

BILL ANALYSIS

Senate Research Center
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S.B. 697
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Senate Bill 697 seeks to strengthen oversight of migrant farmworker housing by improving inspection, enforcement, and outreach efforts. Migrant farmworkers move from region to region following crop harvests. Texas' \$25 billion agricultural business accounts for the second highest migrant farmworker population of any state, with estimates of the population ranging from 34,000 to more than 370,000.

The Texas Department of Housing and Community Affairs (TDCHA) is tasked with inspecting and licensing migrant farmworker housing facilities so they meet a minimum standard of cleanliness and safety. However, an in-depth investigation by *The Austin-American Statesman* in 2016 concluded that enforcement of housing standards is lax at best, and in many cases nonexistent. *The Statesman* found multiple instances in which facilities remained licensed even after inspectors discovered deviations from standards. Substandard conditions include unsanitary conditions, exposed plumbing and electrical wiring, holes in roofs, open wells, and pesticide exposure. Due to this lack of oversight, an estimated 9 in 10 migrant farmworkers lack access to housing that meets basic health and safety standards. In some regions, motels may be the only temporary housing option for farmworkers, yet TDCHA has only inspected and licensed one motel since 2001, according to *The Statesman*.

S.B. 697 improves migrant housing inspections by requiring TDHCA inspectors to keep detailed records of inspections and make immediate determinations of violations. Inspectors would be permitted to interview occupants privately, out of the presence of supervisors. Facilities would need to correct issues promptly before being issued a license, and TDCHA could immediately suspend licenses for facilities with severe violations.

S.B. 697 improves TDHCA's complaint process by requiring the agency to adopt a standardized complaint submission process that is open to third party complaints. Migrant labor housing facilities must post a copy of their license, as well as information about complaint procedures in English and Spanish. The bill also requires TDHCA to proactively engage in outreach to workers and find housing facilities avoiding licensure.

Finally, S.B. 697 gives TDCHA greater flexibility in penalties it may assess, including allowing the agency to develop a penalty schedule for repeat violators, and expands options for migrants challenging unsafe housing conditions, in the courts, through a TDHCA contested case process, or through referral to a county attorney or the attorney general.

As proposed, S.B. 697 amends current law relating to the regulation of migrant labor housing facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the governing board of the Texas Department of Housing and Community Affairs (board) in SECTION 3 (Section 2306.923, Government Code) of this bill.

Rulemaking authority previously granted to the board is modified in SECTION 11 (Section 2306.931, Government Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs (TDHCA) in SECTION 7 (Section 2306.9261, Government Code).

Rulemaking authority is expressly granted to TDHCA in SECTION 8 (Sections 2306.928, 2306.9281, 2306.929, Government Code) of this bill.

Rulemaking authority is expressly granted to TDHCA in SECTION 9 (Section 2306.9305, Government Code) of this bill.

Rulemaking authority is expressly granted to TDHCA in SECTION 12 (Section 2306.933, Government Code) of this bill.

Rulemaking authority is expressly granted to TDHCA in SECTION 13 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2306.922, Government Code, as follows:

Sec. 2306.922. LICENSE REQUIRED. Prohibits a person from establishing, maintaining, or operating a migrant labor housing facility without obtaining a license for the facility from the Texas Department of Housing and Community Affairs (TDHCA) or procuring, making arrangements for, or otherwise providing housing for migrant agricultural workers without ensuring that the applicable migrant labor housing facility is licensed under this subchapter.

SECTION 2. Amends the heading to Section 2306.923, Government Code, to read as follows:

Sec. 2306.923. LICENSE APPLICATION; FEE.

SECTION 3. Amends Section 2306.923, Government Code, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Requires the application to be accompanied by a license fee in an amount established by the governing board of TDCHA (board) rule.

(e) Requires a fee collected under this section to be deposited to the credit of the general revenue fund and may be appropriated to TDHCA for the enforcement of this subchapter (Migrant Labor Housing Facilities).

SECTION 4. Amends the heading to Section 2306.924, Government Code, to read as follows:

Sec. 2306.924. PRE-OCCUPATION INSPECTION.

SECTION 5. Amends Section 2306.925(a), Government Code, as follows:

(a) Requires TDHCA at the time of inspection, if a migrant labor housing facility for which a license application is made does not meet the reasonable minimum standards of construction, sanitation, equipment, and operation required by rules adopted under this subchapter, to give the license applicant in writing the reasons that the facility does not meet those standards. Authorizes the applicant to remedy the deficiency and request TDHCA to reinspect the facility no later than the 10th day, rather than the 60th day, after the date on which the reasons are given.

SECTION 6. Amends Section 2306.926(b), Government Code, to require TDHCA, not later than the 60th day before the date a license is scheduled to expire, to give notice of the expiration to the license holder.

SECTION 7. Amends Subchapter LL, Chapter 2306, Government Code, by adding Section 2306.9261, as follows:

Sec. 2306.9261. **THIRD-PARTY APPEAL OF LICENSE DETERMINATION.** Requires TDHCA by rule to adopt procedures through which third parties, including migrant agricultural workers and advocacy groups, are authorized to appeal the issuance or denial of a license or the imposition of a condition on a license.

SECTION 8. Amends Subchapter LL, Chapter 2306, Government Code, by amending Sections 2306.927, 2306.928, and 2306.929 and adding Section 2306.9281, as follows:

Sec. 2306.927. New heading: **POSTING OF LICENSE AND COMPLAINT INFORMATION.** Requires a person who holds a license issued under this subchapter to post in the licensed migrant labor housing facility at all times during the maintenance or operation of the facility a copy of the license and information describing in English and Spanish the complaint procedures provided by Section 2306.929. Makes a nonsubstantive change.

Sec. 2306.928. **INSPECTION OF FACILITIES.** (a) Requires an authorized representative of TDHCA, before conducting an inspection of a migrant labor housing facility under this section, to give or make a reasonable attempt to give notice to the persons who are the providers of the facility, based on evidence available to TDHCA, and, if applicable, are alleged to be the providers of the facility in any complaint filed under this chapter (Texas Department of Housing and Community Affairs).

(b) Creates this subsection from existing text and provides that an authorized representative of TDHCA, after giving or making a reasonable attempt to give notice under Subsection (a):

(1) is required to inspect the facility on receipt of a complaint under Section 2306.929, including a report of an unlicensed migrant labor housing facility and at least once during the probable period of use of the facility as stated under Section 2306.923(c)(3); and

(2) is authorized to otherwise enter and inspect the facility during reasonable hours and investigate conditions, practices, or other matters as necessary or appropriate to determine whether a person has violated this subchapter or a rule adopted under this subchapter, rather than give notice to the operator of a migrant labor housing facility.

(c) Requires TDHCA by rule, in addition to the inspections required under Subsection (b)(1), to establish an annual quota of proactive inspections of suspected unlicensed or noncompliant migrant labor housing facilities. Prohibits the quota established under this subsection from being less than 50 percent of the number of migrant labor housing facilities licensed under this subchapter in the preceding state fiscal year.

(d) Requires the inspector, during an inspection conducted under Subsection (b)(1) to:

(1) conduct interviews with not less than 10 percent of the occupants of the facility, including any person who submitted a complaint requiring the inspection under Subsection (b)(1)(A), if known;

(2) make written notes regarding the inspection at the time of the inspection or immediately after the inspection; and

(3) take photographs of any violations.

(e) Requires an interview under Subsection (d)(1) to be conducted after working hours or on rest days, to the extent possible and out of the presence of any person who owns or establishes or who maintains, operates, or otherwise provides the

migrant labor housing facility or any person who employs the migrant agricultural workers occupying the facility.

Sec. 2306.9281. INSPECTION REPORT. (a) Requires an inspector, after an inspection, to submit to TDHCA a report containing certain information.

(b) Requires a report under Subsection (a) to be made available to the public on TDHCA's Internet website. Requires TDHCA to redact each migrant agricultural worker's name and other personal information contained in a report made available under this subsection.

(c) Requires TDHCA by rule to establish and require the use of a standardized inspection report form for conducting inspections under Section 2306.928.

Sec. 2306.929. New heading: COMPLAINTS. (a) Requires TDHCA by rule to:

(1) establish procedures for the submission, investigation, and resolution of complaints of alleged violations of this subchapter, including a procedure through which other state agencies that receive a complaint under Subsection (b)(2) can report the complaint to TDHCA; and

(2) adopt a standardized complaint form.

(b) Requires the procedure established under Subsection (a)(1) to allow the submission of complaints to be made:

(1) anonymously or by a third party; and

(2) through the TDHCA's Internet website, in person at any nonprofit organization that assists migrant agricultural workers in finding employment or at any state agency, by phone, or in writing.

(c) Requires the form adopted under Subsection (a)(2) to allow for the collection of specific information.

(d) Requires TDHCA to consider a report regarding an unlicensed migrant labor housing facility to be a complaint under this section.

(e) Requires TDHCA to make available to a person submitting a complaint, if the identity of that person is known, information regarding other housing and transportation resources available to the person. Deletes existing text requiring the board to set the license fee in an amount not to exceed \$250.

SECTION 9. Amends Subchapter LL, Chapter 2306, Government Code, by adding Section 2306.9305, as follows:

Sec. 2306.9305. DUTY TO PROVIDE HOUSING ON SUSPENSION OR REVOCATION OF LICENSE. (a) Requires TDHCA by rule to establish procedures requiring the owner or provider of a migrant labor housing facility, on suspension or revocation of a license as provided by Section 2306.930 (Suspension or Revocation of License), to relocate or provide for the relocation of the occupants of the facility to another facility that meets the occupancy standards of this subchapter and is located in the same area as the vacated facility.

(b) Requires an owner or provider required to relocate an occupant under Subsection (a) to pay any rental cost of the relocation facility that exceeds the rent of the vacated facility.

SECTION 10. Amends the heading to Section 2306.931, Government Code, to read as follows:

Sec. 2306.931. ENFORCEMENT; ADOPTION OF RULES REGARDING HEALTH AND SAFETY AND LICENSING.

SECTION 11. Amends Section 2306.931(e), Government Code, to require the board by rule to adopt minimum standards for issuing, revoking, or suspending a license issued under this subchapter, including rules that provide for the immediate suspension or revocation of a license for certain violations that constitute threats to the health and safety of persons living in migrant labor housing facilities.

SECTION 12. Amends Subchapter LL, Chapter 2306, Government Code, by amending Section 2306.933 and adding Sections 2306.934, 2306.935, and 2306.936, as follows:

Sec. 2306.933. CIVIL PENALTY. (a) Provides that a person who violates this subchapter or a rule adopted under this subchapter is subject to a civil penalty of not less than \$50 for each person occupying the migrant labor housing facility in violation of this subchapter, rather than a civil penalty of \$200, for each day that the violation occurs.

(b) Authorizes an action to collect a penalty under this section to be brought by, rather than requires the county attorney for the county in which the violation occurred, or the attorney general, at the request of TDHCA, to bring an action to collect the penalty:

(1) TDHCA through the contested case hearing process described by Section 2306.930(b) (relating to a specific chapter and TDHCA rules for holding a contested case hearing);

(2) the county attorney for the county in which the violation occurred, or the attorney general, at the request of TDHCA; or

(3) a migrant agricultural worker who, at the time of the violation, lived in the migrant labor housing facility that is the subject of the violation.

(c) Requires TDHCA by rule to adopt a penalty schedule that increases the amount of the penalty assessed against a person who repeatedly violates this subchapter or rules adopted under this subchapter.

(d) Requires a penalty collected under Subsection (b)(1) or (2) to be deposited to the credit of the general revenue fund and authorizes it to be appropriated only to TDHCA for the enforcement of this subchapter.

Sec. 2306.934. ATTORNEY'S FEES. Provides that a person against whom a civil penalty is assessed under Section 2306.933 is liable for paying the costs and attorney's fees of the person who brought the action under Section 2306.933(b).

Sec. 2306.935. RETALIATION PROHIBITED. Prohibits a person who owns, establishes, maintains, operates, procures, makes arrangements for, or otherwise provides a migrant labor housing facility, a person who employs a migrant agricultural worker who occupies a migrant labor housing facility, or a farm labor contractor from retaliating against a person for filing a complaint or providing information in good faith relating to a possible violation of this subchapter.

Sec. 2306.936. OUTREACH AND EDUCATION. (a) Requires TDHCA to provide, to migrant agricultural workers in different regions of the state, educational materials or programs that are presented in English, Spanish, and other languages as appropriate and that inform the workers of their rights and remedies under this subchapter and to persons who own, establish, maintain, operate, procure, make arrangements for, or otherwise provide migrant labor housing facilities, educational materials or programs that are presented in English, Spanish, and other languages as appropriate and that inform the persons of their obligations under this subchapter.

(b) Requires TDHCA, to better provide the services described by Subsection (a), to ensure that, in each region of the state where migrant labor housing facilities are most common, there are persons capable of providing the information described by Subsection (a) in English, Spanish, and other languages as appropriate and conduct research, including by surveying migrant agricultural workers, concerning what types of migrant labor housing facilities are most common in different regions of the state and what regions of the state most need additional or improved migrant labor housing facilities.

SECTION 13. Requires TDHCA, not later than March 1, 2020, to adopt the rules necessary to implement Subchapter LL, Chapter 2306, Government Code, as amended by this Act.

SECTION 14. (a) Makes application of this Act prospective, except as provided by Subsection (b) of this section.

(b) Makes application of Section 2306.933, Government Code, as amended by this Act and Section 2306.934, Government Code, as added by this Act, prospective.

SECTION 15. Effective date: September 1, 2019.