

BILL ANALYSIS

C.S.H.B. 883
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Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A 2016 investigative news report from the Austin American-Statesman shed light on the inhumane housing conditions migrant agricultural workers face in Texas due to lack of oversight. Appropriate and additional oversight and compliance is necessary to properly identify and correct migrant agricultural housing in unlivable conditions. C.S.H.B. 883 seeks to address this issue by revising the procedures through which the Texas Department of Housing and Community Affairs (TDHCA) licenses and oversees these facilities, and by prohibiting a person from procuring or otherwise providing housing for migrant agricultural workers without ensuring that the applicable housing facility is licensed by TDHCA.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the governing board of the Texas Department of Housing and Community Affairs (TDHCA) in SECTIONS 3 and 9 of this bill and to TDHCA in SECTIONS 7 and 10 of this bill.

ANALYSIS

C.S.H.B. 883 amends the Government Code to prohibit a person from procuring or otherwise providing housing for migrant agricultural workers without ensuring that the applicable migrant labor housing facility is licensed by the Texas Department of Housing and Community Affairs (TDHCA). The bill does the following with respect to certain matters related to the licensing of migrant labor housing facilities:

- requires TDHCA to prescribe the form and manner of the license application;
- requires an applicant who seeks to substitute an inspection conducted by the U.S. Department of Labor or the Texas Workforce Commission for a pre-occupation inspection conducted by TDHCA to include with the application individualized affirmations regarding the facility's compliance with each applicable state standard and electronically submitted digital images of the facility that hold metadata verifying when and where the images were taken;
- removes the requirement that the governing board of TDHCA set the fee for a migrant labor housing facility license in an amount not to exceed \$250 and specifies that the license fee is instead established by the board by rule in a reasonable amount sufficient to cover applicable costs, but capped at \$75;
- requires the license fees to be deposited to the credit of the general revenue fund and authorizes the appropriation of the fees to TDHCA for the administration of migrant labor housing facilities provisions;

- prohibits TDHCA from issuing a license for a migrant labor housing facility that does not meet the reasonable minimum standards of construction, sanitation, equipment, and operation;
- specifies that the notice of deficiency given by TDHCA to a license applicant if the facility for which the application is made does not meet those minimum standards is a written notice, removes the 60-day deadline for an applicant that receives such notice to request that TDHCA reinspect the facility, and clarifies that the applicant may remedy the deficiency and then make the request; and
- requires TDHCA to give notice of the expiration of a migrant labor housing facility license to the license holder not later than the 60th day before the date the license is scheduled to expire.

C.S.H.B. 883 requires a license holder to post in the licensed migrant labor housing facility at all times during the maintenance or operation of the facility a copy of information describing in English and Spanish the complaint procedures applicable to such a facility.

C.S.H.B. 883 requires an authorized representative of TDHCA, before conducting an inspection of a migrant labor housing facility, to give or make a reasonable attempt to give notice to the following persons:

- the persons who are the providers of the facility, based on evidence available to TDHCA; and
- the persons who, if applicable, are alleged to be the providers of the facility in any applicable complaint.

C.S.H.B. 883 does the following with respect to inspections of a migrant labor housing facility:

- requires an authorized representative of TDHCA, after giving or making a reasonable attempt to give the applicable notice, to inspect the facility on receipt of a complaint, including a report of an unlicensed facility;
- requires the inspector, during such an inspection, to conduct interviews with occupants of the facility, including any person who submitted a complaint requiring the inspection; make written notes regarding the inspection at the time of the inspection or immediately after the inspection; and take photographs of any violations;
- requires an interview with a facility occupant 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;
- requires TDHCA by rule to prioritize the inspection of migrant labor housing facilities during the probable period of facility use, as stated in license applications, and to establish an annual quota of proactive inspections of suspected unlicensed or noncompliant migrant labor housing facilities, and establishes that these requirements are in addition to the required inspection; and
- prohibits the quota from being less than 15 percent of the number of migrant labor housing facilities licensed in the preceding state fiscal year and authorizes an inspection during the probable use period to be used to satisfy the quota.

C.S.H.B. 883 requires an inspector, after an inspection of a migrant labor housing facility, to submit to TDHCA a report containing a narrative regarding the alleged violation and the methods used to investigate the alleged violation, a determination of whether the alleged violation or any other violation exists, and evidence supporting the determination. The bill requires TDHCA by rule to establish and require the use of a standardized inspection report form for conducting inspections.

C.S.H.B. 883 requires TDHCA by rule to establish procedures for the submission, investigation, and resolution of complaints of alleged violations of provisions governing migrant labor housing

facilities and to adopt a standardized complaint form. The bill does the following with respect to complaints:

- requires the standardized complaint form to allow for the collection of certain specified information;
- requires the procedures to allow the submission of complaints:
 - by a third party; and
 - through the TDHCA website, or at any state agency, by telephone, or in writing;
- requires TDHCA to consider a report regarding an unlicensed migrant labor housing facility to be a complaint;
- requires TDHCA to make available to a person submitting a complaint information regarding other housing and transportation resources available to the person;
- establishes that personal identifying information of a person submitting a complaint is confidential and not subject to disclosure under state public information law; and
- requires TDHCA, if a complaint is dismissed or not yet resolved before the 181st day after the date the complaint was filed, to provide timely written notice of the dismissal or failure to resolve the complaint, sent by certified mail, to the person filing the complaint.

C.S.H.B. 883 requires the governing board of TDHCA to adopt 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.

C.S.H.B. 883 changes the amount of the civil penalty for a violation of provisions governing migrant labor housing facilities or a rule adopted under such provisions from \$200 for each day that the violation occurs to a minimum of \$50 for each person occupying the migrant labor housing facility in violation of those provisions for each day that the violation occurs. The bill does the following with respect to the violations and penalties:

- extends the authority to bring an action to collect a penalty to TDHCA, which does so through a prescribed contested case hearing process;
- further extends the authority to bring such an action to 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, but an action may be brought by a worker only if TDHCA dismisses a complaint or does not resolve the complaint before the 181st day after the date the complaint is filed and the complainant receives approval from TDHCA in the manner provided by the bill;
- with respect to that approval process, provides the following:
 - beginning on the 181st day after a complaint is filed, a complainant whose complaint has not yet been dismissed or otherwise resolved is entitled to request, in writing, from TDHCA a written notice of the complainant's right to file a civil action; and
 - the executive director of TDHCA may issue the notice but failure to issue the notice of a complainant's right to file a civil action does not affect the complainant's right to bring a civil action against the respondent;
- requires TDHCA by rule to adopt a penalty schedule that increases the amount of the penalty assessed against a person who repeatedly violates provisions governing migrant labor housing facilities or rules adopted under those provisions;
- requires a penalty collected through an action brought by TDHCA, a county attorney, or the attorney general to be deposited to the credit of the general revenue fund and restricts appropriation of the penalty to TDHCA for the enforcement of provisions governing migrant labor housing facilities; and
- authorizes the court to award reasonable attorney's fees to the prevailing party in an action brought under provisions governing migrant labor housing facilities.

These provisions apply only to a violation that occurs on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of a violation, or any element thereof, that occurred before that date.

C.S.H.B. 883 prohibits the following from retaliating against a person for filing a complaint or providing information in good faith relating to a possible violation of provisions governing migrant labor housing facilities:

- 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.

C.S.H.B. 883 requires TDHCA to do the following with respect to outreach and education:

- provide certain educational materials or programs to migrant agricultural workers in different regions of Texas and to persons who own, establish, maintain, operate, procure, make arrangements for, or otherwise provide migrant labor housing facilities;
- ensure that, in each region of Texas where such facilities are most common, there are persons capable of providing the information in English, Spanish, and other languages as appropriate; and
- conduct research concerning what types of migrant labor housing facilities are most common in different regions and what regions most need additional or improved migrant labor housing facilities.

C.S.H.B. 883 requires TDHCA to adopt the rules necessary to implement the bill's provisions not later than March 1, 2024. The bill applies only to an administrative or regulatory action taken on or after the bill's effective date.

EFFECTIVE DATE

January 1, 2024.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 883 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The introduced prohibited a person from procuring, making arrangements for, or otherwise providing housing for migrant agricultural workers without ensuring that the applicable migrant labor housing facility is licensed, whereas the substitute applies that prohibition only to persons procuring or otherwise providing housing for such workers.

The substitute includes a provision absent from the introduced that caps the license fee for a migrant labor housing facility at \$75.

The introduced changed the deadline for a license applicant to request that TDHCA reinspect a migrant labor housing facility after receiving notice that it does not meet certain minimum standards from the 60th day after the date on which such notice is given to the 10th day after that date. The substitute removes the 60-day deadline altogether and prohibits TDHCA from issuing a license for a facility that does not meet the applicable minimum standards.

The substitute omits a requirement that appeared in the introduced for TDHCA by rule to adopt procedures through which third parties may appeal the issuance or denial of a migrant labor housing facility license or the imposition of a condition on a license.

With respect to the inspection of migrant labor housing facilities, the substitute does the following:

- omits a requirement that appeared in the introduced for an authorized representative of TDHCA to inspect a facility at least once during the probable period of its use but includes a requirement that did not appear in the introduced for TDHCA by rule to prioritize inspections of facilities during their probable period of use;
- omits a specification of the introduced that an inspector interview at least 10 percent of the occupants of a facility subject to a required inspection;
- lowers the minimum quota of proactive inspections from 50 percent of licensed facilities, as in the introduced, to 15 percent of licensed facilities; and
- omits the provisions from the introduced that required an inspection report to be made available to the public on the TDHCA website, with personal information redacted.

The substitute revises the requirements in the introduced for the procedures established by TDHCA for the submission of complaints by omitting the requirements for those procedures to allow a complaint to be submitted anonymously and to be submitted in person at any nonprofit organization that assigns migrant agricultural workers in finding employment.

The substitute includes provisions not in the introduced that make personal identifying information of a person submitting a complaint confidential and not subject to disclosure under state public information law and requires TDHCA to notify a complainant if the complaint is dismissed or not yet resolved before the 181st day after the date the complaint was filed.

The substitute omits the following requirements that appeared in the introduced:

- a requirement for TDHCA by rule to establish procedures requiring the owner or provider of a migrant labor housing facility whose license is suspended or revoked to relocate or provide for the relocation of occupants to another facility that meets specified requirements; and
- a requirement for the owner or provider to pay any rental cost of the relocation facility that exceeds the rent of the vacated facility.

Both the introduced and substitute extend the authority to bring an action to collect a civil penalty for a violation of provisions governing migrant labor housing facilities or a rule adopted under such provisions to an agricultural worker who, at the time of the violation, lived in the facility that is the subject of the violation. However, the substitute includes the following provisions that did not appear in the introduced:

- a provision making that authority applicable only if TDHCA dismisses a complaint or does not resolve the complaint before the 181st day after the date the complaint was filed and the complainant receives approval from TDHCA;
- provisions that provide for a complainant whose complaint has not yet been dismissed or otherwise resolved by the applicable date to request and receive from TDHCA a written notice of the complainant's right to file a civil action; and
- a clarification that failure to issue such notice does not affect the complainant's right to bring a civil action against the respondent.

Whereas the introduced made a person against whom a civil penalty is assessed liable for paying the costs and attorney's fees of the person who brought the action, the substitute authorizes the court to award reasonable attorney's fees to the prevailing party in an action under provisions governing migrant labor housing facilities.

The substitute changes the bill's effective date from September 1, 2023, as in the introduced, to January 1, 2024.