

BILL ANALYSIS

C.S.H.B. 3136
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Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Developers claim that the Texas Department of Housing and Community Affairs (TDHCA) intentionally delays the issuance of IRS Form 8609 for the allocation of low income housing tax credits. Instead of delivering this coveted document within a reasonable amount of time, the practice at TDHCA is to withhold its issuance until the completion of a "cost certification" process that can drag on for months, or, too often, years. Using this form as leverage to complete cost certification has needlessly delayed owners and investors in filing complete and timely federal tax returns. Development owners and their partners should not be subjected to extended cost certifications that hold the issuance of Form 8609 hostage. C.S.H.B. 3136 seeks to accelerate this process by providing for a Form 8609 to be issued by TDHCA not later than the 120th day after the date the development owner submits the requisite documentation.

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 Texas Department of Housing and Community Affairs in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 3136 amends the Government Code to require the Texas Department of Housing and Community Affairs (TDHCA) to issue an Internal Revenue Service Form 8609 to a person or their affiliate who owns or proposes a qualified low income housing project not later than the 120th day after the date the person submits to TDHCA the documentation packet required to receive an allocation of low income housing tax credits. A documentation packet consists only of the following:

- a signed and notarized owner's statement of certification form through which the development owner certifies the accuracy of the information included in the documentation packet;
- an owner's summary form that includes:
 - the taxpayer identification number of the development owner; and
 - information on the ownership structure of the development owner, the developer, or the development guarantor;
- a development cost schedule for the development;
- an independent auditor's report of the total development cost and eligible basis of the development through which the auditor certifies that the audit was conducted according to generally accepted auditing standards, which includes an examination of evidence supporting the amounts and disclosures outlined in the cost certification, an assessment of the accounting principles used and significant estimates made by the development

owner, and an overall cost certification evaluation and establishment of the total eligible basis;

- an independent auditor's report of bond financing through which the auditor certifies the percentage of the development's aggregate basis financed by tax-exempt bonds;
- a complete copy of the executed carryover allocation agreement issued to the development owner by TDHCA;
- for a development that was awarded points for demonstrating nonprofit participation under the sponsor characteristics of the application, documentation evidencing the nonprofit participation;
- a placement in service form that contains summarized information for the development on a building-by-building basis;
- a permission to occupy form and either an architect certification or substantial completion form that are appropriately completed and signed;
- a complete copy of the executed and recorded land use restriction agreement for the development;
- a projected operating pro forma to include a rent schedule and annual operating expenses; and
- a summary of the sources and uses of funds for the development.

C.S.H.B. 3136 requires certain of the form and contents of such documentation to be the same as those prescribed by TDHCA for the application cycle for low income housing tax credits that is based on the 2022 qualified allocation plan.

C.S.H.B. 3136 authorizes TDHCA to assess an administrative penalty against a development owner if TDHCA determines that the owner has intentionally provided incorrect or inconsistent information in a submitted documentation packet. In assessing an administrative penalty, TDHCA may impose a monetary penalty against the owner in accordance with state law governing administrative penalties imposed by TDHCA or prohibit the owner or any person that has an ownership interest in the development, except for a tax credit purchaser or syndicator, from participating in the low income housing tax credit program for a maximum period of two years.

C.S.H.B. 3136 requires TDHCA to prepare and submit to the legislature a quarterly report that includes the following information for the preceding quarter:

- the total number of submitted documentation packets that TDHCA is in the course of processing;
- the total number of Forms 8609 that TDHCA issued, aggregated by the total number issued, as follows:
 - not later than the 120th day after the date a documentation packet was submitted;
 - on or after the 121st day but before the 151st day after the date a documentation packet was submitted;
 - on or after the 151st day but before the 181st day after the date a documentation packet was submitted; and
 - on or after the 181st day after the date a documentation packet was submitted;
- a detailed statement of the reasons for TDHCA's delay in issuing Form 8609 in the required time, including complete copies of any requests for information;
- the average time TDHCA required for issuing Form 8609;
- the total number of rejected applications for Form 8609; and
- a detailed statement of the reason for TDHCA's rejection of each application.

C.S.H.B. 3136 requires TDHCA to adopt rules to implement the bill's provisions, including rules specifying the manner, deadline, and fees for submitting a documentation packet.

C.S.H.B. 3136 applies only to an application for low income housing tax credits that is submitted to TDHCA during an application cycle that is based on the 2023 qualified allocation plan or a subsequent plan adopted by the governing board of TDHCA.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3136 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.

Whereas the introduced required TDHCA to issue a Form 8609 to a development owner not later than the 30th day after the date the owner submits a documentation packet, the substitute requires TDHCA to issue the form to the owner not later than the 120th day after that date.

The substitute omits a requirement that appeared in the introduced for TDHCA to establish procedures for a development owner to prepare and submit a documentation packet for the purpose of receiving an allocation of low income housing tax credits. However, the substitute includes a clarification absent from the introduced that the packet to which the definition of "documentation packet" applies is the packet required to receive an allocation of low income housing tax credits.

Whereas the introduced required the documentation packet to include specified information, the substitute restricts the contents of the documentation packet to only that information. With respect to that packet, the substitute does the following:

- includes among the required contents of a documentation packet established in the introduced a projected operating pro forma to include a rent schedule and annual operating expenses and a summary of the sources and uses of funds for the development;
- provides for the inclusion of a substantial completion form as an alternative to the architect certification required by the introduced;
- omits a specification present in the introduced that the requisite documentation evidencing the nonprofit participation is for a development that was awarded one or two points, whereas the substitute does not specify the number of points; and
- includes provisions that were not in the introduced that require certain of the forms and contents of the required documentation to be the same as those prescribed by TDHCA for the application cycle that is based on the 2022 qualified allocation plan.

While both the introduced and the substitute specify the periods for which TDHCA is required to report the number of Forms 8609 issued, the substitute extends the periods specified by the introduced as follows:

- from not later than the 15th day after the date a documentation packet was submitted to not later than the 120th day after that date;
- from on or after the 16th day but before the 31st day after the date a documentation packet was submitted to on or after the 121st day but before the 151st day after that date;
- from on or after the 31st day but before the 61st day after the date a documentation packet was submitted to on or after the 151st day but before the 181st day after that date; and
- from on or after the 61st day after the date a documentation packet was submitted to on or after the 181st day after that date.

While both the introduced and substitute require TDHCA to adopt rules to implement the bill's provisions, the substitute omits the specification present in the introduced for the adopted rules to include rules prescribing the form and contents of certain documentation provided in the documentation packet.

Whereas the introduced applied only to an application for low income housing tax credits submitted during an application cycle that is based on the 2024 qualified allocation plan, the substitute applies to those submitted during an application cycle based on the 2023 plan.