

BILL ANALYSIS

C.S.H.B. 2608
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Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Legislature created the Texas Department of Housing and Community Affairs (TDHCA) in 1991 by merging the Texas Department of Community Affairs and the Texas Housing Agency. The Department's main functions include assisting low- and moderate-income Texans to obtain affordable housing by awarding federal funds, state funds, and tax credits; assisting low-income Texans to obtain community-based support services, including services to address homelessness, foreclosure, high utility costs, home weatherization, and other concerns; acting as an information clearinghouse on affordable housing resources; and regulating the manufactured housing industry.

TDHCA is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the Legislature. The Sunset Commission found that the State has a continuing need for TDHCA, but identified areas for improvement within the disaster recovery, housing tax credit, and manufactured housing programs, as well as the Department's enforcement processes.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Board of TDHCA is modified in SECTION 1.07 of this bill.

Rulemaking authority is expressly granted to the Board of the Manufactured Housing Division in SECTION 4.05 of this bill.

Rulemaking authority is expressly granted to the executive director of the Manufactured Housing Division in SECTION 4.13 of this bill.

ANALYSIS

Continues the Texas Department of Housing and Community Affairs for 12 years.

C.S.H.B.2608 changes TDHCA's Sunset review date to September 1, 2023, to continue the agency for 12 years.

Requires TDHCA, in consultation with the Texas Department of Rural Affairs and the Governor's Office, to develop a comprehensive long-term disaster recovery plan.

C.S.H.B.2608 requires TDHCA, in consultation with the Texas Department of Rural Affairs (TDRA) and the Office of the Governor, to develop a long-term disaster recovery plan to administer money received for that purpose. C.S.H.B. 2608 designates TDHCA as the agency responsible for ensuring development of the plan. The bill directs TDHCA to develop housing components of the plan and directs TDRA to develop plan components related to infrastructure. While developing the plan, the bill requires the agencies to consult with federal, state, and local stakeholders. The bill also requires TDHCA to consult with the U.S. Department of Housing and Urban Development to ensure elements of the plan comply with federal requirements.

The bill requires TDHCA, in consultation with TDRA and the Office of the Governor, to update the plan biennially, and obtain the approval of the Governor. The agencies would develop the initial plan by March 1, 2012, and obtain the approval of the Governor by May 1, 2012, in advance of hurricane season.

C.S.H.B.2608 requires the plan to establish the following: methods of distribution of funding subject to modification by the Governor based on the nature of the disaster; guidelines for outreach to applicants and for eligible activities; eligibility criteria for applicants; housing quality standards; priorities for serving local populations; procedures for establishing compliance with federal requirements; procedures for coordination and communication among federal, state, and local entities; pre- and post-disaster training programs; a procedure for each department to compile, update, and post on each department's website, in advance of hurricane season, all relevant forms for program applicants; federal and state monitoring

requirements, including the types of data local government officials may be required to collect; the state processes and information systems that will be used to administer funds; a process for identifying aspects of disaster recovery where coordination among state agencies will be required; and a process for implementing memoranda of understanding in those areas.

Requires the Governor to designate the State's lead agency for administration of any potential long-term disaster recovery funding by May 1 of every even numbered year.

The bill requires the Governor to designate the state agency that will act as the primary agency in charge of coordinating the distribution of long-term disaster recovery funds by May 1, 2012, and biennially thereafter.

Requires communities to add a long-term recovery component to existing emergency management plans.

C.S.H.B.2608 requires local agencies and officials responsible for disaster recovery to add a long-term recovery component to existing disaster plans. The long-term disaster recovery component must identify requirements or procedures that local agencies and officials must implement to qualify for future long-term federal disaster recovery funding, and to prepare for long-term disaster recovery. The plan component must also identify state or local resources available to assist in long-term recovery.

Allows TDHCA to create additional tax credit allocation cycles to take advantage of non-standard federal assistance opportunities.

In the event the State receives emergency tax credits or related federal funding, the bill permits the Department to release credits or funds for development by creating a separate application cycle, that does not follow the uniform application cycle, as needed.

Allows TDHCA's Board to update the qualified allocation plan biennially instead of annually.

C.S.H.B.2608 requires TDHCA to update the qualified allocation plan (QAP) and manual at least every two years instead of annually. The bill permits the Board to adopt the plan and manual annually if the considered appropriate by the Board. The bill clarifies that regardless of whether the Board adopts the QAP annually or biennially, the Department must prepare and submit for adoption any proposed QAP to the Board by September 30th of the year before the new QAP applies. The bill clarifies that regardless of whether the Board adopts the QAP annually or biennially, the Department must submit any proposed QAP to the Governor by November 15th of the year before the new QAP applies.

Clarifies that developments funded with a USDA 538 loan may apply for low-income housing tax credits through the rural tax credit set-aside if the development also has financing through the USDA 515 Loan Program.

Current law requires the Department to set-aside five percent of tax credits to assist developments that receive federal financial assistance through the Texas Rural Development Office of the United States Department of Agriculture (USDA). The bill permits developments seeking tax credits for rehabilitation, which receive funding through the USDA 538 loan program, to apply for the set-aside as long as the developments received other assistance through the USDA 515 program and will continue to receive that assistance.

Clarifies in statute that Housing Trust Fund programmed activities funded with less than \$3 million are exempt from the Department's Regional Allocation Formula.

C.S.H.B.2608 clarifies that TDHCA would not apply its regional allocation formula to an activity funded by the Housing Trust Fund unless the activity received more than \$3 million in funding for that application cycle.

Transfers the Department's penalty appeals hearings to the State Office of Administrative Hearings.

The bill requires TDHCA to refer penalty appeals to the State Office of Administrative Hearings (SOAH), instead of TDHCA's board. The bill requires SOAH to hold the hearing, make findings of fact and conclusions of law regarding the violation and penalty, and issue a proposal for decision to the TDHCA Board. After receiving the proposal for decision, the Board is required to issue an order. The bill requires any SOAH proceeding to be considered a contested case under Government Code, Chapter 2001. The bill specifies that changes in the hearings process apply only to violations committed on or after the effective date of the bill.

Requires judicial review of appeals of the Department's decisions to be based on the substantial evidence rule.

C.S.H.B.2608 requires use of the substantial evidence rule, instead of a *de novo* review, for judicial review of appeals of board orders imposing an administrative penalty. The bill specifies that changes in the judicial review standard apply only to violations committed on or after the effective date of the bill.

Authorizes the Department to use debarment as a sanction and protection in all its programs.

The bill permits the Department to debar individuals for significant performance failures across all housing and community affairs programs, not just the housing tax credit program. C.S.H.B.2608 requires TDHCA to adopt debarment policies in rule. The bill clarifies that repeated violations of Department conditions may lead to debarment. The bill authorizes participants facing debarment to appeal decisions to the TDHCA board.

Requires the Manufactured Housing Division (Division) to inspect 75 percent of all manufactured housing installations, report on meeting this goal and, if the Division cannot meet the goal, institute a third-party inspection process to supplement state inspections.

C.S.H.B.2608 increases the number of manufactured housing installation inspections the Division must perform from 25 percent of installed homes to 75 percent of installed homes. If the Division cannot inspect the 75 percent of homes installed in calendar year 2012, 2013, and 2014, the Division's director is required to develop a third-party installation program in rule to supplement state inspections.

C.S.H.B.2608 requires the department to submit to the Legislative Budget Board, the Governor's Office of Budget, Planning, and Policy, and the standing committee of each house of the legislature having primary jurisdiction over housing, a report explaining whether the department met the 75 percent inspection requirement by January 1, 2015. If the Department fails to meet the 75 percent inspection target, the bill requires the director to establish the program on or after January 1, 2015, adopt rules for the third-party program by December 1, 2015, and to begin registering third-party inspectors by January 1, 2016.

The third-party program must: establish qualifications for third-party inspectors; provide for inspector registration with the department; establish a biennial registration and renewal process for inspectors; require the list of registered third-party inspectors to be posted on the department's website; establish clear processes governing inspection fees and payment to third-party inspectors; establish the maximum inspection fee that may be charged to a consumer; and require third-party inspections to occur no later than the 14th day after the date of installation of the manufactured home.

The third-party program must also: establish a process for a retailer or broker to contract, as part of the sale of a new or used manufactured home, with an independent third-party inspector to inspect the installation of the home; establish a process for an installer to schedule an inspection for each consumer-to-consumer sale where a home is reinstalled; and if a violation is noted in an inspection, require the installer to remedy the violations noted, have the home reinspected at the installer's expense, and certify to the department that all violations have been corrected.

The third-party program must also: require an inspector to report inspection results to the retailer, installer, and the department; require the retailer, installer, and department to maintain a record of the results at least until the end of the installation warranty period; authorize the department to charge a filing fee and an inspection fee; and authorize the department to continue to conduct no-charge complaint inspections on request, but only after an initial installation inspection is completed.

The third-party program must also: establish procedures to revoke the registration of inspectors who fail to comply with rules adopted under this section, and require the department to notify the relevant state agency if the department revokes an inspector registration based on a violation that is relevant to a license issued to the applicable person by another state agency.

Reduces initial core education requirements for all manufactured housing licensees from 20 to eight hours, but requires an additional four hours of specialized training for installers and for retailers.

C.S.H.B.2608 reduces the core curriculum for all new license applicants from 20 to eight hours, but requires installers and retailers to obtain an additional four hours of specialized instruction in their specific occupations. An applicant for a joint installer-retailer license must complete a total of eight hours of specialized instruction. The bill specifies that time needed to complete licensing exams cannot count toward minimum education requirements. The bill specifies that all changes to licensing requirements apply only to applications filed with the Division after the effective date of the bill.

Requires a management official at each licensed manufactured housing retailer location to fulfill appropriate education requirements.

The bill requires each licensed retailer location to have at least one individual, with actual authority over employees involved in the sale of manufactured homes, to meet the education requirements needed for

retailer licensure. The bill specifies that all changes to licensing requirements apply only to applications filed with the Division after the effective date of the bill.

Requires the Department to conduct a fingerprint-based criminal background check of all manufactured housing licensees.

C.S.H.B.2608 requires TDHCA to require applicants for licensure to submit fingerprints to the Department or the Department of Public Safety (DPS) so that the Department may obtain state and federal criminal history information on the applicant. The bill requires prospective licensees to provide fingerprints at the time of application, and requires existing licensees to provide fingerprints upon renewal. The bill requires applicants to pay the cost of the criminal history check. The bill specifies that all changes to licensing requirements apply only to applications filed with the Division after the effective date of the bill. The bill authorizes the Department to enter into an agreement with DPS to administer criminal history checks.

Grants cease-and-desist authority to the Division for unlicensed construction, sale, and installation of manufactured homes.

C.S.H.B.2608 expands the Division's existing cease-and-desist authority to allow the director to issue cease-and-desist orders to unlicensed operators, in addition to licensed operators, who are in violation of Division laws or rules. Through expanding this authority, the bill authorizes the director to assess administrative penalties against unlicensed individuals or entities who violate a cease-and-desist order.

Authorizes the Division to order direct refunds as part of the manufactured housing complaint settlement process.

The bill expands the Division's consumer compensation options by authorizing the director to order a licensee to pay a refund directly to a consumer who sustains actual damages resulting from a claim against a manufactured housing licensee. This option is in addition to current law that permits consumers to seek refunds from the manufactured homeowners' recovery trust fund. C.S.H.B.2608 requires the director to post notifications of this direct compensation option on the Division's website and to provide copies upon request.

Authorizes Division staff to administratively dismiss baseless and non-jurisdictional manufactured housing complaints and report these actions to the Division's director and Board.

C.S.H.B.2608 authorizes Division staff to administratively dismiss baseless and non-jurisdictional complaints and requires staff to report these actions to the Division's director and Board. Staff must provide sufficient explanation of the reason the complaint was dismissed. The bill specifies that changes in the complaint dismissal process apply only to complaints filed on or after the effective date of the bill.

Eliminates manufactured housing branch and rebuilder licenses from statute.

C.S.H.B.2608 eliminates the branch and rebuilder, including salvage rebuilder, license types. The bill clarifies that functions previously performed under branch or rebuilder licenses shall be performed under a retailer license. The bill specifies that a retailer licensed to operate one or more branch locations is not required to comply with changes made to the licensing law until March 1, 2012.

Authorizes the Division to establish a fee for reprinted manufactured housing licenses.

C.S.H.B.2608 permits the Division to collect a fee, determined by the Division's Board, for reprinted licenses.

Applies the standard Sunset across-the-board requirement for the Manufactured Housing Division to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

The bill requires the Division to develop and implement a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The Division would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Unlike the original bill, C.S.H.B. 2608 maintains current law with respect to scoring criteria for the low-income housing tax credit program. Current law includes provisions that require TDHCA to score tax credit applications based on letters received from neighborhood organizations as the second-highest

scoring criterion in the awards process. Current law also requires that TDHCA score letters received from state senators and state representatives as the sixth-highest scoring criterion.

The original bill adjusted the tax credit scoring criteria by replacing neighborhood organization letters with voted resolutions, adopted by the governing body of the municipality or commissioners court in the area of the proposed development, as the second-highest scoring criterion. The original bill would have maintained neighborhood letters in the scoring process, but as the last statutorily required scoring item. The original bill also removed the statutory scoring priority for letters from state senators and state representatives.

The substitute clarifies that a development funded with a USDA 538 loan may apply for low-income housing tax credits through the rural tax credit set-aside if the development also has, and will continue to have, financing through the USDA 515 Loan Program. The original bill did not contain this provision.