HOUSE
RESEARCH
ORGANIZATION bill analysis | 4/27/99 | HB 2209
McClendon
(CSHB 2209 by Ehrhardt)

SUBJECT: Allowing housing authorities to lend money to public facility corporations

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 7 ayes — Carter, Bailey, Burnam, Clark, Ehrhardt, Hodge, Najera

0 nays

1 present, not voting — Hill

1 absent — Edwards

WITNESSES: For — Melvin Braziel, Diana Kinlaw, Richard Martinez, Doug Poneck, and Lisa Ann Rodriguez, San Antonio Housing Authority

Against — None

On — John Henneberger, Texas Low Income Housing Information Service

BACKGROUND: Public housing authorities are governmental entities created by cities and counties to provide affordable housing and housing assistance to the poor. Housing authorities generally are funded by federal money from the U.S. Department of Housing and Urban Development (HUD) and are directed by the state to set rental rates as low as possible.

Housing authorities are authorized by statute to create nonprofit subsidiary corporations called public facility corporations (PFCs) to help the housing authorities develop, finance, and manage affordable housing. Under the Public Facility Corporation Act, art. 717s, VTCS, PFCs have broad powers to acquire, build, rehabilitate, repair, equip, and furnish public facilities at the lowest possible borrowing costs. They also may issue bonds on their sponsors' behalf to finance the costs of public facilities.

DIGEST: CSHB 2209 would amend the Local Government Code to allow a housing authority, in order to provide affordable housing or housing assistance, to secure the payment of debt issued by a PFC created by the authority. The authority could, with or without consideration:

- transfer, pledge, or otherwise use money, real property, or any other right or benefit to which the authority is entitled; and
- pledge a right or benefit to secure the payment of debt issued by the PFC.

For the purpose of providing affordable housing or housing assistance, a housing authority that created a PFC could, with or without consideration, make loans, contributions, and mortgages to and investments in the corporation and could enter into leases and exchanges with the corporation. These actions could be for the purpose of acquiring, building, rehabilitating, renovating, equipping, or providing assistance to low-income residential developments or housing projects or for any other public purpose authorized by law. An authority could exercise these powers as necessary to:

- develop or diversify the economy of the state;
- reduce unemployment or underemployment in the state;
- develop or expand commerce in the state; or
- promote another public purpose.

A housing project or other program that used funds provided by an authority under this provision would have to benefit individuals and families whose incomes were not more than 80 percent of the area median family income, as determined by HUD, in the same proportion that the funds provided by the authority bore to the overall cost of the project.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY:

CSHB 2209 would enable housing authorities to make contributions or loans to their nonprofit subsidiaries to help them provide affordable housing and housing assistance to those in need. Providing safe, decent, affordable housing for low-income families and individuals can reduce unemployment and crime, protect children, and promote economic development in areas where it is most needed.

The bill would allow PFCs to use funds provided by housing authorities to bridge the gap between the costs of the project and what can be funded by bonds. With the federal government giving less and less money to the states for affordable housing, the state must use every possible means to continue to make affordable housing available to a growing number of low- and moderate-income families.

The state should help housing authorities encourage mixed-income rentals. In the past decade, projects designed only for very low-income residents gained a bad reputation, and many were demolished. Although HUD will provide replacement housing, it no longer will provide rental supplements for residents of new low-income public housing. Consequently, it is almost impossible to obtain financing for housing that is only for very low-income residents. Housing authorities are trying to create new opportunities for low-income families and individuals by creating mixed-income projects that can generate enough cash flow to support subsidized rentals for low-income families.

CSHB 2209 would allow PFCs to continue to promote and expand the availability of decent, affordable housing for those who deserve it. Current law does not authorize housing authorities specifically to enter into transactions with PFCs to assist them with funding to meet their public purpose of providing low-income housing. Some housing authorities have been making loans or contributions for these purposes, but the attorney general has questioned their authority to do so.

The attorney general, when reviewing tax-exempt bond financing of this nature, has questioned the authority of a housing authority to make capital contributions or loans to a PFC under current law and under Art. 3, sec. 52 of the Texas Constitution, which prohibits political subdivisions from lending or granting public money to individuals, associations, or corporations. An exception to this restriction, found in Art. 3, sec. 52-a, authorizes public money to be used for economic development pursuant to enabling legislation. CSHB 2209 would take advantage of this constitutional exception, authorizing the housing authority to make loans or contributions for projects that would develop or diversify the economy, reduce unemployment or underemployment, and develop or expand commerce.

The bill would ensure that any public money that the authority contributed or lent to a PFC would benefit those who really need it. It would stipulate that those funds must benefit families whose income is not more than 80 percent of the area median family income in the same proportion those funds bore to the overall cost of the project. In other words, if an authority provided 30 percent of the funding for a project, 30 percent of that project would have to benefit low-income individuals and families.

PFCs have some housing projects underway that cannot be rehabilitated or operated without additional funds, and PFCs have no way to obtain that additional funding. For example, the San Antonio Housing Authority (SAHA) cannot help one of its subsidiary PFCs rehabilitate two apartment complexes. CSHB 2209 would allow SAHA to maintain affordable housing options in the area by allowing SAHA to contribute a small amount of money to the PFC to cover rehabilitation and operating expenses.

**OPPONENTS SAY:**

Public money for housing projects should be reserved for housing the poorest of the poor. Although CSHB 2209 would earmark money from the housing authority for those whose incomes are not more than 80 percent of the area median family income, the money still would benefit everyone in the project, including families of moderate income. As federal subsidies for low-income housing dwindle, the state must reserve both public and federal funds only for those who truly have no other options.

Allowing a housing authority to lend money for such broad reasons as "developing the economy of the state" or "developing commerce in the state" would set a bad precedent by allowing housing authorities to circumvent the constitutional provision that prohibits public money from being lent to corporations, simply by calling it "economic development." Despite the bill's other statutory restrictions, this language could be misinterpreted or misused to allow public money to be used for housing that was not destined for the poor.

**OTHER OPPONENTS SAY:**

CSHB 2209 would set too high an income threshold in providing that the funds that the public authority contributed would have to benefit proportionally those whose incomes are not more than 80 percent of the area median family income. Instead, the bill should stipulate that the money could go only to benefit those whose incomes were below 60 percent of the area median family income. This would ensure that the lowest-income Texans would benefit from the funds provided by a housing authority.

**NOTES:**

The original bill did not include the limitation that the housing authority could take the actions allowed under the bill only to provide affordable housing or housing assistance. The original version also did not specify that funds provided by a housing authority to a PFC would have to benefit individuals and families whose incomes were not more than 80 percent of the area median family income, in the same proportion as the funds bore to the overall cost of the project.