HOUSE RESEARCH ORGANIZATION bill analysis | 5/8/97 | HB 2577 Hill (CSHB 2577 by Hill)

SUBJECT: Expanding TDHCA programs

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 9 ayes — Hill, Bailey, Burnam, Clark, Ehrhardt, Garcia, Hodge, Shields, Wohlgemuth

0 nays

WITNESSES: For — None

Against — John Henneberger, Texas Low Income Housing Information Service; Andrea Morgan and G. K. Sprinkle, Texas Association of Community Development Corporations; Leslie Newman, Proyecto Azteca

On — Harry Clemons, Larry Paul Manley, Stewart Brent, Lorie Mason, and Margie Bingham, Texas Department of Housing and Community Affairs; Frances Ferguson, Texas Association of Community Development Corporations; David Mintz, Texas Apartment Association; Sandra Mauro, John Garvin, Anne Paddock

BACKGROUND: The Texas Department of Housing and Community Affairs (TDHCA) is composed of three divisions: the community affairs division, the housing finance division, and the manufactured housing division. The statutory purposes of the TDHCA are to assist local governments in providing essential public services for their residents and in overcoming financial, social and environmental problems; provide for the housing needs of individuals and families of low and moderate income; contribute to the preservation, development and redevelopment of neighborhoods and communities; assist the governor and the Legislature in coordinating federal and state programs affecting local government; and inform state officials and the public of the needs of local government.

The TDHCA uses the Housing Trust Fund to provide loans, grants or other comparable forms of assistance to local units of government, public housing authorities, nonprofit organizations, and income-eligible individuals, families and households to finance, acquire, rehabilitate and develop decent, safe and sanitary housing. The Texas Housing Corporation is a nonprofit corporation authorized to issue bonds to further the mission of the TDHCA.

DIGEST: CSHB 2577 would rename and redefine the authority of the Texas Housing Corporation, codify the TDHCA's low-income housing tax credit program, allow the TDHCA to acquire and manage properties, and establish new oversight requirements.

Texas State Affordable Housing Corporation. The bill would rename the Texas Housing Corporation as the Texas State Affordable Housing Corporation. The corporation would have a new public purpose to perform activities and services that the corporation’s board of directors determined to promote the public health, safety and welfare through the provision of adequate, safe and sanitary housing for individuals and families of low and very low income and families of moderate income. The activities and services would include engaging in mortgage banking activities and lending transactions, acquiring, holding, selling or leasing real or personal property.

The corporation could make loans for single family homes only to individuals and families of low and very low income and families of moderate income. The corporation could make loans for multifamily developments that met certain affordability requirements for a certain percentage of units. To the extent reasonably practicable, the corporation would have to use the services of banks, thrifts, savings and loans, private mortgage companies, nonprofit organizations, and other lenders for the origination of loans and assist the lenders in providing credit to individuals and families of low and very low income and families of moderate income.

The corporation’s board of directors would consist of six members: the presiding officer of the TDHCA’s board of directors, the presiding officer of the programs committee of the TDHCA’s board of directors, and four other members appointed by the governor. The governor would appoint a presiding officer.

The director of the TDHCA would serve as president of the corporation if the director has demonstrated experience in the field of mortgage banking or residential lending. If the director did not qualify, the corporation would hire another qualified individual to serve as president.

The corporation could purchase with its funds liability insurance for each member of its board members, officers and other employees.

In addition to its existing powers, the corporation would be given all rights and powers necessary to accomplish its public purpose. The corporation could not compete with private lenders or originate or make any loan that could or would be made at the same time by a private lender on substantially the same or better terms. All of the mortgage banking operations would have to be dedicated to the furtherance of facilitating affordable housing finance for the ultimate benefit of individuals and families of low and very low income and families of moderate income not afforded housing finance options through conventional lending channels.

The corporation would have to pay its expenses from any available fund without resort to the general revenues of the state, except for specific legislative appropriations. The TDHCA could not transfer any funds to the corporation to subsidize its operations in any way, and the TDHCA would have to be fully compensated by the corporation for any property or employees that they shared.

The corporation would have to submit an annual report to the governor, lieutenant governor, speaker of the House, comptroller, and Legislative Budget Board. The corporation also would have to file quarterly performance reports with the TDHCA, and annual reports on the debts and obligations of the corporation with the Bond Review Board.

The corporation would have to hire an independent certified public accountant to audit its books and accounts for each fiscal year and would be subject to audit by the state auditor.

The corporation’s directors, officers and employees would not be personally liable for obligations, contracts, guaranties or insurance executed by the corporation, or for any other action taken in accordance with the corporation’s powers or in the good faith belief that it was in accordance with the corporation’s powers. Their civil liability would be limited to the same extent that it is limited for directors, officers and employees of charitable organizations.

Low income housing tax credit program. CSHB 2577 would put in statute many of TDHCA's current policies regarding the implementation of the low income housing tax credit plan. The goal of the low income housing tax credit plan would be to provide permanent affordable housing. The TDHCA would have to prepare and submit to the board for adoption the "qualified allocation plan" required by federal law for use in setting criteria and priorities for the allocation of tax credits under the low income housing tax credit program. The plan would have to be submitted to the governor for approval, rejection or modification.

In allocating low income housing tax credits, the TDHCA would have to score each application using a point system based on criteria consistent with the TDHCA's housing goals.

The TDHCA would have to add bonus points to an applicant's score if the applicant agreed to provide qualified nonprofit or tenant organizations a right of first refusal to purchase the property to which the tax credit applied or if the application was received within the first 10 days of the application acceptance period.

The TDHCA would have to provide the score of each application on each criterion to the board and the governor, and the results of the scoring would have to be available to the public. The board would have to document the reasons for each project's selection to receive a tax credit allocation. Board members would be prohibited from contacting TDHCA staff in any manner with the intent to influence the processing of an application for a low income housing tax credit.

Tax credit recipients who agreed to provide a right of first refusal and who intend to sell the property would have to notify the TDHCA before a certain deadline. The recipients would also have to notify qualified nonprofit organizations and tenant organizations of the opportunity to purchase the property. If the recipient could not sell the property to a qualified nonprofit or tenant organization within two years and the TDHCA declined to purchase the property, the recipient could sell the property to any purchaser.

Issuance of 501(c)(3) bonds. CSHB 2577 would expand the statutory provisions addressing issuance of 501(c)(3) bonds, so-called because they are provided for projects of 501(c)(3) nonprofit organizations. The Bond Review Board would have to enter into a memorandum of understanding with the TDHCA specifying the amount of 501(c)(3) bonds that could be issued in each fiscal year. At least 50 percent of the total issuance amount would have to be reserved for the purposes of new construction of housing or acquisition of housing with substantial rehabilitation. Not more than 25 percent of the amount issued could be used for projects in any one metropolitan area. At least 15 percent would be reserved for projects in rural areas.

In addition to certain Tax Code requirements, 501(c)(3) organizations seeking to undertake a project would have to:

- demonstrate to the TDHCA that the project was carefully and conservatively underwritten;
- ensure that at least 60 percent of the housing to be provided by the project was affordable housing;
- agree to reserve at least 60 percent of the housing for low and very low income individuals and families, ensure that the reserved housing would remain affordable to those individuals and families, and agree not to discriminate against tenant applicants solely because they received public rental assistance; and
- agree to restrict the rents charged on the reserved units.

Housing Trust Fund. In each biennium, the first $2.6 million available through the housing trust fund for loans, grants or other comparable forms of assistance would have to be set aside and made available exclusively for local units of government, public housing authorities, and nonprofit organizations. At least 45 percent of available funds in excess of the first $2.6 million would have to be made available to nonprofit organizations for the purpose of acquiring, rehabilitating and developing decent, safe and sanitary housing. Nonprofit organizations, for-profit organizations and other eligible entities would compete for the remaining portion.

In addition to its current uses, the fund could be used to acquire property to endow the fund, and to provide security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income.

The TDHCA would have to transfer into the fund the amount of any origination fee, asset oversight fee and servicing fee the TDHCA or the corporation received in relation to the administration of its 501(c)(3) bond program that exceeded the amount needed to pay operating and overhead costs and fund reserves.

Property ownership program. CSHB 2577 would provide that the Legislature would not intend for the TDHCA to compete with the private sector by becoming a long-term owner of real property merely for the purpose of owning, managing and operating tenant properties but that the property ownership program of the TDHCA could acquire, own, reconstruct, rehabilitate, manage or operate real property for a period of ten years or less for the purposes of preserving publicly financed or subsidized housing or participating in certain programs involving the U.S. Department of Housing and Urban Development.

Public information. The TDHCA and the Texas State Affordable Housing Corporation would be subject to the open meetings and open records acts. These laws would not apply to the personal financial information submitted by an individual or family for a loan, grant or other housing assistance, but the TDHCA and the corporation would be permitted to disclose information about any applicant in a form that did not reveal the identity of the individual or family for the purpose of determining eligibility for programs and preparing required reports.

The TDHCA would have to encourage informed and effective public participation in its programs through holding public hearings and soliciting and accepting public comments during those hearings. The bill would impose requirements for the location, time, and provision of notice for public hearings. In addition, the TDHCA would have to provide an opportunity for persons to transmit on the Internet written testimony or comments on the subject of a hearing.

Before preparing the annual low income housing report and the state low income housing plan, the TDHCA would be required to meet with representatives of groups with an interest in low income housing. The TDHCA would have to obtain their comments and suggestions about the prioritization and allocation of the TDHCA's resources in regard to housing.

The TDHCA would have to hold two, rather than just one, public hearings on the annual state low income housing plan. Public hearings would have to be held in Dallas or Fort Worth, El Paso, Houston, San Antonio, and at least three additional municipalities selected by the TDHCA to represent geographically diverse communities. The bill would set up requirements for notice of and topics to be addressed at the hearings.

To the extent it was feasible and appropriate, the TDHCA would be required to make information on its programs, public hearings and scheduled public meetings available to the public on the Internet.

Disclosure of fees. An application for a loan, grant or other assistance for an eligible affordable housing project or activity under a program administered by the TDHCA or the Texas State Affordable Housing Corporation or from bonds issued by the TDHCA would have to include the name of each person expected to charge the applicant a project development fee or project operation fee, the nature and amount of each project development fee and project operation fee the applicant is expected to pay, and any interlocking interests of the persons charging a fee and the applicant.

Within 30 days after the term of a project expired, the recipient would have to provide to the TDHCA a statement including the name of each person to whom the recipient paid a project development fee or project operation fee during the term of the project, the nature and amount of each project development fee and project operation fee paid by the recipient, and any interlocking interests of the persons charging a fee and the recipient.

The TDHCA would have to adopt rules governing penalties and sanctions for a person who did not provide the foregoing information or knowingly disclosed false information.

Other provisions. CSHB 2577 also would:

- add a new community development division to the TDHCA;
- require the TDHCA to administer the state's allocation of federal funds benefiting homeless individuals and families; and

- add for profit-corporations to the list of entities that the TDHCA could work with to provide information on programs of the housing finance division of the TDHCA, and encourage to match the division's funds to assist in providing affordable housing to eligible individuals.

The bill would take effect September 1, 1997

SUPPORTERS SAY:

CSHB 2577 would provide some creative new methods to address the need for affordable housing in Texas at a time when federal funding is starting to shrink. Currently, the TDHCA's budget comes almost entirely from the federal government. CSHB 2577 would enable the TDHCA to generate funds for affordable housing programs so that Texas can increase the availability of affordable housing without having to increase taxes. The 501(c)(3) bond program provided by the bill would generate some funds for the TDHCA while providing nonprofit organizations with money for projects designed to create affordable housing. Any money made in administering the bond program would go to the Housing Trust Fund to be used for more affordable housing. In addition, the Texas State Affordable Housing Corporation would be authorized to service the bonds so Texas would experience substantial savings by avoiding the cost of having a private entity service the bonds.

The bill would resolve some concerns that have been raised regarding the low income housing tax credit award process by requiring application scores to be released and the board to document the reasons for each project's selection, including an explanation of all discretionary factors used in making the determination. In addition, board members would be prohibited from contacting TDHCA staff with the intent to influence the processing of an application.

CSHB 2577 would also address concerns regarding project fees by requiring program applications to include the names of persons expected to charge the applicant a project development fee or operation fee and describe any interlocking interests of the applicant and the persons charging a fee. At the end of the project term, the recipient would have to give the TDHCA a statement describing actual fees paid. There would be penalties and sanctions for failure to provide the information or for knowingly disclosing false information. These provisions would ensure that the TDHCA was able to monitor project recipients effectively.

The bill would also make the TDHCA's programs more user-friendly for the public by instituting increased requirements for public meetings and the solicitation of public comment, even allowing written testimony or comments to be submitted via the Internet. The Internet would also be used to provide public information about TDHCA programs and public meetings.

CSHB 3075 would not allow the TDHCA to hold property in perpetuity. It simply could buy multi-family housing, rehabilitate it and sell it. The bill would allow a 10-year time period for that process to allow for real estate market fluctuations. This provision would be designed to generate more multi-family housing, not to speculate in real estate or have the TDHCA act as a landlord.

Since it is dependent on the TDHCA, which undergoes sunset review, the operations of the State Affordable Housing Corporation would be thoroughly examined during the TDHCA's review. In addition, the bill would impose substantial reporting requirements on the corporation, including an annual report to the state leadership; quarterly performance reports filed with the TDHCA; and annual reports on the debts and obligations of the corporation filed with the Bond Review Board. In addition, the corporation would have to hire an independent certified public accountant to audit its books each year, and the corporation would still be subject to audit by the state auditor.

OPPONENTS SAY:

CSHB 2577 should not authorize the TDHCA to use the Housing Trust Fund to acquire property with which to endow the fund. It would not be wise for the TDHCA to speculate in real estate in an attempt to generate revenue.

The TDHCA also should not be allowed to function as a landlord for low-income properties. Local nonprofits and local housing authorities would be able to manage these properties better than a central state bureaucracy. In addition, management by the state would increase the state's liability to an unacceptable level.

The bill should provide explicitly for sunset review of the State Affordable Housing Corporation.

NOTES: The committee substitute added several provisions, such as open meetings and open records requirements, public hearings, new requirements for the annual report, public information on the Internet, disclosure of fees, legislative intent of property ownership program, issuance of 501(c)(3) bonds, the Texas State Affordable Housing Corporation, and the low income housing tax credit plan.

A related bill, SB 1502 by Ellis, which passed the Senate on April 17 and was reported favorably by the House Urban Affairs Committee on April 29, would address 501(c)(3) bonds and transfer of funds to the housing trust fund. HB 2147 by Hill, left pending in the Urban Affairs Committee, would prohibit board members from contacting TDHCA employees with the intent to influence tax credit applications. HB 1666 by Ehrhardt, left pending in Urban Affairs, would affect operations of the TDHCA and provide for issuance of bonds.