

SUNSET ADVISORY COMMISSION

FINAL REPORT
WITH LEGISLATIVE ACTION

*Texas Department
of Housing and
Community Affairs*

JULY 2013



Sunset Advisory Commission

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Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. The beautifully carved wood door frames are emphasized with elaborate, custom-designed bronze hinges and hardware produced especially for the building by Sargent and Co. of New Haven, Connecticut, in the late 1880s. The eight inch by eight inch hinges are inscribed with the words "Texas Capitol", decorated with incised designs of geometric and stylized floral motifs, and weigh over seven pounds each.

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS**

**SUNSET FINAL REPORT WITH LEGISLATIVE ACTION
JULY 2013**

This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and the public.

- *Sunset Staff Report, August 2012* – Sunset staff develops a separate report on each individual agency, or on a group of related agencies. Each report contains both statutory and management recommendations developed after the staff’s extensive evaluation of the agency.
 - *Sunset Staff Report with Hearing Material, August 2012* – Adds responses from agency staff and the public to Sunset staff recommendations, as well as new issues raised for consideration by the Sunset Commission at its public hearing.
 - *Sunset Staff Report with Decision Material, November 2012* – Adds additional responses, testimony, or new issues raised during and after the public hearing for consideration by the Sunset Commission at its decision meeting.
 - *Sunset Staff Report with Commission Decisions, November 2012* – Adds the decisions of the Sunset Commission on staff recommendations and new issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency’s Sunset bill.
 - *Sunset Final Report with Legislative Action, July 2013* – Adds action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency’s Sunset bill.
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SUMMARY

SUMMARY

This special purpose review of the Texas Department of Housing and Community Affairs (TDHCA) follows up on the full Sunset review of the Department conducted in 2010. At that time, the Sunset Commission adopted and forwarded recommendations on the Department to the 82nd Legislature. The Legislature passed House Bill 2608, containing most of the Sunset Commission's recommendations; however, in June 2011, the Governor vetoed the bill over concerns about language pertaining to the Department's disaster recovery functions. In the special legislative session that summer, the Legislature made changes to the disaster recovery program, continued the Department for two years, and focused the current Sunset staff review on the appropriateness of the recommendations voted on and adopted by the Sunset Commission in 2010.

Most of Sunset's 2010 statutory recommendations remain appropriate.

Based on the re-examination, Sunset staff concluded that most of Sunset's previous recommendations remain appropriate, and that the Department continues to need statutory authority and direction to implement them. Of the 22 statutory recommendations on TDHCA from 2010, Sunset staff recommends 14 for consideration again in 2012. The other recommendations are no longer necessary for a variety of reasons. Five of the 2010 Sunset recommendations passed in Senate Bill 1 during the summer special session. Sunset staff no longer recommends three of the 2010 recommendations related to TDHCA's former disaster recovery functions, as the Governor and Legislature transferred those functions from TDHCA to the General Land Office in 2011. The remaining eight 2010 recommendations were management actions the Department has implemented or is in the process of implementing. The current status of each of the TDHCA-related recommendations is shown in the chart, *Status of 2010 Sunset Commission Recommendations on the Texas Department of Housing and Community Affairs*, on page 5 of this report.

The following material summarizes the 14 recommendations on TDHCA from 2010 that continue to be appropriate for consideration, as well as one new staff recommendation. During the last legislative session, the Legislature charged the Sunset Commission with evaluating agency reporting requirements. New Issue 5 of this report contains Sunset staff's analysis and recommendation on TDHCA's reporting requirements.

For additional information on the Sunset Commission's 2010 review, please see the following reports available on the Sunset Commission's website.

- *Report to the 82nd Legislature*, February 2011. Contains information on the Sunset Commission's 2010 decisions.
- *Final Report on the Texas Department of Housing and Community Affairs*, July 2011. Contains detailed information on the original Sunset staff recommendations, Commission modifications, and legislative action.

Issues and Recommendations

Issue 1

Certain Statutory Requirements Impede Texas' Administration of the Housing Tax Credit Program.

Recommendations

- Replace neighborhood organization letters with voted resolutions from local city council or county commissioners courts as a principal tax credit scoring item, but continue to consider neighborhood organization letters as a lesser scoring item.
- Eliminate the requirement for letters of support from state senators and representatives.
- Allow TDHCA to create additional tax credit allocation cycles to take advantage of nonstandard federal assistance opportunities.

Issue 2

Inconsistencies in the Department's Enforcement Process Could Waste Resources and Contribute to Compliance Problems.

Recommendations

- Clarify the agency's ability to refer penalty appeals hearings to the State Office of Administrative Hearings.
- Require judicial review of appeals of the Department's decisions to be based on the substantial evidence rule.
- Authorize the Department to use debarment as a sanction and protection in all its programs.

Issue 3

Key Elements of the Manufactured Housing Division's Functions Do Not Conform to Common Licensing Standards.

Recommendations

- Require the Manufactured Housing Division to conduct a fingerprint-based criminal background check of all manufactured housing licensees.
- Grant cease-and-desist authority to the Division for unlicensed construction, sale, and installation of manufactured homes.
- Authorize the Division to order direct refunds as part of the manufactured housing complaint settlement process.

- Authorize Division staff to administratively dismiss baseless and non-jurisdictional complaints and report these actions to the Division's Board.
- Eliminate manufactured housing branch and rebuilder licenses from statute.
- Authorize the Division to collect a fee for reprinted manufactured housing licenses.

Issue 4

The State Has a Continuing Need for the Texas Department of Housing and Community Affairs.

Recommendations

- Continue the Texas Department of Housing and Community Affairs for 12 years.
- Apply the standard Sunset across-the-board requirement for the Manufactured Housing Division to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

Issue 5

Department Statutes Contain Unnecessary Reporting Requirements.

Recommendation

- Abolish the Department's reports relating to energy and peak demand savings, the statutory Contract for Deed Conversion Guarantee Program, and transfers of funds, personnel, or in-kind services to the Texas State Affordable Housing Corporation.

Fiscal Implication Summary

None of the recommendations in this report would have a fiscal impact to the State.

SUMMARY OF FINAL RESULTS

H.B. 3361 Dutton (Birdwell)

This special-purpose Sunset review of the Texas Department of Housing and Community Affairs follows a full review of the agency in 2011 in which changes were not enacted because the Governor vetoed the agency's Sunset bill. During a special session that summer, the Governor's concerns were resolved by the transfer of the Department's disaster recovery functions to the General Land Office. The Legislature continued the Department under Sunset review for two years, directing Sunset to review the appropriateness of the recommendations previously adopted.

With the exception of the disaster recovery recommendations, the Sunset Commission concluded that most of its previous recommendations remained appropriate. These changes were incorporated into House Bill 3361 and include improvements to the Department's low income housing tax credit program, compliance efforts, and oversight of the manufactured housing industry.

The following material summarizes the recommendations adopted as part of this special-purpose Sunset review of the Department.

Tax Credits

- Replaces neighborhood organization letters with voted resolutions from local city councils or county commissioners courts as a principle tax credit scoring item, but continues consideration of neighborhood organization letters as a lesser scoring item.
- Eliminates the requirement for letters of support from state senators, but continues consideration of letters from state representatives as a lesser scoring item.
- Allows the Department to create additional tax credit allocation cycles to take advantage of nonstandard federal assistance opportunities.
- Establishes local threshold requirements for noncompetitive 4 percent low income housing tax credit applications.

Compliance

- Clarifies the Department's ability to refer penalty appeals hearings to the State Office of Administrative Hearings.
- Requires judicial review of appeals of the Department's decisions to be based on the substantial evidence rule, instead of a de novo review.
- Authorizes the Department to use debarment as a sanction and protection in all its programs.
- Specifies that the Department must provide development owners with certain periods of time to correct violations that fail to meet compliance requirements.

Manufactured Housing

- Requires the Manufactured Housing Division to conduct a fingerprint-based criminal background check of all manufactured housing licensees.
- Grants cease-and-desist authority to the Division for unlicensed construction, sale, and installation of manufactured homes.
- Authorizes the Division to order direct refunds as part of the manufactured housing complaint settlement process.
- Authorizes Division staff to administratively dismiss baseless and non-jurisdictional complaints and report these actions to the Division's Board.
- Eliminates manufactured housing branch and rebuilder licenses from statute.
- Authorizes the Division to collect a fee for reprinted manufactured housing licenses.
- Applies the standard Sunset Across-the-Board Recommendation for the Manufactured Housing Division to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

Reporting Requirements

- Abolishes the Department's reports relating to energy and peak demand savings, the statutory Contract for Deed Conversion Guarantee Program, and transfers of funds, personnel, or in-kind services to the Texas State Affordable Housing Corporation.

Continuation

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

Fiscal Implication

House Bill 3361 will not have a significant fiscal impact to the State.

**STATUS OF 2010 SUNSET
COMMISSION RECOMMENDATIONS**

Status of 2010 Sunset Commission Recommendations on the Texas Department of Housing and Community Affairs

| 2010 Recommendation | Status |
|--|--|
| Issue 1 – Lack of State Planning Delays Funding to Hard Hit Texas Communities Recovering From Major Disasters. | |
| Change in Statute | |
| 1.1 Require TDHCA, in consultation with the Texas Department of Rural Affairs and the Governor's Office, to develop a comprehensive long-term disaster recovery plan. | Statutory Alternative Implemented – The 82nd Legislature passed S.B. 1 and S.B. 2 during the 1st Called Session. These bills, along with a subsequent Declaration of the Texas Governor, transferred the disaster recovery programs at TDHCA and the Texas Department of Rural Affairs to the General Land Office. Since this program is no longer a function of TDHCA, these 2010 recommendations are not included in this report. |
| 1.2 Require 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. | |
| 1.3 Require communities to add a long-term recovery component to existing emergency management plans. | |
| Issue 2 – Certain Statutory Requirements Impede Texas' Administration of the Housing Tax Credit Program. | |
| Change in Statute | |
| 2.1 Replace neighborhood organization letters with voted resolutions from local city council or county commissioners courts as a principle tax credit scoring item, but continue to consider neighborhood organization letters as a lesser scoring item. | Not Implemented – See Issue 1 of this report. These recommendations require a change in statute. |
| 2.2 Eliminate the requirement for letters of support from state senators and representatives. | |
| 2.3 Allow TDHCA to create additional tax credit allocation cycles to take advantage of nonstandard federal assistance opportunities. | |
| 2.4 Allow TDHCA's Board to update the qualified allocation plan biennially instead of annually. | Implemented – This recommendation passed in S.B. 1, 82nd Legislature, 1st Called Session. The Department's Board approved the most recent qualified allocation plan for up to two years. |

Status of 2010 Sunset Commission Recommendations on the Texas Department of Housing and Community Affairs

| 2010 Recommendation | Status |
|--|--|
| Issue 3 – The Department’s Processing of Single-Family Loans is Slow and Inefficient, Causing Families to Wait for Needed Assistance. | |
| Management Action | |
| 3.1 Direct the Department to overhaul its single-family loan review process to create a faster and more efficient system. | <p>In Progress – The Department initiated, but has not completed, an overhaul of its single-family loan processes. However, the Department’s process improvements go significantly beyond those contemplated in the 2010 Sunset recommendation.</p> <p>To improve loan processing the Department has identified and eliminated redundancies; launched an electronic tracking system to improve processing times and accountability; and contracted with outside counsel to expedite execution of simple loans.</p> <p>TDHCA is rewriting rules for all single-family programs to simplify the programs and make them more user friendly. The Department expects full implementation of changes to all single-family program rules, policies, processes, and forms by December 2012.</p> |
| Issue 4 – The Department Has Not Used Funds Designated by the Legislature to Address Contract for Deed Problems. | |
| Management Action | |
| 4.1 Direct the Department to identify, through the legislative appropriations process, a more flexible source of funding for the contract for deed conversion program. | Implemented – The Department identified federal Community Development Block Grant (CDBG) funding as a more flexible source of funding than federal HOME funding. The Department attempted unsuccessfully to secure additional CDBG funding during the 2011 legislative appropriations process. |
| 4.2 Direct the Department to consider using its existing Colonias Self-Help Centers to help administer the contract for deed conversion program. | Implemented – Cameron County’s Colonia Self-Help Center completed nine of the Department’s 18 contract for deed conversions in calendar year 2011. When renewing contracts with Colonia Self-Help Centers, the Department is now encouraging Centers to include contract for deed conversion as a future Self-Help Center activity. |
| 4.3 Direct the Department to study the prevalence of contracts for deed in colonias, and report the results to the Legislature. | In Progress – The Department has contracted with the University of Texas at Austin to conduct a study of the prevalence of contracts for deed in colonias. The report is due to the Legislature by December 1, 2012. |

Status of 2010 Sunset Commission Recommendations on the Texas Department of Housing and Community Affairs

| 2010 Recommendation | Status |
|---|---|
| Issue 5 – Inconsistencies in the Department’s Enforcement Process Waste Resources and Contribute to Lingering Compliance Problems. | |
| Change in Statute | |
| 5.1 Transfer the Department’s penalty appeals hearings to the State Office of Administrative Hearings. | Not Implemented – See Issue 2 of this report. The agency continues to need statutory and legislative direction to implement these recommendations. |
| 5.2 Require judicial review of appeals of the Department’s decisions to be based on the substantial evidence rule. | |
| 5.3 Authorize the Department to use debarment as a sanction and protection in all its programs. | |
| Management Action | |
| 5.4 The Department should track and timely refer properties that fail to come into compliance for additional enforcement action. | Implemented – The Department updated its internal operations procedures to reflect a more comprehensive enforcement tracking system consistent with the intent of this recommendation. |
| Issue 6 – The State’s Process for Inspecting Manufactured Housing Installations Is Inefficient and Does Not Provide Adequate Statewide Coverage. | |
| Change in Statute | |
| 6.1 Require 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. Require the Division to report to the Legislative Budget Board, Governor’s Office of Budget, Planning, and Policy and the legislative committees of jurisdiction on meeting the new inspection goal before the legislative session in 2015. If the Division cannot complete 75 percent of installation inspections by 2015, the Division would be required to establish a third-party inspection process to supplement existing state inspections, and would be required to establish maximum fees, in rule, for third-party installation inspections. Require consumers to pay for future third-party inspections, and require the retailer or installer to ensure the inspection occurs within 14 days of installation. The inspector would report the inspection results to the retailer, installer, and the Division, and pay a small filing fee to the Division. | In Progress – The 82nd Legislature adopted these recommendations as part of S.B. 1, 1st Called Session. In response to these statutory changes, the Division restructured its inspection process, including automating portions of the process. The Division reports that it has inspected approximately 83 percent of installations this fiscal year, to date. If the Division continues to inspect more than 75 percent of installations through 2015, it will not need to establish a third-party inspection process. |

Status of 2010 Sunset Commission Recommendations on the Texas Department of Housing and Community Affairs

| 2010 Recommendation | Status |
|---|---|
| Issue 7 – Key Elements of the Manufactured Housing Division’s Functions Do Not Conform to Common Licensing Standards. | |
| Change in Statute | |
| 7.1 Reduce initial core education requirements for all licensees from 20 to eight hours, but require an additional four hours of specialized training for installers and for retailers. | Implemented – The 82nd Legislature adopted these recommendations as part of S.B. 1, 1st Called Session. In response to that statutory change, the Manufactured Housing Division updated training curricula and notices to licensees to reflect the legislative changes. |
| 7.2 Require a management official at each licensed retailer location to fulfill appropriate education requirements. | |
| 7.3 Require the Department to conduct a fingerprint-based criminal background check of all manufactured housing licensees. | Not Implemented – See Issue 3 of this report. The agency continues to need statutory and legislative direction to implement these recommendations. |
| 7.4 Grant cease-and-desist authority to the Division for unlicensed construction, sale, and installation of manufactured homes. | |
| 7.5 Authorize the Division to order direct refunds as part of the manufactured housing complaint settlement process. | |
| 7.6 Authorize Division staff to administratively dismiss baseless and nonjurisdictional complaints and report these actions to the Division’s Board. | |
| 7.7 Eliminate manufactured housing branch and rebuilder licenses from statute. | |
| 7.8 Authorize the Division to establish a fee for reprinted manufactured housing licenses. | |
| Management Action | |
| 7.9 The Division should explore offering broader access to license education courses and examination across the state. | Implemented – Upon request, the Division offers a licensee the option to pay for staff to present a license education course and examinations on site. |
| 7.10 Direct the Division to remove the requirement that manufactured housing complaints filed with the Division be notarized. | Implemented – The Division amended its policy to no longer require complaints to be notarized. |
| 7.11 Direct the Division’s Board to make all disciplinary orders and sanctions available to the public on the Division’s website and in an easily accessible format for consumers. | In Progress – The Division changed its website to make searching enforcement orders a more user-friendly process. In addition to this change, the Division is working to add enforcement information to each licensee’s online profile; however, this requires a change to existing databases. The Division has requested that TDHCA’s IT department make the necessary changes, and expects this project to be completed by the end of summer 2012. |

Status of 2010 Sunset Commission Recommendations on the Texas Department of Housing and Community Affairs

| 2010 Recommendation | Status |
|--|--|
| Issue 8 – The Law Governing the Application of the Department’s Regional Allocation Formula to the State’s Housing Trust Fund Is Unclear. | |
| Change in Statute | |
| 8.1 Clarify in statute that Housing Trust Fund programmed activities funded with less than \$3 million are exempt from the Department’s Regional Allocation Formula. | Implemented – The 82nd Legislature adopted this recommendation as part of S.B. 1, 1st Called Session. The Department has updated its Housing Trust Fund Biennial Plan, the planning document for how funds will be spent, to reflect this change. |
| Issue 9 – The State Has a Continuing Need for the Texas Department of Housing and Community Affairs. | |
| Change in Statute | |
| 9.1 Continue the Texas Department of Housing and Community Affairs for 12 years. | Not Implemented – See Issue 4 of this report. This recommendation requires a change in statute to continue the Department and the Manufactured Housing Division. |
| 9.2 Apply the standard Sunset across-the-board requirement for the Manufactured Housing Division to develop a policy regarding negotiated rulemaking and alternative dispute resolution. | Not Implemented – See Issue 4 of this report. This recommendation requires a change in statute. |

AGENCY AT A GLANCE

AUGUST 2012

AGENCY AT A GLANCE

The Texas Department of Housing and Community Affairs (TDHCA) works to ensure the availability of affordable housing, provides funding for community assistance, and regulates the manufactured housing industry. The Department's mission is to help Texans achieve an improved quality of life through the development of better communities. The Legislature created the Department in 1991 by merging the Texas Department of Community Affairs and the Texas Housing Agency. The Department's functions include the following activities.

- Assisting low-income individuals and families to obtain affordable rental housing by awarding federal funds and tax credits, as well as state funds, to nonprofit and for-profit organizations and local governments.
- Assisting low- and moderate-income families with home rehabilitation, reconstruction, or first-time home purchase.
- Assisting low-income individuals and families through a network of public and private service providers 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 in Texas.
- Regulating the manufactured housing industry and maintaining official records of manufactured home ownership, location, and status, including liens.

Key Facts

- **Policy Board.** The Department is governed by a board of seven public members, and the Manufactured Housing Division is governed by a separate board of five public members. The Governor appoints the members to both boards and designates the presiding officers. Members serve staggered, six-year terms.
- **Staffing.** The agency employs 311 staff, 64 staff of whom are allocated to the Manufactured Housing Division. Most staff work in one of the agency's two Austin locations, however TDHCA also maintains three Office of Colonia Initiatives field offices, and two Manufactured Housing Division field offices.
- **Funding.** In fiscal year 2011, the Department expended or encumbered about \$386 million in funds for activities that predominantly benefit low- and moderate-income Texans. About 98 percent of housing and community services funds came directly from the federal government as grants and authorizations. Manufactured housing funds come from licensing fees, documentation fees, and some federal funds.

The Department received \$171.8 million in state-appropriated funds in fiscal year 2011; however, the majority of the funds that flow through the Department do not go through the standard legislative appropriations process. Long-standing federal programs, including housing tax credits and single- and multifamily bonds, provide federal authorization rather than direct funding, and only administrative funds for these programs are included in the legislative appropriations process. TDHCA receives these administrative funds as appropriated receipts.

In the housing tax credit program and the single- and multifamily bond programs, the federal government authorizes the State to issue tax credits or bonds to raise capital for developments or homeownership activities. The federal government uses a formula based on population to determine the amount of credits and bonds each state can issue. The chart, *Recurring Revenue Sources and Funding Authority*, details the fiscal year 2011 state-appropriated and federally authorized funding for all typical funding streams. In fiscal year 2011, the State's general revenue contribution was \$22.6 million. In fiscal years 2012 and 2013, general revenue funds decreased to \$8.1 million per year, resulting from a decrease in the Housing Trust Fund and the discontinuation of appropriations for a homelessness initiative for Texas' eight largest cities.

Recurring Revenue Sources and Funding Authority
FY 2011

| State-Appropriated Funds | |
|--|------------------------|
| General Revenue | \$22.6 million |
| Federal Funds | \$132.7 million |
| Appropriated Receipts | \$16.5 million |
| Interagency Contracts | \$68,255 |
| Subtotal | \$171.8 million |
| Federally Authorized Funds | |
| Single-Family Mortgage Revenue Bond Program | \$329 million |
| Multifamily Mortgage Revenue Bond Program* | \$0 |
| Housing Tax Credits | \$54 million |
| Subtotal | \$383 million |
| Total Appropriated and Authorized Funds | \$554.8 million |

* In 2011, the economic recession and the downturn in the bond market resulted in TDHCA using none of its multifamily bond authority.

In fiscal year 2011, TDHCA expended or encumbered \$386 million. This amount includes typical grants and funds and administrative costs associated with all department activities. The chart, *Expenditures and Encumbrances by Strategy*, shows the Department's expenditures by type.

- Affordable Housing.** The Department administers many federal and some state programs to assist the state's low-income residents with finding and maintaining affordable housing. The Department's programs serve the homeless, finance multifamily development, subsidize rents, provide homebuyer assistance, rehabilitate homes, and assist families with disaster recovery. The Department accomplishes these objectives through loans, grants, vouchers, down payment assistance, and tax credits. In fiscal year 2011, the Department assisted 9,125 households with housing needs through its funding. TDHCA also previously operated a large-scale disaster recovery program focused on hurricane recovery until 2011, at which time the Governor transferred the function to the General Land Office. TDHCA maintains some funding to provide limited assistance in the wake of state disasters such as wildfires and floods.

**Expenditures and Encumbrances by Strategy
FY 2011**

| Affordable Housing | |
|---|----------------------|
| HOME Program | \$46,343,152 |
| Housing Trust Fund | \$16,872,311 |
| Section 8 Rental Assistance | \$5,752,117 |
| Housing Tax Credits | \$1,457,162 |
| Single-Family Mortgage Revenue Bond Program | \$1,258,115 |
| Multifamily Mortgage Revenue Bond Program | \$363,059 |
| Information and Assistance | |
| Housing Resource Center | \$1,482,063 |
| Colonia Service Centers | \$372,240 |
| Poor and Homeless Programs | |
| Energy Assistance Programs | \$244,168,255 |
| Poverty Related Funds | \$48,664,642 |
| Ensure Compliance | |
| Monitor Contract Requirements | \$4,981,859 |
| Monitor Housing Requirements | \$2,015,764 |
| Manufactured Housing | |
| Inspections | \$1,463,260 |
| Enforcement | \$1,407,672 |
| Titling and Licensing | \$1,386,325 |
| Texas Online | \$19,120 |
| Indirect Administration and Support | |
| Central Administration | \$6,022,927 |
| Information Resources and Technology | \$1,510,375 |
| Operating Support | \$539,785 |
| Total | \$386,080,203 |

- Community Services.** The Department administers several programs to help local agencies provide services to very low-income and homeless Texans. Community services may vary widely across the state and depending on the TDHCA program, but include activities like education, health, and employment services; self-sufficiency programs; transportation, rental and utility assistance; and emergency and other shelter services. The Department also provides home weatherization and utility payment assistance in all 254 counties. In fiscal year 2011, approximately 94,208 individuals or households received homeless services; 218,377 received utility bill support or weatherization assistance; and 723,829 received other supportive services. Appendix A provides additional detail on the Department's housing and community services programs and the number of people they serve.

- **Compliance and Asset Management.** The Department ensures that entities that administer federal and state multifamily housing programs adhere to established guidelines by monitoring the contracting and construction phases of projects and ensuring that projects meet physical and contractual standards after they are in service. As of April 30, 2012, the Department was overseeing approximately 455 active contracts totaling about \$340 million in federal and state funds, and monitoring the ongoing compliance of a growing portfolio of 1,870 properties, totaling approximately 212,000 units.
- **Manufactured Housing Regulation.** Governed by a separate board, the Manufactured Housing Division regulates manufactured housing activities in Texas to ensure units are well built and correctly installed, and that ownership is properly documented for financing and taxing purposes. The Division's major functions include issuing titles that are referred to as Statements of Ownership and Location for manufactured housing; licensing manufacturers, retailers, brokers, salespersons, and installers of manufactured housing; inspecting manufactured housing installations; and responding to consumer complaints. In fiscal year 2011, the Division issued 60,126 Statements of Ownership and Location, inspected 10,873 manufactured home installations, and issued 1,741 licenses.

ISSUES

ISSUE 1

Certain Statutory Requirements Impede Texas' Administration of the Housing Tax Credit Program.

Background

In fiscal year 2011, Texas' Housing Tax Credit Program helped to create more than 4,600 units of housing, making it the largest affordable housing program in the state. The U.S. Department of the Treasury (Treasury) administers the program through a public-private partnership that provides federal tax incentives to encourage private investment in affordable housing. Treasury distributes credits to each state based on population, and the Texas Department of Housing and Community Affairs (TDHCA) allocates Texas' credits to proposed affordable multifamily housing developments statewide. In return for a ten-year, dollar-for-dollar tax credit, property owners agree to set aside a portion of a property's units for rent to persons and families of low income, and restrict the rent on these units. Investors purchase the credits, providing partial equity for construction, and then claim the credits over time. In 2011, Texas received \$54 million in housing tax credits, equivalent to \$540 million in tax credits over the 10-year life of the credits.

To set the priorities and requirements for the allocation of tax credits, the federal government requires states to adopt a Qualified Allocation Plan (QAP). The QAP provides information on how to apply, how the Department assesses eligibility and scores applications, and what awardees must do to remain in program compliance. The QAP also details how the Department allocates credits regionally and how some credits are set aside for certain purposes, such as encouraging housing development by nonprofits and preserving existing affordable housing. The textbox, *Texas' 2012–2013 QAP*, outlines each of the key components of the current plan. The Department publishes the QAP in rules and updates these rules annually, including soliciting public comment.

Texas' 2012–2013 QAP

- Eligibility standards
- Site and development restrictions
- Allocation and award process
- Application process
- Threshold and selection criteria
- Board decisions and appeals
- Post-award activities
- Application amendments and re-evaluation
- Program fees

In addition to federal requirements, state law prescribes many specific requirements for when and how the Department can award tax credits in Texas. State law spells out and prioritizes the top-ten criteria the Department must use in evaluating applications, as detailed in the chart on the following page, *Tax Credit Scoring*.¹ In addition to these ten items, the Department has added another 14 lower-priority, lower-scoring criteria.² The tax credit program is very competitive, with successful and unsuccessful applications often separated by a single point.

Tax Credit Scoring

| Priority | Topic | Maximum Points |
|--------------|---|----------------|
| 1 | Financial feasibility of the development | 28 |
| 2 | Quantifiable community participation based on letters from neighborhood organizations | 24 |
| 3 | Income levels of tenants | 22 |
| 4 | Size and quality of units | 20 |
| 5 | Commitment of local funding | 18 |
| 6 | Level of community support based on letters from state legislators | 16 |
| 7 | Rent levels of units | 14 |
| 8 | Cost of development by square foot | 12 |
| 9 | Services to be provided to tenants | 10 |
| 10 | Whether the development is located in a declared disaster area | 8 |
| 11-24 | Criteria added by TDHCA, with scores ranging from 1 to 7 points each | 56 |
| Total | | 228 |

Findings

The Sunset Commission's recommendations to improve administration of the Housing Tax Credit Program continue to be appropriate.

The 2010 Sunset review found that several statutory requirements impede the effective administration of this key housing program. The Commission's proposed changes in law are still needed to improve the allocation of federal housing tax credits in Texas.

Neighborhood letters can significantly outweigh other important criteria.

- **Neighborhood organization letters.** State law requires the awarding of significant points during the tax credit application process for letters from neighborhood organizations; however, the Sunset Commission found that these letters are not always representative of the community as a whole, and are regularly contested. As a result of the number of points awarded, neighborhood letters outweigh other important criteria for a tax credit project. The scoring and verification of letters is very time consuming for the Department, and the Commission found that other states do not generally grant this level of importance to neighborhood letters, but instead rely on locally elected officials and governing bodies to provide community input. A change in law is still needed to adjust the scoring of community input through neighborhood organization letters.
- **State elected official letters.** This recommendation was based on the Sunset Commission's finding that the law governing the tax credit awards process was the only state law that required state representatives and senators to provide letters in support of, or opposition to, development projects of this nature. The Commission concluded that given the size of many electoral districts and the short application timeframe, elected

officials were often not in a position to meaningfully evaluate a proposed development or obtain community input sufficient to draft the required letters. Given the point value associated with these letters, if officials opt not to provide letters, projects, especially in the most competitive areas, will almost certainly not be funded. As there were no changes in the statutory scoring criteria for the tax credit program during the most recent legislative session, this recommendation remains appropriate.

- **Emergency tax credit cycles.** This recommendation was based on findings that fixed statutory deadlines could restrict the State's ability to distribute federal tax credit assistance in emergency circumstances in the future. In 2009, TDHCA received temporary authority, which expired in 2011, to create additional tax credit cycles in conjunction with receipt of American Recovery and Reinvestment Act funds. If the Department were to receive additional non-standard funds in the future, it may be unable to use them. This recommendation remains appropriate to ensure that the Department could allocate emergency tax credits should it receive them in the future.

Without a change in law, Texas could be unable to use future emergency federal funding.

Recommendations

Change in Statute

1.1 Replace neighborhood organization letters with voted resolutions from local city council or county commissioners courts as a principal tax credit scoring item, but continue to consider neighborhood organization letters as a lesser scoring item.

Under this recommendation, voted resolutions from local elected officials would replace neighborhood organization letters as the second-highest scoring criterion required by statute for tax credit applications. The Department would award points to applications for supportive resolutions voted on by a city council, or if none exists, the county commissioners court in the area of the proposed development. The Department would continue to score letters from neighborhood organizations as the last statutorily required item in the tax credit scoring process. This recommendation would adjust the tax credit scoring process to give greater weight to local voted resolutions and reduce the number of points available for neighborhood organization letters.

Letters from elected bodies would ensure that the basis for evaluating community participation is more representative of the community as a whole. Elected officials have been entrusted with making decisions for the community and have the responsibility and accountability inherent in representation, which neighborhood organizations do not have. Local officials are typically more accessible through open, public means than groups based on voluntary membership, which would afford more equal opportunity for community residents to provide input.

1.2 Eliminate the requirement for letters of support from state senators and representatives.

This recommendation would change the application scoring process by removing the statutory requirement for support letters from state-level elected officials. State senators and representatives could still provide input in the tax credit awards process, but their participation would not be a required scoring item.

1.3 Allow TDHCA to create additional tax credit allocation cycles to take advantage of nonstandard federal assistance opportunities.

In the event the State receives emergency credits or related funding, this recommendation would allow the Department to release credits or funds for development outside of the regular application cycle by creating a new application cycle as needed. The recommendation would essentially make the temporary statutory authorization that existed from 2009 to 2011 permanent, and would also clarify the emergency authority applies to any federal programs related to tax credits.

Fiscal Implication

This recommendation would not have a fiscal impact to the State.

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¹ Section 2306.6710, Texas Government Code.

² 10 T.A.C., Part 1, Section 50.9.

RESPONSES TO ISSUE 1

Recommendation 1.1

Replace neighborhood organization letters with voted resolutions from local city council or county commissioners courts as a principal tax credit scoring item, but continue to consider neighborhood organization letters as a lesser scoring item.

Agency Response to 1.1

The Texas Department of Housing and Community Affairs accepts Recommendation 1.1. (J. Paul Oxer, Board Chairman, and Timothy K. Irvine, Executive Director – Texas Department of Housing and Community Affairs)

For 1.1

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Matt Hull, Executive Director – Texas Association of Community Development Corporations, Austin

Against 1.1

Cynthia Burks, Vice President – East 1488 Community Association, Magnolia

Felicia Salewsky, Magnolia

Ryan Wardinsky, Conroe

Recommendation 1.2

Eliminate the requirement for letters of support from state senators and representatives.

Agency Response to 1.2

The Texas Department of Housing and Community Affairs accepts Recommendation 1.2. (J. Paul Oxer, Board Chairman, and Timothy K. Irvine, Executive Director – Texas Department of Housing and Community Affairs)

For 1.2

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Matt Hull, Executive Director – Texas Association of Community Development Corporations, Austin

Against 1.2

Felicia Salewsky, Magnolia

Ryan Wardinsky, Conroe

Modification

1. Replace letters of support by state senators and representatives with resolutions voted on by a city council or, if none exists, the county commissioners court in the area of the proposed development. (Cynthia Burks, Vice President – East 1488 Community Association, Magnolia)

Recommendation 1.3

Allow TDHCA to create additional tax credit allocation cycles to take advantage of nonstandard federal assistance opportunities.

Agency Response to 1.3

The Texas Department of Housing and Community Affairs accepts Recommendation 1.3. (J. Paul Ozer, Board Chairman, and Timothy K. Irvine, Executive Director – Texas Department of Housing and Community Affairs)

For 1.3

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Matt Hull, Executive Director – Texas Association of Community Development Corporations, Austin

Against 1.3

None received.

COMMISSION DECISION ON ISSUE 1

(NOVEMBER 2012)

Adopted Recommendations 1.1 through 1.3.

FINAL RESULTS ON ISSUE 1

(JULY 2013)

Legislative Action — H.B. 3361

Recommendation 1.1 — House Bill 3361 adjusts the housing tax credit scoring process by replacing neighborhood organization letters as the second highest scoring criterion with voted resolutions by a city council or a commissioners court. The bill requires the Department to continue scoring letters from neighborhood organizations as a lesser scoring item. The Legislature modified the Sunset provision to make neighborhood organization letters the next to last, rather than the last, statutorily required item in the tax credit scoring process.

Recommendation 1.2 — The bill eliminates the requirement for letters of support from state senators. The Legislature modified the Sunset provision to continue to require the Department to consider letters from state representatives, but as the last statutorily required item in the tax credit scoring process rather than the sixth scoring item.

Recommendation 1.3 — The bill allows the Department to create additional tax credit allocation cycles to take advantage of nonstandard federal assistance opportunities.

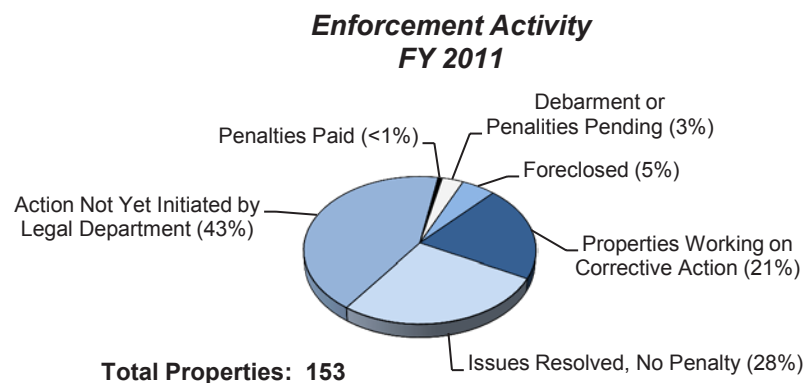
ISSUE 2

Inconsistencies in the Department's Enforcement Process Could Waste Resources and Contribute to Compliance Problems.

Background

The Department monitors affordable multifamily housing developments funded through its programs to ensure properties are well constructed, remain suitable for tenants, appropriately restrict rents, and generally perform well for the life of the contract. When monitors find violations, staff work with property owners and managers to return developments to full compliance. Common violations include deficiencies in physical standards of the properties, and failure to restrict rents or verify income appropriately.

The vast majority of properties are either in compliance or have only minor violations that do not materially impact the property, the services it provides, or the tenants. Most properties return to compliance voluntarily, but when the Department cannot achieve compliance, staff refer violators to an enforcement committee, made up of executive and senior staff, for settlement negotiations or assignment of penalties up to and including financial penalties and possible debarment from future projects. Parties can appeal committee decisions to the TDHCA Board and ultimately to district court. The pie chart, *Enforcement Activity*, details the status of compliance problems brought before the enforcement committee during fiscal year 2011, and reflects a noticeable increase in activity from the agency's past three-year enforcement data.¹



Findings

The Department's statute continues to reflect an appeals process that does not ensure an independent hearing for individuals sanctioned by the Department.

The 2010 Sunset review found that statute directs individuals who receive an administrative penalty and wish to appeal such a sanction to do so before the TDHCA Board, which then holds a hearing about the violation

Unlike most agencies, TDHCA does not use SOAH for administrative appeals.

and associated penalty.² However, nearly all state agencies rely on the State Office of Administrative Hearings (SOAH) to provide independent hearings of appeals. In fact, TDHCA's Division of Manufactured Housing uses SOAH for its enforcement hearings. As part of this standard process, governing boards have the authority to reverse, modify, or accept the SOAH judge's proposal for decision, preserving their role in final decision making. The State Office of Administrative Hearings offers a consistent standard of independence and professionalism, and SOAH's judges are well versed in the kinds of enforcement cases that TDHCA would generate. Prompted by the last Sunset review, the Department began referring cases to SOAH in 2009, and has referred three cases since that time, though all referred cases have been settled. This recommendation continues to be appropriate since statute still directs an outdated, nonstandard hearing process before the Board.

In addition, the Sunset Commission also recommended updating the type of review conducted by a district court, as statute requires a *de novo* review, as opposed to the standard substantial evidence review for administrative decisions. In a *de novo* review, the court essentially begins a new trial, and does not rely on the established record, whereas the substantial evidence rule relies on the record established by the agency and its administrative process. Appeals of decisions based on SOAH-conducted hearings typically use the substantial evidence rule, and not a *de novo* review, as SOAH has established a clear record for later use by the court.

The agency continues to lack appropriate sanction authority to ensure bad actors are prohibited from future participation in Department programs, as recommended by the Sunset Commission.

State law only allows TDHCA to debar applicants from one program.

In 2001, the Legislature authorized the Department to debar, or prohibit, applicants with bad records at the Department from application to, or participation in, future tax credit award rounds.³ However, the 2010 Sunset review found that statute does not authorize debarment from any of the Department's other housing or community affairs programs. Violations that can result in debarment include misappropriation of funds, other criminal activity, poor construction quality, or repeated failure to correct issues of noncompliance. Debarment ensures exclusion of people who have seriously or repeatedly violated laws, rules, or contracts. However, use of debarment as an enforcement action without statutory backing would likely open the agency's decision to legal challenge. Since the last Sunset review, TDHCA debarred one participant from the tax credit program. The original Sunset Commission recommendation remains appropriate as the Department continues to need statutory change to use debarment as an enforcement tool across all agency programs.

Recommendations

Change in Statute

2.1 Clarify the agency's ability to refer penalty appeals hearings to the State Office of Administrative Hearings.

This recommendation would amend statute to require TDHCA to refer penalty appeals to SOAH, following the same process as TDHCA's Manufactured Housing Division. In conducting hearings, SOAH would consider the Department's applicable substantive rules or policies. Like other agencies that have hearings conducted by SOAH, the Board would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge. The Board could reverse or modify the decision only if the judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions; the judge relied on a prior administrative decision that is incorrect or should be changed; or the Board finds a technical error in a finding of fact that should be changed.

The State Office of Administrative Hearings already receives a direct appropriation to conduct hearings for the Department's Manufactured Housing Division and this relationship could extend to cover contested cases related to housing program violations and penalties. However, if the Department's caseload were to increase, SOAH would likely seek additional General Revenue appropriations to cover the increased workload.

This recommendation would improve the efficiency and ensure the independence of the Department's contested case hearings involving housing programs. Although SOAH may face an initial learning curve in hearing appeals about departmental penalties, the subject areas of TDHCA cases are not generally more complex than other enforcement cases currently brought before SOAH.

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

This recommendation would require use of the substantial evidence rule, instead of a *de novo* review, for judicial review appeals of administrative decisions. Any party subject to a penalty would continue to be authorized to appeal board decisions to district court, but this recommendation would specify that appeals be made under the substantial evidence rule, consistent with the vast majority of other administrative appeals.

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

This recommendation would clearly permit the Department to debar individuals for significant performance failures across all programs, not just the housing tax credit program. This change would also permit the agency to set terms for debarment. This recommendation would not grant any new sanction authority to the Department, but would extend use of an existing sanction across all the Department's programs. The Department could use procedures and rules established for tax credit debarment and apply them, as necessary, to participants of other programs. Participants facing debarment would be authorized to appeal decisions to the TDHCA Board.

Fiscal Implication

Requiring the use of SOAH would not result in a fiscal impact to the State, as SOAH is well positioned to absorb the small increase in workload using existing agency resources. None of the other recommendations would result in a fiscal impact.

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¹ During the 2010 Sunset review the agency's three-year enforcement activity included 58 properties, as compared to the one-year activity in fiscal year 2011 of 153 properties brought before the agency's enforcement committee.

² Sections 2603.044 and 2306.045, Texas Government Code.

³ Section 2306.6721, Texas Government Code.

RESPONSES TO ISSUE 2

Recommendation 2.1

Clarify the agency's ability to refer penalty appeals hearings to the State Office of Administrative Hearings.

Agency Response to 2.1

The Texas Department of Housing and Community Affairs accepts Recommendation 2.1. (J. Paul Ozer, Board Chairman, and Timothy K. Irvine, Executive Director – Texas Department of Housing and Community Affairs)

For 2.1

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Matt Hull, Executive Director – Texas Association of Community Development Corporations, Austin

Against 2.1

None received.

Recommendation 2.2

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

Agency Response to 2.2

The Texas Department of Housing and Community Affairs accepts Recommendation 2.2. (J. Paul Ozer, Board Chairman, and Timothy K. Irvine, Executive Director – Texas Department of Housing and Community Affairs)

For 2.2

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Matt Hull, Executive Director – Texas Association of Community Development Corporations, Austin

Against 2.2

None received.

Recommendation 2.3

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

Agency Response to 2.3

The Texas Department of Housing and Community Affairs accepts Recommendation 2.3. (J. Paul Oser, Board Chairman, and Timothy K. Irvine, Executive Director – Texas Department of Housing and Community Affairs)

For 2.3

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Against 2.3

None received.

COMMISSION DECISION ON ISSUE 2

(NOVEMBER 2012)

Adopted Recommendations 2.1 through 2.3.

FINAL RESULTS ON ISSUE 2

(JULY 2013)

Legislative Action — H.B. 3361

Recommendation 2.1 — House Bill 3361 clarifies the agency's ability to refer penalty appeals hearings to the State Office of Administrative Hearings.

Recommendation 2.2 — The bill requires judicial review of appeals of the Department's decisions to be based on the substantial evidence rule, instead of a de novo review.

Recommendation 2.3 — The bill authorizes the Department to use debarment as a sanction and protection in all its programs.

ISSUE 3

Key Elements of the Manufactured Housing Division's Functions Do Not Conform to Common Licensing Standards.

Background

As part of its mission to ensure manufactured housing units are well-constructed, safe, and installed correctly, and consumers are provided fair and effective remedies, the Manufactured Housing Division (Division) performs several standard licensing and enforcement functions. The Division and its independent Board monitor approximately 2,000 license holders, with many holding multiple licenses. Qualifications include education, training, and criminal background checks. The Division also enforces the Texas Manufactured Housing Act and its Board's rules by investigating complaints against license holders and taking disciplinary action when necessary.

The Sunset Commission has observed and documented common licensing practices during more than 30 years of experience reviewing licensing agencies, and compiled them into a set of licensing and regulatory standards. In the 2010 Sunset review of the Division, the Sunset Commission adopted several recommendations aimed at making the Division's statute more consistent with these common licensing practices. These recommendations remain appropriate, as described in the findings below.

Findings

The Division continues to need statutory change to ensure its background checks follow model practices.

Criminal background checks of licensees help protect the public, especially for occupations in which licensees regularly interact with the public or there is a potential risk of consumer fraud. The 2010 Sunset review found that the Division conducts a DPS name check upon initial licensure, instead of the standard fingerprint-based check performed by the Department of Public Safety (DPS), which provides more accurate, real-time information. Beyond matching an individual with any associated criminal history, including any criminal history from other states or the Federal Bureau of Investigation, fingerprint checks also replace the need for renewal checks, as DPS issues automatic notice of subsequent arrests. By statute, the Division may refuse to issue a license for criminal history five years preceding the application date.¹ As statute has not been updated to require this shift in licensing, the recommendation remains appropriate.

Fingerprint checks are the most reliable way to uncover criminal history.

Nonstandard enforcement provisions of the Division's statute, rules, and practices continue to reduce the Division's ability to protect consumers.

- **Cease-and-desist authority.** While the Division has cease-and-desist authority for licensed activities, it lacks authority to address unlicensed activities. Finding that a licensing agency should have enforcement

The Division lacks the authority needed to stop the unlicensed sale and installation of manufactured homes.

authority not only over its licensees, but also over those who engage in unlicensed activity, the Sunset Commission recommended granting the Division cease-and-desist authority for unlicensed sale and installation of manufactured homes. Since the Division cannot issue such orders without statutory authority, the recommendation remains appropriate to help the agency obtain injunctive relief more easily.

- **Refund authority.** Refunds allow a complainant to receive financial compensation for some or all of what was lost as a result of the act that prompted the complaint and resulted in a violation of state law or rules by a licensee. The 2010 Sunset review found that Division is not authorized to allow a licensee to pay a refund directly to the aggrieved party, even if the licensee wishes to do so. Instead, the Division pays refunds to the complainant and seeks reimbursement from the licensee's surety bond.² The Sunset Commission recommended that the Legislature allow the licensee to refund the consumer directly, providing a potentially faster option to compensate the consumer without risking the licensee's ability to maintain a surety bond. This recommendation remains appropriate as statute has not been amended to reflect such a change.
- **Administrative complaint dismissal.** In 2010, the Sunset Commission recommended that Division staff have the ability to administratively dismiss baseless and nonjurisdictional complaints, without having to involve their governing board, except to inform them of such dismissals. Statute continues to authorize staff to handle warranty cases, but remains silent on closure of other cases. The Sunset Commission found that allowing administrative dismissal would save time by eliminating the need for the Board to consider each complaint while still providing necessary information so that it is accountable for staff actions. A change in law is still needed to allow staff to administratively dismiss any kind of complaint.

The Division would continue to benefit from updating certain licensing provisions.

A change in law is still needed to remove two superfluous licenses.

- **Unnecessary license types.** The 2010 Sunset review concluded that the manufactured housing branch and rebuilder licenses were unnecessary and should be removed from statute, as these licenses do not play a clear role in protecting the public. The Division has never issued a branch license, has not issued a rebuilder license since 2006, and does not anticipate issuing either license in the future. A change in statute to remove these superfluous license categories is still required.
- **Reprinted licenses.** The Sunset Commission recommended granting the Division the ability to collect a fee for reprinted manufactured housing licenses. The Division's statute still does not authorize such a reprint fee, so the Division reissues these licenses at no cost to the licensee. Authorizing a minimal reprint fee would ensure that the licensee bears the administrative cost associated with producing a reprinted license.

Recommendations

Change in Statute

3.1 Require the Manufactured Housing Division to conduct a fingerprint-based criminal background check of all manufactured housing licensees.

This recommendation would require the Division to conduct fingerprint criminal background checks, through DPS, on all licensees to review complete federal and state criminal histories of applicants. Licensees would use the State's fingerprint vendor to collect and submit fingerprints. The DPS system provides automatic updates, eliminating the need for additional background checks at the time of renewal. New prospective licensees would provide fingerprints at the time of application, and existing licensees would provide fingerprints upon renewal. Applicants would pay the one-time \$42 cost.

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

This recommendation would allow the Division to issue cease-and-desist orders when it discovers an individual or entity operating without a license. As part of this recommendation, the Division would also be authorized to assess administrative penalties on unlicensed individuals or entities of up to \$1,000 for each day of the violation, consistent with the Division's penalty authority for licensed individuals and entities. These changes would not impact the Division's authority to also seek an injunction through the Attorney General. Cease-and-desist authority would help the Division better protect consumers from unlicensed manufactured housing operations and standardize the Division's procedures with commonly applied licensing practices.

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

This recommendation would authorize the Division to order refunds directly from the licensee, instead of having to use the licensee's surety bond, for any violation that caused consumer harm. This recommendation would not expand the basic authority the Division already has, but would simply increase options for payment, allowing licensees to pay refunds directly.

3.4 Authorize Division staff to administratively dismiss baseless and non-jurisdictional complaints and report these actions to the Division's Board.

This recommendation would save time while promoting greater accountability of staff actions by ensuring Division staff report these actions to its Board. Dismissal information reported to the Division's Board should contain sufficient explanation indicating why complaints were dismissed.

3.5 Eliminate manufactured housing branch and rebuilder licenses from statute.

This recommendation would eliminate the unnecessary branch and rebuilder licenses.

3.6 Authorize the Division to collect a fee for reprinted manufactured housing licenses.

This recommendation would permit the Division to collect a nominal fee for reprinted licenses requested by a licensee. The Division's Board would determine the appropriate fee level.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the State overall. Authorizing the Division to order direct refunds as part of the complaint settlement process would have no fiscal impact because consumers, not the State, directly receive the funds. For criminal background checks licensees would be responsible for a one-time fee, currently \$42. Permitting the Division to collect fees for reprinted licenses would increase revenues, but the amount cannot be estimated because the Division does not track the number of requests it receives annually for license reprints. The Division could implement the remaining recommendations within its current resources.

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¹ Section 1201.551, Texas Occupations Code.

² Section 1201.406, Texas Occupations Code.

RESPONSES TO ISSUE 3

Recommendation 3.1

Require the Manufactured Housing Division to conduct a fingerprint-based criminal background check of all manufactured housing licensees.

Division Response to 3.1

The Manufactured Housing Division agrees with Recommendation 3.1. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 3.1

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin
DJ Pendleton, J.D., Executive Director – Texas Manufactured Housing Association, Austin

Against 3.1

None received.

Recommendation 3.2

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

Division Response to 3.2

The Manufactured Housing Division agrees with Recommendation 3.2. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 3.2

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin
DJ Pendleton, J.D., Executive Director – Texas Manufactured Housing Association, Austin

Against 3.2

None received.

Recommendation 3.3

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

Division Response to 3.3

The Manufactured Housing Division agrees with Recommendation 3.3. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 3.3

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin
DJ Pendleton, J.D., Executive Director – Texas Manufactured Housing Association, Austin

Against 3.3

None received.

Recommendation 3.4

Authorize Division staff to administratively dismiss baseless and non-jurisdictional complaints and report these actions to the Division's Board.

Division Response to 3.4

The Manufactured Housing Division agrees with Recommendation 3.4. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 3.4

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin
DJ Pendleton, J.D., Executive Director – Texas Manufactured Housing Association, Austin

Against 3.4

None received.

Recommendation 3.5

Eliminate manufactured housing branch and rebuilder licenses from statute.

Division Response to 3.5

The Manufactured Housing Division agrees with Recommendation 3.5. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 3.5

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

DJ Pendleton, J.D., Executive Director – Texas Manufactured Housing Association, Austin

Against 3.5

None received.

Recommendation 3.6

Authorize the Division to collect a fee for reprinted manufactured housing licenses.

Division Response to 3.6

The Manufactured Housing Division agrees with Recommendation 3.6. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 3.6

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

DJ Pendleton, J.D., Executive Director – Texas Manufactured Housing Association, Austin

Against 3.6

None received.

COMMISSION DECISION ON ISSUE 3

(NOVEMBER 2012)

Adopted Recommendations 3.1 through 3.6.

FINAL RESULTS ON ISSUE 3

(JULY 2013)

Legislative Action — H.B. 3361

Recommendation 3.1 — House Bill 3361 requires the Manufactured Housing Division to conduct a fingerprint-based criminal background check of all manufactured housing licensees.

Recommendation 3.2 — The bill grants cease-and-desist authority to the Division for unlicensed construction, sale, and installation of manufactured homes.

Recommendation 3.3 — The bill authorizes the Division to order direct refunds as part of the manufactured housing complaint settlement process.

Recommendation 3.4 — The bill authorizes Division staff to administratively dismiss baseless and non-jurisdictional complaints and report these actions to the Division's Board.

Recommendation 3.5 — The bill eliminates manufactured housing branch and rebuilder licenses from statute.

Recommendation 3.6 — The bill authorizes the Division to collect a fee for reprinted manufactured housing licenses.

ISSUE 4

The State Has a Continuing Need for the Texas Department of Housing and Community Affairs.

Background

Recognizing the shortage of affordable housing and the need for community-based services to assist low- and moderate-income people, the federal government has established numerous programs to help communities increase housing and community services options. The federal government requires a state partner to administer these programs and funds, and the Texas Legislature created the current Texas Department of Housing and Community Affairs (TDHCA) in 1991 for that purpose. Organizationally, the Department is responsible for affordable housing and community services activities, and statute establishes the Manufactured Housing Division within TDHCA, with its own board, dedicated to the regulation of manufactured housing.

Since the federal government provides funds directly to some cities in Texas, the Department serves a dual role as provider for areas not served by the federal government, and statewide administrator of several large federal programs. The agency provides funding through grants and loans, and serves as a housing finance authority, issuing bonds and tax credits to raise capital for affordable housing projects.

In fiscal year 2011, the Department expended or encumbered \$386 million to support affordable housing, community services, and manufactured housing activities. Approximately 98 percent of the Department's housing and community services budget comes from federal payments, block grants, and financing authority, while manufactured housing regulation is funded solely through a combination of fees and federal funds.

Findings

No significant changes have occurred to affect the 2010 Sunset Commission recommendation to continue the Department.

In 2010, the Sunset Commission recommended that the Legislature continue the Department for 12 years. The recommendation is still appropriate. Through the Department's functions the State administers several hundred million dollars in federal funds and financing authority annually. To continue to receive these funds, and to help meet the growing demand for affordable housing, Texas must have a state housing authority and an agency, like TDHCA, with the capacity to administer complicated grant programs.

The Sunset Commission also found that the functions of the Manufactured Housing Division (Division) continue to be needed to provide records of ownership (titles) for manufactured homes; regulate production, sales, and installation of manufactured housing; and to ensure safety and reduce financial risks for consumers through licensing and consumer protection. Without these manufactured housing functions Texas would stand to lose federal funding; regulatory responsibilities could be assumed by the federal

Texas has a continuing need for affordable housing and safe manufactured housing.

government; Texans would have difficulty selling, insuring, and financing manufactured homes; and taxing entities could have trouble accurately assessing and collecting taxes. In fiscal year 2011, the Division issued 1,741 licenses and 60,126 titles, and inspected 10,873 home installations.

The Manufactured Housing Division's statute does not reflect standard language typically applied across-the-board during Sunset reviews.

In 2010, the Sunset Commission determined that the Division's statute does not include a standard provision relating to alternative rulemaking and dispute resolution that the Commission routinely applies to agencies under review. A similar provision exists in the Department's governing statute but does not clearly extend to the operations of the Division. A change in law is still needed to apply this provision to the Division.

Recommendations

Change in Statute

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

This recommendation would continue the Texas Department of Housing and Community Affairs as an independent agency responsible for the allocation of state and federal funds related to development of affordable housing and the provision of community services for 12 years. The recommendation would also continue the Manufactured Housing Division, within the Department, and maintain its separate board.

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

This recommendation would ensure that the Division develops and implements 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. Because the recommendation only requires the Division to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expenses.

Fiscal Implication

If the Legislature continues the current functions of the Department using the existing organizational structure, the agency's annual appropriation of \$183.8 million would continue to be required for its operation. Applying the standard Sunset provision relating to alternative rulemaking and dispute resolution would not have a fiscal impact.

RESPONSES TO ISSUE 4

Recommendation 4.1

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

Agency Response to 4.1

The Texas Department of Housing and Community Affairs accepts Recommendation 4.1. (J. Paul Oser, Board Chairman, and Timothy K. Irvine, Executive Director – Texas Department of Housing and Community Affairs)

Division Response to 4.1

The Manufactured Housing Division agrees with Recommendation 4.1. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 4.1

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Matt Hull, Executive Director – Texas Association of Community Development Corporations, Austin

DJ Pendleton, J.D., Executive Director – Texas Manufactured Housing Association, Austin

Against 4.1

None received.

Recommendation 4.2

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

Division Response to 4.2

The Manufactured Housing Division agrees with Recommendation 4.2. (Joe A. Garcia, Executive Director – Manufactured Housing Division, Texas Department of Housing and Community Affairs)

For 4.2

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

DJ Pendleton, J.D., Executive Director – Texas Manufactured Housing Association, Austin

Against 4.2

None received

COMMISSION DECISION ON ISSUE 4

(NOVEMBER 2012)

Adopted Recommendations 4.1 and 4.2.

FINAL RESULTS ON ISSUE 4

(JULY 2013)

Legislative Action — H.B. 3361

Recommendation 4.1 — House Bill 3361 continues the Texas Department of Housing and Community Affairs for 12 years.

Recommendation 4.2 — The bill applies the standard Sunset Across-the-Board Recommendation for the Manufactured Housing Division to develop a policy regarding negotiated rulemaking and alternative dispute resolution.

ISSUE 5

Department Statutes Contain Unnecessary Reporting Requirements.

Background

Over the years, Sunset reviews have come to encompass an increasing number of standard elements either from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the Criteria for Review in the Sunset Act, or from general law provisions typically imposed on state agencies. The following material summarizes Sunset staff's analysis of applicable standard elements for the Department.

- **Reporting requirements.** The Sunset Act establishes a process for state agencies to provide information to the Sunset Commission about reporting requirements imposed on them by law and requires the Commission, in conducting reviews of state agencies, to consider if each reporting requirement needs to be continued or abolished.¹ The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reports required by rider to the General Appropriations Act are included as a matter of law, but under a presumption that the appropriations committees have vetted these requirements each biennium. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, posting requirements, or federally mandated reports.
- **Equal Employment Opportunities and Historically Underutilized Businesses.** The Sunset Act requires the Sunset Commission and its staff to consider agencies' compliance with applicable federal and state requirements regarding equal employment opportunity (EEO) and historically underutilized businesses (HUB).² Staff routinely evaluates agency performance regarding these requirements in the course of a Sunset review, but only reports deficiencies significant enough to merit attention.

Findings

The Department has three reporting requirements that are no longer necessary.

State law requires the Department to produce 15 reports that are specific to the agency and meet the parameters described above. Appendix B lists all of the agency's reporting requirements, and Sunset staff's analysis of their need. Many of these reporting requirements continue to be useful; however, three reports required of the Department are no longer needed.

- **Energy and peak demand report.** Statute requires the Department, as the state agency that administers the federal weatherization assistance program, to provide reports detailing energy and peak demand savings achieved in each transmission and distribution utility (TDU) service area.³ By law, the Department must produce the report to the Public Utility Commission (PUC) when PUC requests one. However, PUC

Twenty percent of Department reports are no longer needed.

requests this information directly from TDUs and the Department cannot produce this report since it lacks authority to review TDU energy and peak demand data. As a result, the Department no longer needs to produce this report.

- **Contract for Deed Conversion Guarantee Program report.** State law requires the Department to establish a program to guarantee loans made by private lenders to convert a contract for deed into a warranty deed. Statute further requires the Department to annually report on the repayment history and coinciding guarantee percentages, and to deliver a copy of the report to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives.⁴ As required, the Department initiated the program with a lender, who after a small number of loans, discontinued participation in the program. The Department attempted to attract new lenders and operate the program for several years, and ultimately discontinued the program in 2004. Since the program is inactive, the Department no longer needs to produce this report.
- **Transfers of funds, personnel, or in-kind services to the Texas State Affordable Housing Corporation report.** Statute requires the Department to report to the Legislative Budget Board all transfers of funds, personnel, or in-kind contributions from the Department to the Texas State Affordable Housing Corporation (Corporation).⁵ In 1995, the Legislature established the Corporation in law as an independent entity, though the Department's Board served as the Corporation's Board. When the Legislature added this reporting requirement in 1997, statute linked the Corporation to the Department. In 1999, the Legislature completely separated the Corporation from the Department, creating a Governor-appointed board with its own staff. The Department and the Corporation have not conducted transfers of funds, personnel, or in-kind contributions in many years, and given the structural separation between the two entities, the Department no longer needs to produce this report.

The Department has not met statewide civilian workforce percentages in certain categories for the last three years.

While the Department met or exceeded many statewide civilian workforce percentages for fiscal years 2009 to 2011, the agency fell significantly below EEO percentages for two groups — African Americans in the administration category and females in the technical category. The Department indicates that low turnover in these job categories, combined with a limited qualified applicant pool, contributed to the Department falling below statewide civilian workforce percentages. The Department states it will increase recruitment efforts with organizations supporting diverse groups and undertake national searches to improve hiring in the administration category. Likewise, TDHCA will strengthen recruitment to increase the number of female applicants for technical positions. Appendix C shows the Department's EEO performance in each job category for fiscal years 2009 to 2011.

The Department has not met the State’s HUB purchasing goals in the other services category for the last two years.

While the Department has met HUB program requirements, such as appointing a HUB coordinator and establishing a HUB policy, and greatly exceeded the State’s goals for its purchases of commodities, the Department has had difficulty meeting statewide HUB purchasing goals in the one category with the most significant expenditures — other services. Between fiscal year 2009 and 2011, Department expenditures in the other services category increased 133 percent, from \$1.91 million to \$4.45 million, largely resulting from an influx of American Recovery and Reinvestment Act (ARRA) funds. The Department attributes its failure to meet goals in this category to temporary costs related to administration of the ARRA Weatherization Training Academy and its use of outside counsel. The Department does not anticipate having this same issue in the future given the temporary nature of ARRA funding and expenditures. Although the Department did not meet HUB purchasing goals in two other categories, the other services category was the only one with significant expenditures. Appendix D details the Department’s HUB spending for fiscal years 2009 to 2011 in all purchasing categories.

Recommendation

Change in Statute

5.1 Abolish the Department’s reports relating to energy and peak demand savings, the statutory Contract for Deed Conversion Guarantee Program, and transfers of funds, personnel, or in-kind services to the Texas State Affordable Housing Corporation.

This recommendation would eliminate these three unnecessary reporting requirements from law. The Department’s remaining 12 reporting requirements would continue because they provide information useful to both the agency and the public. Appendix B summarizes all of the agency’s reporting requirements and shows which reports would be continued and abolished under this recommendation. To comply with a recent change in law, the Department should provide any reports to the Legislature in an electronic format only.

Fiscal Implication

This recommendation would not have a fiscal impact to the State.

-
- ¹ Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.
 - ² Section 325.011(9), Texas Government Code.
 - ³ Section 39.905(f), Texas Utilities Code.
 - ⁴ Section 2306.255(h), Government Code.
 - ⁵ Section 2306.560(d), Texas Government Code.

RESPONSES TO ISSUE 5

Recommendation 5.1

Abolish the Department's reports relating to energy and peak demand savings, the statutory Contract for Deed Conversion Guarantee Program, and transfers of funds, personnel, or in-kind services to the Texas State Affordable Housing Corporation.

Agency Response to 5.1

The Texas Department of Housing and Community Affairs accepts Recommendation 5.1. (J. Paul Oser, Board Chairman, and Timothy K. Irvine, Executive Director – Texas Department of Housing and Community Affairs)

For 5.1

John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin

Against 5.1

None received.

COMMISSION DECISION ON ISSUE 5

(NOVEMBER 2012)

Adopted Recommendation 5.1.

FINAL RESULTS ON ISSUE 5

(JULY 2013)

Legislative Action — H.B. 3361

Recommendation 5.1 — House Bill 3361 abolishes the Department's reports relating to energy and peak demand savings, the statutory Contract for Deed Conversion Guarantee Program, and transfers of funds, personnel, or in-kind services to the Texas State Affordable Housing Corporation.

NEW ISSUE

NEW ISSUE

The following issue was raised in addition to the issues in the staff report. This issue is numbered sequentially to follow the staff's recommendations.

6. Require developers of proposed low-income projects to notify communities when submitting an application. (Cynthia Burks, Vice President – East 1488 Community Association, Magnolia)

Staff Comment: Both the Department and an applicant for housing tax credits provide public notice regarding proposed developments. An applicant must send notifications of application to neighborhood organizations, school district officials, the mayor and city council, the county judge and commissioners court, and the state senator and state representative in the area containing the proposed development.

The Department makes available on its website notice about public hearings, meetings, application dates, submitted applications, and applications approved for underwriting and recommended to the Department's Board. The Department provides that information to a variety of groups, including locally affected community groups, local and state elected officials, local housing departments, and any appropriate newspapers of general or limited circulation that serve the community in which the development is to be located. The Department also maintains an electronic mail notification service to which any person may electronically subscribe. Subscribers receive information concerning the submission and status of pre-applications and applications for housing tax credits proposed to be located in a specific postal zip code.

COMMISSION DECISION ON NEW ISSUE

(NOVEMBER 2012)

The Commission did not adopt the new issue.

FINAL RESULTS ON NEW ISSUE

(JULY 2013)

Legislative Action

No action needed. (The new issue was not adopted by the Commission.)

**PROVISIONS ADDED BY THE
LEGISLATURE**

PROVISIONS ADDED BY THE LEGISLATURE

Legislative Action — H.B. 3361

- **Establishes local threshold requirements for noncompetitive 4 percent low income housing tax credit applications.**

The Legislature added a provision to House Bill 3361 that establishes new local notice, hearing, and resolution requirements for noncompetitive 4 percent housing tax credit applications. The bill specifies that an applicant must provide notice of intent to file an application for tax credits for developments financed through the private activity bond program to the governing body of a municipality, commissioners court of a county, or both. This includes private activity bonds issued by the Department, the Texas State Affordable Housing Corporation, or a local issuer. The bill requires a county or municipality, as applicable, to hold a hearing for public comment on the application. The bill prohibits the Department's Board from approving an application for housing tax credits for developments financed through the private activity bond program unless the applicant has submitted to the Department a certified copy of a resolution from each applicable governing entity.

- **Specifies that the Department must provide development owners with certain periods of time to correct violations that fail to meet compliance requirements.**

The Legislature added a provision to House Bill 3361 to provide the owner of a development financed with low income housing tax credits with 30 or 90 day time periods to correct failures to meet compliance requirements for certain violations other than violations that pose an imminent hazard or threat to health and safety.

APPENDICES

APPENDIX A

Texas Department of Housing and Community Affairs Housing and Community Service Programs Fiscal Year 2011

| Continuum of Service | Program/Activities | Description | Households/ People Served |
|-----------------------------|--|--|--------------------------------------|
| Poverty Prevention | Community Services Block Grant | Funds local community action agencies to provide essential services and poverty programs. | 723,829 |
| | Community Services Block Grant American Recovery and Reinvestment Act (ARRA) | | 99,325 ^{1,2} |
| | Comprehensive Energy Assistance | Funds local agencies to offer energy education; utility bill assistance; and heating, ventilating, and air conditioning replacement. | 209,882 |
| Homelessness Prevention | Emergency Shelter Grant Program | Funds entities to provide shelter and related services to persons who are homeless. | 64,073 |
| | Homelessness Prevention and Rapid Re-Housing Program (ARRA) | Funds qualifying entities to provide homelessness prevention and re-housing assistance to persons who are homeless. | 46,818 ^{1,2} |
| | Homeless Housing and Services Program | Funds the eight largest Texas cities to provide services or facilities to individuals and families who are homeless. | 30,135 |
| Rental Assistance | Section 8 Housing Choice Vouchers | Offers tenant-based rental assistance vouchers in certain rural areas. | 1,004 |
| | HOME Program/Tenant-Based Rental Assistance | Provides tenant-based rental assistance for up to two years. | 250 |
| | Housing Trust Fund/Texas Veterans Housing Assistance Program – Rental Assistance | Provides rental subsidies for veterans for a maximum of two years. | 7 |

Appendix A

| Continuum of Service | Program/Activities | Description | Households/ People Served |
|-------------------------|---|---|------------------------------|
| Multifamily Development | Housing Trust Fund/Affordable Housing Match Program | Provides funding to nonprofit organizations to attract, or meet requirements for, affordable housing grants or government programs. | 47 ² |
| | HOME Program/Community Housing Development Organization Set-Aside | Provides funding to nonprofit organizations to develop or preserve affordable rental housing. | 36 |
| | HOME Program/Rental Housing Development | Provides loans or grants to develop or preserve affordable rental housing. | 288 |
| | Housing Tax Credit Program | Provides tax credits to developers for the creation or preservation of affordable rental housing. | 4,656 |
| | Multifamily Bond Program | Provides loans to develop or preserve affordable rental housing. | 0 |
| | HOME Program/Tax Credit Assistance Program (ARRA) | Provides HOME fund awards to housing tax credit developments affected by the tax credit devaluation. | 8,346 ^{1,2} |
| | Texas Tax Credit Exchange Program (ARRA) | Allows developments affected by the housing tax credit devaluation to return their credits and receive a cash grant in its place. | 8,015 ^{1,2} |
| Homebuyer Education | Colonia Self-Help Center Program | Provides education and training to residents of designated colonias. | 18,170 ^{2,5} |
| | Texas Statewide Homebuyer Education | Trains nonprofits to provide homebuyer education. | 4,000 ² |

Appendix A

| Continuum of Service | Program/Activities | Description | Households/ People Served |
|---------------------------|--|--|------------------------------|
| Homebuyer Assistance | 90-Day Down Payment Assistance (ARRA) and Mortgage Advantage Program (ARRA) | Provides up to \$6,000 of the first lien mortgage amount, or \$7,000 for down payment and/or closing costs at 0.0 percent interest for 90 or 120 days. | 854 ^{1,2} |
| | First Time Homebuyer Program | Provides low-interest loans and/or down payment and closing costs for first time homebuyers. | 1,792 |
| | HOME Program/Homeownership Assistance – Contract for Deed Conversion | Provides financial and technical support to convert contracts for deed in colonias into traditional mortgages. | 9 |
| | HOME Program/Homeownership Assistance | Provides loan and grants for entities to offer down payment and closing cost assistance; may include accessibility modification. | 82 |
| | Housing Trust Fund/ Homeownership Assistance Program – Homebuyer Assistance | Provides loan and grants for entities to offer down payment and closing cost assistance, including assistance targeted to persons with disabilities. | 45 ³ |
| | Housing Trust Fund/Affordable Housing Match Program | Provides funding to nonprofit organizations to attract or meet requirements for affordable housing grants or government programs. | 230 ² |
| | Mortgage Credit Certificate Program | Provides annual tax credit for qualified homebuyers based on the interest paid on the homebuyer's mortgage loan. | 624 |
| Single-Family Development | HOME Program/Community Housing Development Organization Set-Aside | Provides loans to organizations to assist in the acquisition, rehabilitation, or new construction of single-family housing. | 0 |
| | Texas Bootstrap Loan Program | Funds entities to offer owner-builder loan programs. | 80 |

Appendix A

| Continuum of Service | Program/Activities | Description | Households/ People Served |
|--|--|---|---------------------------|
| Rehabilitation | Housing Trust Fund/Amy Young Barrier Removal Program | Grants for entities to provide home modifications needed for persons with disabilities. | 31 ³ |
| | HOME Program/Homeowner Rehabilitation | Provides loans and grants for entities to provide home repair assistance. | 221 |
| Weatherization | Weatherization Assistance Program | Funds local agencies to provide minor home repairs to increase energy efficiency. | 8,495 |
| | Weatherization Assistance Program (ARRA) | | 54,880 ^{2,4} |
| Foreclosure Prevention and Post-Foreclosure Assistance | National Foreclosure Mitigation Counseling | Funds foreclosure counselors to assist households in avoiding foreclosure. | 233 ² |
| | Neighborhood Stabilization Program | Provides funds primarily to purchase and rehabilitate foreclosed homes as affordable housing. | 1,267 ^{2,6} |

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¹ Reflects total served through stimulus funding provided under this program.

² Households and persons served through this program are not included in the totals provided in the Agency at a Glance section of this report.

³ The majority of households served under this program were reported in state fiscal year 2010, when the majority of awards were made.

⁴ Reflects total households served through stimulus funding provided under this program as of April 30, 2012.

⁵ This program is classified as homebuyer education, but provides a variety of services.

⁶ Reflects single-family and multifamily units scheduled to be assisted or currently occupied under existing contracts as of April 30, 2012.

APPENDIX B

Texas Department of Housing and Community Affairs Reporting Requirements

| Report Title | Legal Authority | Description | Recipient | Sunset Evaluation |
|--|--|--|--|--------------------------|
| 1. Energy and Peak Demand Report | Section 39.905(f), Texas Utilities Code | At the request of the Public Utility Commission, requires the Department to report the most current information available on energy and peak demand savings achieved in each transmission and distribution utility service area. | Public Utility Commission | Abolish |
| 2. Contract for Deed Conversion Guarantee Program Report | Section 2306.255, Texas Government Code | Requires the Department to compose an annual report that evaluates the repayment history and coinciding guarantee percentages for guarantees issued under the program. | Governor, Lieutenant Governor, and Speaker of the House of Representatives | Abolish |
| 3. Transfers of Funds, Personnel, or In-Kind Services to the Texas State Affordable Housing Corporation Report | Section 2306.560(d), Texas Government Code | Requires the Department to report all transfers of funds, personnel, or in-kind contributions from the Department to the Texas State Affordable Housing Corporation. | Legislative Budget Board | Abolish |
| 4. Foreclosure Data Collection Report | Section 51.0022, Texas Property Code | Requires the Department to provide quarterly reports on the number of notices of foreclosures or completed foreclosures by county and zip code. | Legislature | Continue |
| 5. State Low Income Housing Plan | Sections 2306.0721 and 2306.0722, Texas Government Code | Requires the Department to prepare a plan that analyzes the existing need and resources available for affordable housing and describes the next fiscal year's programs and available funding. | Governor, Lieutenant Governor, and Speaker of the House of Representatives | Continue |
| 6. State Low Income Housing Report | Sections 2306.072, 2306.0722, and 2306.0723, Texas Government Code | Requires the Department to prepare a report that analyzes housing activities during the preceding year. | Governor, Lieutenant Governor, Speaker of the House of Representatives, and members of any legislative oversight committee | Continue |

Appendix B

| Report Title | Legal Authority | Description | Recipient | Sunset Evaluation |
|--|--|--|---|--------------------------|
| 7. Texas Interagency Council for the Homeless Annual Report | Section 2306.908, Texas Government Code | Requires the Department to submit a progress report on the duties of the Texas Interagency Council for the Homeless. | Governing bodies of the agencies on Council | Continue |
| 8. Assistance to Colonias Report | Section 2306.083, Texas Government Code | Requires the Department to provide a report detailing any projects funded by the Department that provide assistance to colonias. | Secretary of State | Continue |
| 9. Contract for Deed Conversion Program Report | Rider 6(b), page VII-6, Article VII (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act) | Requires the Department to provide quarterly reports detailing the number of, and cost for each, contract for deed conversions completed. | Legislative Budget Board | Continue |
| 10. Housing and Health Services Coordination Council Biennial Plan | Section 2306.1096(b), Texas Government Code | Requires the Department to report on the findings and recommendations of the Housing and Health Services Coordination Council. | Governor's Office, Legislative Budget Board | Continue |
| 11. Housing Assistance Report | Rider 5, page VII-5, Article VII (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act) | Requires the Department to report expenditures targeting individuals and families earning less than 30 percent of the Area Median Family Income (AMFI), and individuals and families earning between 31 percent and 60 percent of AMFI. | Legislative Budget Board | Continue |
| 12. Qualified Allocation Plan for Low Income Housing Credits | Section 2306.6724(a)-(b), Texas Government Code | Requires the Department to prepare and submit to the Board for adoption any proposed qualified allocation plan required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the low-income housing tax credit program. | Governor's Office | Continue |

Appendix B

| Report Title | Legal Authority | Description | Recipient | Sunset Evaluation |
|---|--|--|---|--------------------------|
| 13. Manufactured Housing Report to Each Chief Appraiser | Section 1201.220, Occupations Code | Requires the Department to make available to each chief appraiser a monthly report containing specified information for each manufactured home installed during the preceding month, and for each previously installed home for which a transfer of ownership was recorded by the issuance of a statement of ownership and location. | Appraisal Districts | Continue |
| 14. Weatherization Efforts Report | Rider 15, page VII-8, Article VII (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act) | Requires the Department to produce an annual report with information about the number of low-income households benefiting from energy efficiency monies through state, federal, and utility-funded programs; the amount overall electric energy saved; the amount of money saved; and the number of job and job years created. | Governor, Lieutenant Governor, Speaker of the House of Representatives, and made available on TDHCA's website | Continue |
| 15. Housing Trust Fund Report | Rider 9(c), page VII-6, Article VII (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act) | Requires the Department to provide an annual report detailing the agency's plan to expend funds from the Housing Trust Fund during the current fiscal year. | Legislative Budget Board, House Appropriations Committee, and Senate Finance | Continue |

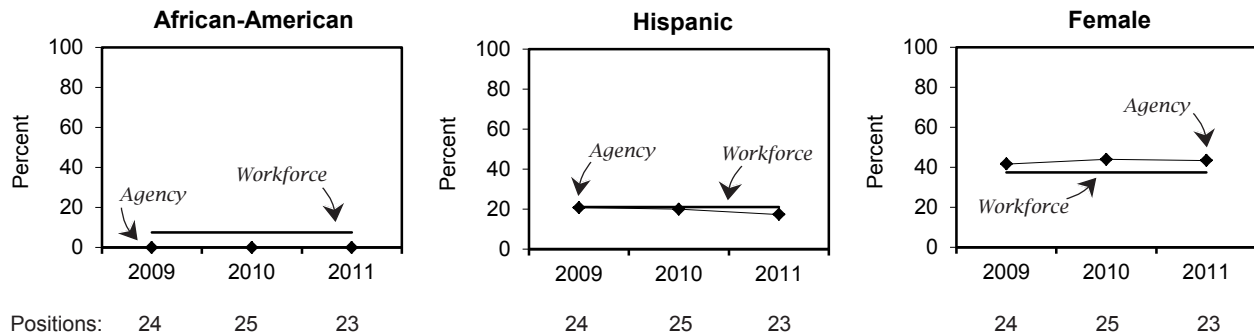
APPENDIX C

Equal Employment Opportunity Statistics 2009 to 2011

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Department of Housing and Community Affairs (Department).¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2009 to 2011.

The Department met or exceeded the civilian workforce percentages in several categories, but had significant disparities with respect to employment of African-Americans in the administration category, and for females in the technical category. The Department attributes this failure to a very low turnover rate and inadequate recruitment strategies in both categories. The Department plans to undertake more effective recruitment to address these shortfalls.

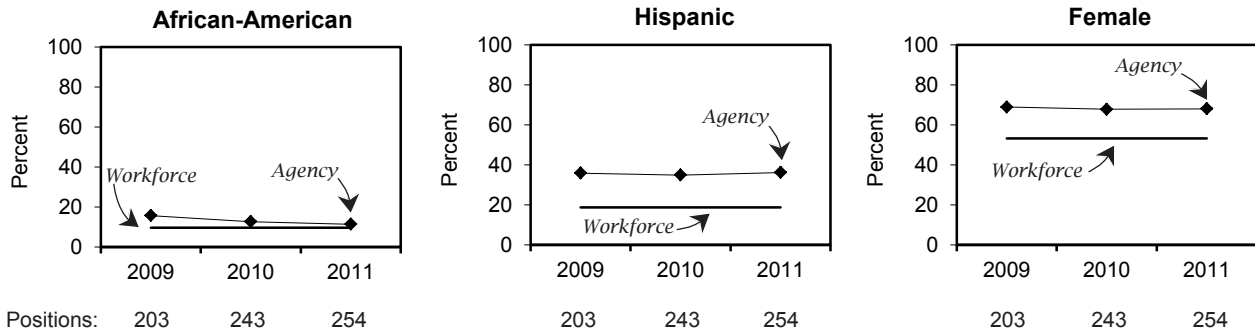
Administration



The Department fell below the civilian workforce percentages for African-Americans and Hispanics in the last three fiscal years, but exceeded percentages for females.

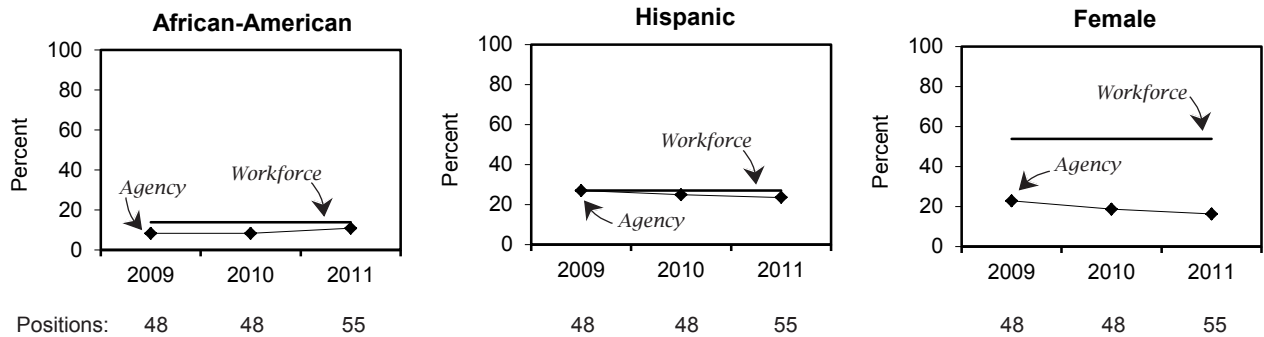
Appendix C

Professional



The Department generally meets or exceeds the statewide average for African-Americans, Hispanics, and females.

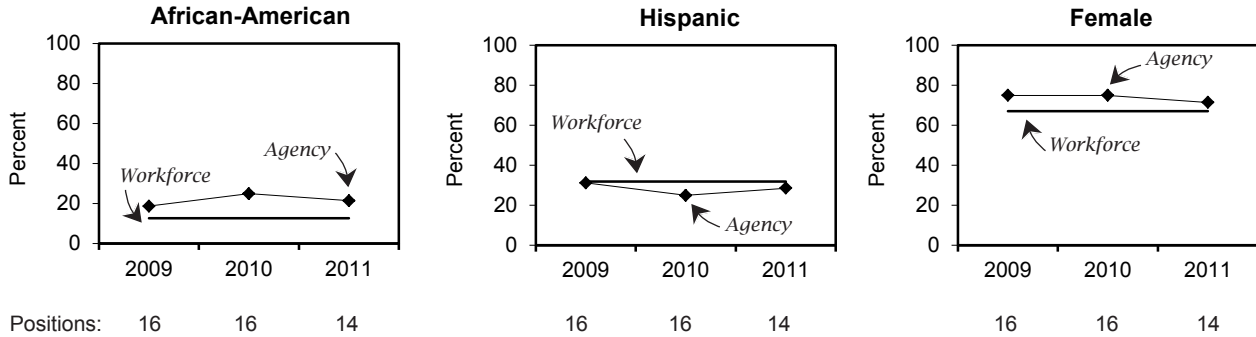
Technical



The Department fell slightly below the civilian workforce percentages for African-Americans and Hispanics, and significantly below for females in the last three fiscal years.

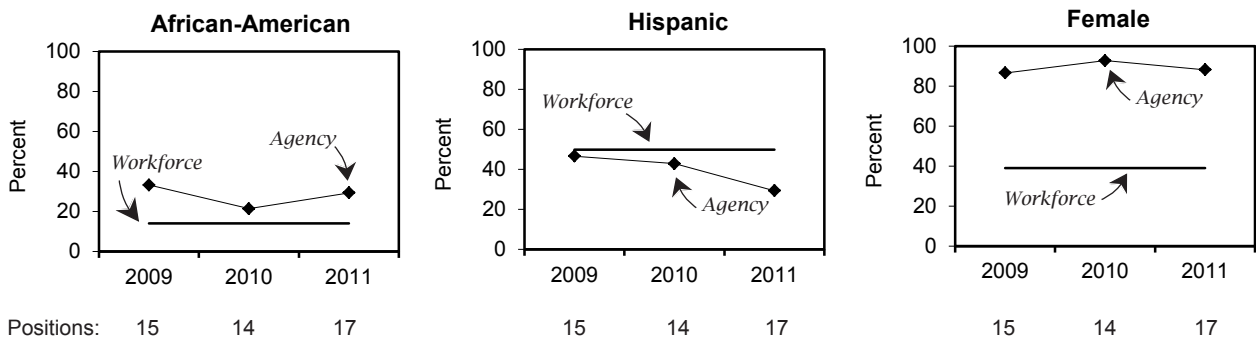
Appendix C

Administrative Support



The Department exceeded the civilian workforce percentages for African-Americans and females in the last three fiscal years, but fell below civilian workforce percentages for Hispanics.

Service/Maintenance³



The Department exceeded the civilian workforce percentages for African-Americans and females in the last three fiscal years, but fell below for Hispanics.

¹ Section 325.011(9)(A), Texas Government Code.

² Section 21.501, Texas Labor Code.

³ The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals used to be reported as separate groups.

APPENDIX D

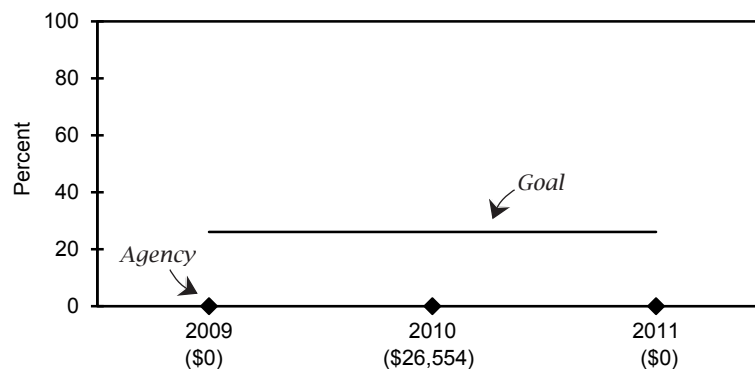
Historically Underutilized Businesses Statistics 2009 to 2011

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.¹

The following material shows trend information for the Texas Department of Housing and Community Affairs' use of HUBs in purchasing goods and services. The Department maintains and reports this information under guidelines in statute.² In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Comptroller's Office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2009 to 2011. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The Department exceeded the State's HUB purchasing goals for commodities, but had difficulty meeting the goals for other purchasing categories. The Department's most significant shortfall was in the other services category. The Department attributes its failure to meet this goal to the small number of HUB vendor bids it received to administer the temporary American Recovery and Reinvestment Act Weatherization Training Academy, as well as its use of outside counsel. The Department has met other HUB-related requirements, such as appointing a HUB coordinator, establishing a HUB policy, and developing a mentor-protégé program.

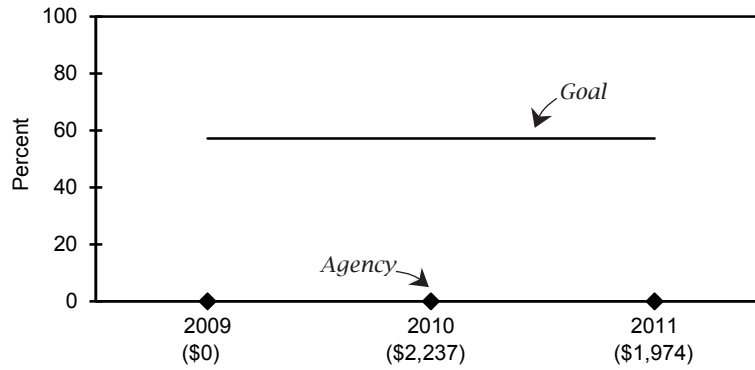
Building Construction



In fiscal year 2010, the only year it had expenditures in this category, the Department fell below the State purchasing goal.

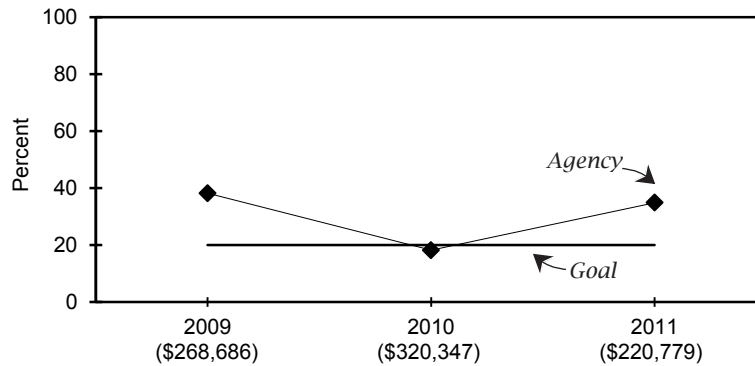
Appendix D

Special Trade



In fiscal years 2010 and 2011, the Department did not meet the State’s purchasing goal, but contract expenditures in this category were small. The Department reported no spending for special trade in fiscal year 2009.

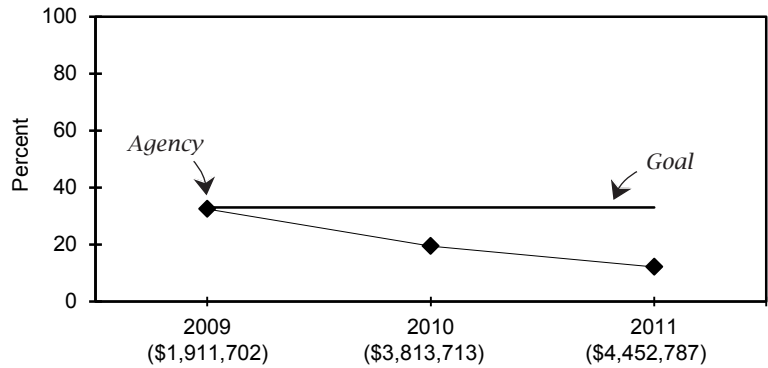
Professional Services



In fiscal years 2009 and 2011, the Department exceeded the State’s goal for spending for professional services, but fell slightly short of the goal in fiscal year 2010.

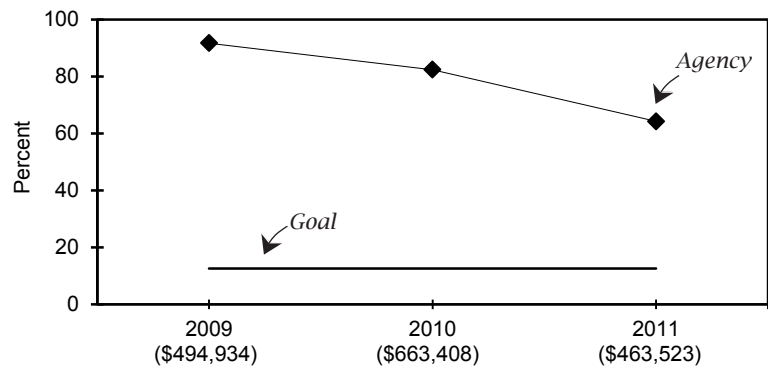
Appendix D

Other Services



In 2011, nearly 87 percent of the Department’s contracting expenditures were in the other services category, up from 72 percent in 2009. The Department met the State’s purchasing goal in 2009, but fell significantly below the goal in fiscal years 2010 and 2011.

Commodities



The Department greatly exceeded the State’s goal for spending for commodities in each of the past three fiscal years.

¹ Section 325.011(9)(B), Texas Government Code.

² Chapter 2161, Texas Government Code.

Sunset Staff Review of the
*Texas Department of Housing and
Community Affairs*

————— *Report Prepared By* —————

Leah Daly, *Project Manager*

Eric Beverly

Kelly Kennedy

Dawn Roberson

Ginny McKay, *Project Supervisor*

Ken Levine
Director

Sunset Advisory Commission

Location
Robert E. Johnson Bldg., 6th Floor
1501 North Congress Avenue
Austin, TX 78701

Mail
PO Box 13066
Austin, TX 78711

Website
www.sunset.state.tx.us

Email
sunset@sunset.state.tx.us

Phone
(512) 463-1300