Sunset Advisory Commission

Texas Department of Housing and Community Affairs

Texas State Affordable Housing Corporation

Staff Report
November 2002

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SUMMARY

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Summary

The Legislature created the Texas Department of Housing and Community Affairs (the Department) in 1991 to fund affordable housing and community support services for low-income Texans. During its review of the Department in 2000, the Sunset Commission found a strong need for the agency's mission, but also found significant problems regarding public accountability and the allocation of funds to meet key housing needs. Based on the recommendation of the Sunset Commission, the Legislature continued the Department for only two years and required the Sunset Commission to evaluate the success of the Department in implementing the requirements of the Sunset bill, SB 322. The Legislature specifically requested the Sunset Commission to evaluate five key criteria related to the performance of the Governing Board, the processes for assessing needs and allocating resources, and procedures to ensure fair access to the Department's housing and community support services.

Sunset staff found that the Department, under new leadership at the Board and Executive Director levels, has made significant progress in implementing the requirements of SB 322. Overall, the Department has fully implemented 86 percent of the provisions of the bill, including four of the five key evaluation criteria, and has partially implemented the remaining provisions. The Board has improved its expertise and receptiveness to public input, and continues to implement significant changes to how it assesses and addresses the most pressing housing needs in the various regions of the state. With these changes, Sunset staff concluded that the Department is more accountable to public interests, is better positioned to serve low-income Texans in need of affordable housing, and should be continued for 12 years.

The Department has made major changes to address legislative concerns.

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Texas State Affordable Housing Corporation

The Legislature created the Texas State Affordable Housing Corporation (the Corporation) in 1995 as a self-sustaining non-profit entity to provide additional housing options for low-income Texans. The Legislature granted the Corporation significant flexibility in law to choose the means to achieve this broad mission. During the Sunset review of the Corporation in 2000, Sunset staff found, based on its limited activity at the time, no compelling reason to maintain the Corporation's statutory ties to the State. However, during the review, the Corporation changed its business focus from non-profit mortgage banking to issuing multifamily and single-family housing bonds. Acting as a bond issuer requires the Corporation to maintain a statutory link to the State. Based on the recommendation of the Sunset Commission, the Legislature endorsed this new focus and continued the Corporation for two years, but required the Sunset Commission to evaluate the success of the Corporation in implementing the new focus.

During the current review, Sunset staff found that the Corporation has effectively created affordable housing through multifamily and single-family housing bonds. However, the Corporation lacks the visibility and accountability to public interests to ensure the proper allocation and oversight of Corporation resources. Concerns about the lack of public benefits in return for lost tax revenues has created opposition to some of the Corporation's multifamily bond projects. In addition, the Corporation's lack of inclusion in the State's strategic planning for affordable housing limits the effectiveness of the State's overall efforts to maximize limited resources to best meet the most pressing housing needs. The lack of regular state oversight and the changing direction of the Corporation led Sunset staff to conclude that the Corporation should be continued, but made subject to Sunset review in six years, rather than the standard 12 years.

The Corporation lacks accountability to maximize the public benefit of its housing efforts.

Sunset staff analysis led to specific recommendations for the Texas Department of Housing and Community Affairs and the Texas State Affordable Housing Corporation, summarized in the following material.

Issues / Recommendations

Issue 1 Texas Has a Continuing Need for the Texas Department of Housing and Community Affairs.

Key Recommendation

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

Issue 2 The Texas State Affordable Housing Corporation Effectively Creates Affordable Housing, but Changes Are Needed to Maximize the Public Benefits of Its Programs.

Key Recommendations

- Continue the Texas State Affordable Housing Corporation for six years.
- Require the Corporation to adopt a minimum dollar-for-dollar public benefit requirement for recipients of 501(c)(3) bonds.
- Require the Corporation to annually review policies for awarding 501(c)(3) bonds, specifically addressing public benefit requirements.

Fiscal Implication Summary

The recommendation in Issue 1 would require a continuation of the average annual appropriation of $158 million for the Department's operation. The recommendations in Issue 2 would have no fiscal implication to the State. In addition, these recommendations are not anticipated to significantly impact the Corporation, and should be accomplished with existing resources.

Issues / Recommendations

Issue 1

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

Summary

Key Recommendation

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

Key Findings

- The 77th Legislature continued the Department of Housing and Community Affairs for a two-year probationary period, requiring the Sunset Commission to evaluate the agency's implementation of certain changes.
- The Department's Governing Board has improved its responsiveness to public input, improving its capacity to make informed decisions and enhance the Department's accountability.
- The Department is undergoing structural and procedural changes to better align its housing finance programs with strategic planning and customer service needs.
- The Department has adopted compliance review procedures and rules to better ensure fair access to housing.
- Overall, the Department of Housing and Community Affairs has implemented 86 percent of the changes imposed by SB 322.

Conclusion

The Texas Department of Housing and Community Affairs was a troubled agency during its Sunset review before the last Session. Despite the significant problems affecting the agency at that time, the Sunset Commission found a strong need for the housing finance programs administered by the agency. The current Sunset review found that the Department has significantly improved since its last review, and has displayed a commendable effort to implement the changes adopted by the Legislature. Sunset staff found that the magnitude of the changes within the Department over the past year should position the agency well to advance in its mission to serve Texas' low-income families.

Support

The 77th Legislature continued the Department of Housing and Community Affairs for a two-year probationary period and directed the Sunset Commission to evaluate the agency's implementation of needed changes before the next legislative session.

- During its review of the Texas Department of Housing and Community Affairs in 1999-2000, the Sunset Commission found a strong need for the agency's mission — to fund affordable housing development and community support services for low-income families. Despite the strong need for the agency, the Commission found many significant problems affecting the Department. These problems centered around two themes, public accountability and the allocation of funds to meet key housing needs.

  The first theme involved the public accountability of the agency and its governing body. At the time of the Sunset review, the Department's Board failed to serve effectively. Members appointed to represent certain industries failed to grasp or advance the agency's broader mission. In addition, the Department's staff and the Board failed to encourage meaningful public participation in its hearings while denying opportunities to appeal agency decisions. The Sunset Commission also found that the Department did not take an active role in ensuring compliance with state and federal fair housing requirements within the housing projects that it funded.

  The last Sunset review focused on two themes - public accountability and the allocation of funds to meet housing needs.

  The second theme reflected the Department's failure to allocate funds to meet Texas' most pressing housing needs. At the time of the review, the Department did not have an accurate assessment of the housing needs and resources throughout the state. Consequently, the agency lacked the information to link the Department's housing finance programs with critical housing needs. Also, the Department's housing programs operated independently from one another, precluding the synthesis of separate funds as a means towards building housing developments that served lower income families. In addition, Sunset staff found that the Department had done little to preserve portions of Texas' affordable housing stock that would no longer be available to low-income families.

- Despite the Department's shortcomings, the Sunset Commission found that the Department's mission was critical to the improvement of Texas' low-income housing crisis. However, rather than recommend that the Department be continued for another 12 years, the Sunset Commission recommended a two-year probationary period during which the Department was expected to fulfill five requirements to justify a 12-year continuance. Those five criteria are listed in the text box, *Sunset Evaluation Requirements*. During the 2001 Session, the Legislature passed Senate Bill 322, which continued the Department for the two-year probationary period, and required that the Department fulfill the requirements recommended by the Sunset Commission by December 31, 2002.

- Sunset staff's current evaluation of the Department centered on the agency's implementation of changes in three areas. First, staff evaluated the extent of the agency's compliance with the criteria put forth as part of its probationary continuation. Second, staff evaluated the agency's compliance with other legislative recommendations adopted in SB 322. Lastly, Sunset staff evaluated the agency's compliance with the management actions adopted by the Sunset Commission in 2000. The following material outlines the Department's implementation of recommended changes in each of these areas.

Sunset Evaluation Requirements[1]

SB 322 listed five criteria for the Sunset Commission's follow-up evaluation of TDHCA.

(1) Establishment of a functional governing board that values public input and enables board members to develop the expertise necessary to make informed decisions about and to ensure the accountability of the department and the programs of the department.

(2) Establishment of an organizational structure to develop and implement a statewide needs assessment and a corresponding allocation process.

(3) Development of policies and procedures that clearly define the appropriate roles of board members, the director, and department staff.

(4) Implementation of rules outlining a formal process to appeal board decisions.

(5) Establishment of project compliance procedures that ensure that the programs of the department provide fair access to housing and community support services in this state.

TDHCA's Compliance with Continuation Criteria

The Department's Governing Board has improved its responsiveness to public input, improving its capacity to make informed decisions and enhance the Department's accountability.

Criteria #1	Status
Establishment of a functional governing board that values public input and enables board members to develop the expertise necessary to make informed decisions about and to ensure the accountability of the department and the programs of the department.	Implemented.

- SB 322 reduced the size of the Department's Board from nine to seven members. The legislation also removed the requirement that certain members of the Board represent various industries related to housing. Four of the current Board members were newly appointed since the last Sunset review.

The Board has improved its receptiveness to public input and its expertise with housing issues in Texas.

- The Board has demonstrably improved its receptiveness to public input. In addition to public comment periods at the beginning of each board meeting, the public can now speak on certain agenda items as the item is taken up by the Board. In March 2002, the Department adopted rules codifying these improvements in the public input process. Sunset staff observed a significantly improved receptiveness to public comment at the Board's public meetings in 2002, compared to meetings observed in 1999 and 2000.
- The Board has taken steps to improve its expertise with regard to its obligations as a governing body and with housing issues in Texas. Since September 1, 2001, the Board has attended nine training functions covering topics such as underwriting, fair housing, professional ethics, and the Department's programs and services. Sunset staff interviews with current Board members and observations of Board meetings found that the training has enhanced their expertise with regard to decision making. This training has been particularly helpful given the number of new appointments to the Board, and has better positioned the members to hold the agency accountable.

The Department is undergoing structural and procedural changes to better align its housing finance programs with strategic planning and customer service needs.

Criteria #2	Status
Establishment of an organizational structure to develop and implement a statewide needs assessment and a corresponding allocation process that: (A) ensure that the state's objectives regarding housing and community support services are identified and met; (B) ensure that the state's most critical needs regarding housing and community support services are identified and met; (C) incorporate input from local entities; (D) maximize the preservation of affordable housing; and (E) achieve the best use of state resources.	Implemented.

- During the last Sunset review, Sunset staff found that the Department failed to link its housing finance resources with Texas' most pressing housing needs. Since the adoption of SB 322, however, the Department has improved its strategic planning process by fielding a community needs survey to officials statewide and conducting 12 public hearings across the state. In addition, the Department has developed allocation formulas and housing need scores designed to identify areas with housing priorities and to allocate resources accordingly. The Department has also adopted specific strategies and housing program set-asides to assist in the preservation of affordable housing.

The Department has developed better means for identifying and funding critical housing needs.

- The Department is developing a single application and allocation cycle as a way to improve customer service and enhance the strategic allocation of housing funds. During the 2002 allocation cycle, the Department combined the application and allocation processes for the Low Income Housing Tax Credit Program and the Housing Trust Fund. The Department was unable to attach the HOME program during FY 2002 because of changes in program procedures. By FY 2003, however, the Department plans to also allocate HOME funds in conjunction with other housing programs. The Department cannot include private activity bonds as part of this allocation cycle because of certain timing requirements made by state law.

  A combined application and allocation cycle has yielded two benefits. First, applicants seeking various sources of funding for a housing development no longer have to complete multiple applications for separate deadlines. Second, synchronizing the allocation of housing program funds gives the Department flexibility to "layer" funds to better a project's ability to serve lower income families. This approach enables the Department to better target Texas' most pressing housing needs.

The Department is reorganizing to cut overhead and remove barriers across programs.

- To address concerns about the lack of coordination across its different housing finance programs, the Department is reorganizing its staff and the processes in place for doing its job. The intent is to better position the Department to meet the state's housing needs by dividing the agency's housing finance programs into two divisions, one for single-family housing production, the other for multifamily housing production. This reorganization should help eliminate duplication and unnecessary barriers between the Department's housing finance programs, and increase staff productivity and accountability. The Department is currently contracting with the State Auditor's Office's Management Advisory Services to assist, and anticipates the full execution of these changes by the Spring of 2003.

The Department has followed policies and procedures that distinguish the roles of the Board, the Executive Director, and agency staff.

Criteria #3	Status
Development of policies and procedures that clearly define the appropriate roles of board members, the director, and department staff.	Partially Implemented.

- During its last review of the Department, the Sunset Commission found that members of the agency's Board meddled in the Department's operations. The Board's involvement with the Department's operations created the perception of some Board members having undue influence over agency decisions, particularly with regard to tax credit allocations. The Sunset Commission recommended that the Department adopt policies that create distinctions between the Board, the Executive Director, and agency staff.

  The Department's Board anticipates considering a proposed policy for separating the functions of the policymaking body and staff during its November 2002 meeting. While the policy has yet to be adopted, Sunset staff's observation of the Department's operations found appropriate levels of separation between the Board, the Director, and staff. In addition, clearer roles have been incorporated in a series of rules based on the statutory requirements of SB 322. For example, the policies adopted in October 2001 relating to public appeals of agency decisions distinguishes between appeals of Board decisions and those of staff decisions.

The Board and staff now operate with more appropriate and distinct roles.

The Department has developed a process for appeals of the Board's decisions.

Criteria #4	Status
Implementation of rules outlining a formal process to appeal board decisions.	Implemented.

- During the previous Sunset review of the Department, Sunset staff found no appeals process to challenge Board decisions. Board decisions were regarded as final; citizens wishing to appeal a decision had to do so in a court of law. In SB 322, the Legislature required that the agency adopt a formal appeals process, in rule, as a solution to this problem. In October 2001, the agency adopted rules for appeals of Board and Department staff decisions. The agency also amended the rules for the Low Income Housing Tax Credit

Program to include an appeals process specific to that program. During the course of its review work, Sunset staff observed citizens' appeals of the Department's original allocation tax credits. The new appeals process helped mitigate the potential for controversy after the initial allocation, while allowing for greater transparency to the tax credit allocation process.

A new appeals process allows for greater transparency to the way tax credits are allocated.

The Department has adopted compliance review procedures and rules to better ensure fair access to housing.

Criteria #5	Status
Establishment of project compliance procedures that ensure that the programs of the department provide fair access to housing and community support services in this state.	Implemented.

- In the last review, Sunset staff found that the Department lacked policies ensuring compliance with state and federal fair housing laws. The agency also lacked any policy with regard to tax credit properties' acceptance of tenants with Section 8 vouchers. The textbox, *Section 8 Vouchers*, briefly describes the Section 8 program. Consequently, the Department failed to ensure that its programs furthered fair housing objectives while some properties, particularly those funded with tax credits, engaged in discrimination against Section 8 voucher holders. In response, the Sunset Commission adopted provisions requiring the Department to develop procedures to ensure low-income families' fair access to housing funded through the agency's programs.

Section 8 Vouchers

Local public housing authorities and TDHCA issue Section 8 vouchers to low-income families in need of rental assistance. The families use these vouchers to pay for a portion of their rent.

- The Department's Board adopted two sets of rules regarding fair access to housing in 2002. One set requires developers that receive funds from the Department to maintain compliance with state and federal laws prohibiting discrimination. In particular, the rule requires compliance with the Civil Rights Acts of 1964 and 1968, the Texas Fair Housing Act, the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973. The Department has begun reviewing developers' compliance with these laws as part of its compliance review procedures.

  The second set of adopted rules govern how housing developments funded by the Department's programs, including tax credit developments, must accept tenants with Section 8 vouchers. Under the current rules, a housing development owner cannot discriminate against applicants on the basis of their use of a Section 8 voucher, or use a minimum income standard for admission that would preclude Section 8 voucher holders from becoming tenants. The rules provide sanctions for developers found not in compliance with this policy.

New rules better ensure against discrimination in developments funded by the Department.

- The Department's Compliance Division also hired a fair housing monitor to field fair housing complaints, coordinate fair housing complaint referrals with the Human Rights Commission, provide fair housing training to the Department and the housing industry, and provide technical assistance where needed. TDHCA has begun monitoring compliance with fair housing requirements for all projects funded by the Department. This monitoring includes the review of marketing plans, Section 8 admittance policies, and tenant population characteristics. The Department has referred ten possible violations to the U.S. Department of Housing and Urban Development during the past eighteen months.

TDHCA's Compliance with SB 322 Provisions

Overall, the Department of Housing and Community Affairs has implemented 86 percent of the changes imposed by SB 322.

The Department has implemented 86 percent of the provisions of SB 322.

- SB 322 contained 81 provisions requiring action by the Department, including provisions for the five evaluation criteria discussed above. As of October 2002, the Department had fully implemented 70, or 86 percent, of the provisions. The remaining eleven provisions are partially implemented. Appendix A, *Partially Implemented SB 322 Provisions*, lists those provisions that are currently only partially implemented by the Department. Of those, the Department anticipates completing an additional five by the end of 2002. The remaining six will be fully implemented once certain information is released by the U.S. Census Bureau in 2003, and program funding cycles are renewed. Sunset staff found no SB 322 provision that the Department has not at least partially addressed.

TDHCA's Compliance with Sunset Commission Management Actions

The Department of Housing and Community Affairs has complied with the majority of management actions adopted by the Sunset Commission.

- The Sunset Commission adopted 14 management actions as part of its decisions for the Department. Although compliance with this type of recommendation is typically measured by the State Auditor's Office, Sunset staff assessed the Department's level of compliance during this limited scope review. Appendix B, *TDHCA Compliance with Management Action Recommendations*, depicts the extent to which the Department has complied with the management actions. The Department has fully implemented nine management actions and partially implemented two actions. The two partially implemented actions are expected to be completed by fiscal year 2004.

- The Department did not implement three management actions adopted by the Sunset Commission. These management actions are highlighted in bold in Appendix B, and include the agency's explanation for why no action was taken. Sunset staff understands and concurs with the Department's reasons for not implementing these management action recommendations.

Recommendation

Change in Statute

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

This recommendation would continue the Texas Department of Housing and Community Affairs until 2015. Under this recommendation, the Department would continue as the only state agency responsible for the distribution of Texas' affordable housing funds.

Impact

This recommendation would continue the Department as an independent agency. Over the past year the Department has displayed a commendable effort to implement the changes adopted by the Legislature. While some recommendations have yet to be fully implemented, the Department appears to be on track towards having all of SB 322's provisions implemented by mid 2003. Given the magnitude of the reforms initiated by the Legislature, coupled with the significant changes in the direction of the agency's leadership, the Department appears well positioned to serve Texas' housing needs into the future.

Fiscal Implication

If the Legislature continues the current functions of the Department, its average annual appropriation of $158 million would be required for the agency's operation.

[1] Texas Senate Bill 322, 77th Legislature (2001).

Issue 2

The Texas State Affordable Housing Corporation Effectively Creates Affordable Housing, but Changes Are Needed to Maximize the Public Benefits of Its Programs.

Summary

Key Recommendations

- Continue the Texas State Affordable Housing Corporation for six years.
- Require the Corporation to adopt a minimum dollar-for-dollar public benefit requirement for recipients of 501(c)(3) bonds.
- Require the Corporation to annually review policies for awarding 501(c)(3) bonds, specifically addressing public benefit requirements.

Key Findings

- The Corporation has effectively used its new business focus to create affordable housing.
- Concerns about the loss of tax revenue may create opposition to the Corporation's multifamily affordable housing projects.
- The Corporation has no statutory requirement to ensure that projects it funds use the abated tax revenues to benefit the public.

Conclusion

The Texas State Affordable Housing Corporation has effectively created affordable housing by issuing multifamily and single-family mortgage revenue bonds, and should be continued. However, the Corporation may face opposition to its 501(c)(3) bond projects due to concerns about the loss of property tax revenue. Adopting a dollar-for-dollar public benefit requirement and policies with public benefit expectations would improve the ability of the Corporation to promote the benefits of its 501(c)(3) bond program and overcome opposition tied to the loss of tax revenues. Through greater coordination between the Corporation and the Department of Housing and Community Affairs, the public should have better opportunities to learn about the Corporation's resources, while the State would improve its affordable housing resource allocation and compliance monitoring.

Support

The Legislature continued the Texas State Affordable Housing Corporation for two years in 2001 and directed the Sunset Commission to evaluate the Corporation's new business focus.

- The Texas Department of Housing and Community Affairs (the Department) created the Texas State Affordable Housing Corporation (the Corporation) in 1994 to assist colonia residents in converting contracts for deed into mortgages. The Legislature created the Corporation as a separate legal entity in 1995 and directed the Corporation to facilitate the provision of affordable housing for low-income Texans.
- To achieve its mission, the Corporation's Board of Directors may alter the structure, organization, programs, or activities of the corporation. The Corporation's governing statute allows significant flexibility in the methods it may use to meet statutory requirements.
- During the Sunset review for the 2001 legislative session, the Corporation changed its business focus from non-profit mortgage banking to issuing multifamily and single-family housing bonds. The new business focus required the Corporation to maintain its statutory link to the state in order to issue bonds.
- The Legislature, based on the recommendation of the Sunset Commission, continued the Corporation but required the Sunset Commission to evaluate the new business focus before the 2003 legislative session. The Legislature also created the Teacher Home Loan Program, described below, and charged the Corporation with implementing the program.

The Corporation has financed more than 7,700 multifamily affordable housing units.

The Corporation has effectively used its new business focus to create affordable housing.

- The text box, *Key Corporation Programs*, briefly describes its major programs.
- Since April 2001, the Corporation has issued more than $487 million in 501(c)(3) mortgage revenue bonds for multifamily housing. The bonds financed more than 7,700 units of affordable housing in 39 properties throughout the state. The Corporation requires borrowers to provide public benefits as a condition of issuing the bonds. Public benefits include rent reductions, rehabilitation of properties, and resident services for low-income tenants.
- The Corporation operates as the only statewide issuer of 501(c)(3) bonds for affordable housing. Although the Department has the same capacity to issue such bonds, it has not approved any 501(c)(3) bond deals since the Corporation started its program in April 2001.

Key Corporation Programs

The **501(c)(3) Bond Program** provides mortgage revenue bond financing to non-profit borrowers/developers of new or existing rental properties. The bonds are payable solely from the rental income of the properties, without any obligation on behalf of the Corporation, the State, or any political subdivision to repay the bonds. The Bond Review Board must approve each bond issuance by the Corporation.

The Legislature created the **Teacher Home Loan Program** in 2001 to offer home purchasing assistance to eligible Texas educators. The Corporation offers grants for down-payment and closing cost assistance on 30-year, fixed rate mortgage loans equal to 5.5 percent of the amount of the mortgage. The Corporation is authorized to issue up to $25 million of the State's Private Activity Bonds each year, subject to the approval of the Bond Review Board.

The **Multifamily Direct Lending Program** provides long-term financing, through cooperation with real estate financial institutions, to developers to create new and preserve existing affordable housing units throughout the state.

- Since April 2002, the Corporation financed the purchase of 60 homes through the Teacher Home Loan Program, providing an average of $4,700 in down-payment and closing cost assistance per home buyer. Sunset staff has determined that the Corporation operates the program effectively according to the requirements set by the Legislature.

The Corporation's statute does not have terms of service for Board members or grounds for their removal, which limits their accountability.

The members of the Corporation's Board serve indefinitely.

- The five members of the Board are appointed by the Governor for indefinite terms.[1] The Corporation's governing statute does not contain any grounds for removal of board members in case of neglect of duties, misconduct, or unethical or criminal behavior. Without specific terms of service and grounds for removal, the Board members cannot effectively be held accountable for their actions by the Governor or the Legislature.

Concerns about the loss of tax revenue may create opposition to the Corporation's multifamily affordable housing projects.

- In 1997, the Legislature allowed non-profit organizations who provide affordable housing to receive a tax abatement on multifamily housing properties. The property tax abatement has significantly increased the use of 501(c)(3) mortgage revenue bonds to finance multifamily affordable housing units throughout the state.[2] The text box, *Property Tax Abatements and Affordable Housing*, describes in detail the use of abatements to create affordable housing.

Property Tax Abatements and Affordable Housing

A private non-profit organization may apply to local appraisal districts for an abatement of all property taxes levied on property used to provide affordable housing. The organization must be organized as a Community Housing Development Organization (CHDO) to obtain the abatement. Once the abatement is awarded, the CHDO may retain the abatement so long as it demonstrates annually that it has either invested a certain percentage of the exempted tax revenue in resident services, or made a payment in lieu of taxes to the local taxing jurisdiction.

Most CHDOs receive financing for these properties through 501(c)(3) bonds, which are often bought by Fannie Mae and Freddie Mac. These entities require investment-grade ratings with strict underwriting standards, which require the CHDO to have a debt-service coverage ratio of 1.5 to 1. Unlike other financing sources such as private activity bonds, 501(c)(3) bonds do not have a tax credit or other form of equity as an additional source of financing. As a result, projects with 501(c)(3) bonds depend upon the tax abatement to meet the debt service requirements while providing affordable housing to low-income Texans.

The I.R.S. requires CHDOs using 501(c)(3) bond financing to set aside 20 percent of housing units for persons earning 50 percent or less of the Area Median Family Income (AMFI), or to set aside 40 percent of the units for persons earning 60 percent or less of AMFI. In addition, CHDOs must set aside 75 percent of all units for persons earning 80 percent or less of AMFI.

- The increasing use of 501(c)(3) bonds issued by the Corporation and local housing authorities has lead to growing local concern and opposition, as communities lose an increasing amount of their tax base.[3] Sunset staff found that projects funded by the Corporation account for an average of 14 percent of the total amount of lost tax revenue in the four most populous counties in the state, as shown by the chart, *Property Tax Losses Due to CHDO Tax Abatements*.

Property Tax Losses Due to CHDO Tax Abatements
2001 – 2002

County Appraisal District*	Total Tax Abatements**	Corporation Tax Abatements***	Corporation Percentage of Total
Bexar	$11,012,706	$1,086,634	9.87%
Dallas	$7,238,938	$1,371,682	18.95%
Harris	$11,100,891	$2,277,282	20.51%
Tarrant	$5,115,440	$183,494	3.59%
Total / Average	**$34,467,975**	**$4,919,092**	**14.27%**

* Includes city and county governments, school districts, and other taxing entities.

** Texas Legislative Council, *Levy Loss from CHDO Property Tax Exemption*, March 14, 2002.

*** Texas State Affordable Housing Corporation.

The Corporation has no statutory requirement to ensure that projects it funds use the abated tax revenues to benefit the public.

- To address the concerns described above, the 77th Legislature tightened the restrictions on the use of abated property taxes. Non-profit organizations must re-invest at least 90 percent of the total amount of abated taxes in rent reductions, capital improvement projects; or social, educational, or economic development services for low-income residents.[4] However, organizations that make partial payments of taxes owed to school districts are exempted from the restrictions, regardless of the size of the payments. Because the Corporation requires its borrowers to make a Payment in Lieu of Taxes (PILOT) of 25 percent of the abated taxes, the borrowers are not required by law to reinvest the remainder of the abated taxes in public benefits, such as rent reductions or low-income resident services.

Corporation borrowers are not requird by law to reinvest abated taxes in public benefits.

- In response to opposition to individual proposals, the Corporation has recently developed program regulations requiring public benefits of its 501(c) bond recipients, as described in the text box, *Corporation 501(c)(3) Bond Requirements*. However, the Corporation could change these requirements at any time, with no statutory obligation to consider public input when adopting regulations or to ensure the regular and timely review of its regulations.

Corporation 501(c)(3) Bond Requirements

The Corporation requires borrowers to provide:

- a Resident Services Agreement specifying the resident services to be provided to low income tenants;
- a Payment in Lieu of Taxes (PILOT) to local taxing districts equal to 25 percent of any tax abatement awarded;
- a PILOT of up to 100 percent of any taxes owed to special taxing districts with small tax bases, such as fire districts and municipal utility districts;
- a letter explaining why they are not pursuing local financing;
- evidence of a need for affordable housing in the areas where the properties are located;
- a benefit analysis showing the total benefits and the total amount of abated taxes for each property in a transaction; and
- a list of all companies and individuals receiving payments from bond proceeds.

In addition, one-third of the board members of the borrower must be low-income residents of communities where the borrower owns property. The borrower must also establish an advisory committee for each property, with membership consisting of low-income residents of the property and other individuals from the surrounding community.

Other non-profits mix financing tools to better maximize public benefits.

The Corporation may not be maximizing the public benefit return for abated tax revenue.

- The Corporation has financed a significant number of multifamily affordable housing units in the last eighteen months by issuing 501(c)(3) bonds. Corporation projects provide an average of $1.30 in public benefits for every dollar of property tax abatement. However, other non-profit organizations have used a mix of financing tools to provide more than three times the amount of public benefits than the Corporation average.[5] The chart, *Public Benefit Comparison*, compares the amount of public benefits provided by the Corporation's 501(c)(3) bond projects to projects by selected non-profit organizations using bank loans, 501(c)(3) bonds, private activity bonds, tax credits, and grants from federal and state housing programs.

Public Benefit Comparison

	Corporation[6]	Selected Non-Profits[7]
Total Property Tax Abatements	$6,019,891	$5,436,260
Total Public Benefits (Rent Reductions, Rehabilitation, Resident Services)	$7,926,373	$24,553,751
Average Amount of Public Benefit for Every Dollar of Tax Abatement	$1.32	$4.52
Average Rent Reduction, per unit, per month	$16	$51
Average Spent on Resident Services, per unit, per year	$227	$781
Total PILOT payments to taxing districts	$1,712,783	$5,000

The Corporation operates outside the State's plan for affordable housing.

- The Corporation has not used its non-profit status to solicit charitable donations and other private funds, which could be used to significantly increase the amount of public benefits for its projects. While the Corporation has established Resident Advisory Committees to articulate resident needs, the Corporation has not established an adequate policy regarding what constitutes a resident service. This allows property owners significant leeway to determine the types of services provided. For example, one property owner with a project approved by the Corporation has proposed supporting an "artist-in-residence" with housing and exhibition space for one year as a public benefit.[8]

The lack of coordination between the Corporation and the Department of Housing and Community Affairs prevents the State from maximizing its affordable housing resources.

- The Corporation operates outside the Department's strategic planning process for matching State affordable housing resources with the most pressing needs. When allocating its resources, the Corporation does not consider factors used by the Department for the strategic use of State resources, such as regional demand and the availability of alternative federal and local resources. For example, the Corporation is capable of financing multi-jurisdictional transactions with 501(c)(3) bonds, which mix properties in regions of higher average income with properties in lower income regions. However, only 20 percent of the affordable housing units created by Corporation financing are located outside the Dallas/Fort Worth, Houston, and San Antonio metropolitan areas. The Corporation has concentrated its projects in large urban areas already well served by local housing finance organizations, largely bypassing the small and mid-size cities without such local capacity.

- The Corporation and the Department do not share information on whether property owners/developers have complied with the regulations tied to receiving State funds. The Corporation and the Department must enforce their own regulations to ensure that funding recipients are reserving units for low-income tenants, rehabilitating properties, providing resident services, and meeting other public benefit requirements. However, property owners/developers who are not complying with one agency's regulations could still obtain funding from the other agency, using a loophole to escape the State's oversight.

The Corporation and the Department of Housing and Community Affairs do not share compliance information.

- The Department, through its unified public hearings, has a significant opportunity to communicate with local communities about affordable housing issues. The Corporation does not have the visibility on its own, and does not coordinate with the Department to effectively publicize its programs and funding opportunities to communities in need of affordable housing. As a result, the public may be unaware of the Corporation's goals, programs and policies, and may miss opportunities to obtain Corporation resources to meet local needs. Public testimony at Board meetings is minimal, and limited to specific projects that have already been proposed and discussed in local hearings.[9]

Recommendation

Change in Statute

2.1 Continue the Texas State Affordable Housing Corporation for six years.

The Corporation has significant flexibility in its governing statute to modify its structure, organization, programs and activities to achieve its mission. This flexibility allows the Corporation to adjust to changing circumstances and to find the appropriate tools at the appropriate time to meet a portion of the State's affordable housing needs.

However, the Corporation is not subject to regular review and analysis through the appropriations process. The significant organizational flexibility and the lack of regular legislative review give the

Corporation a freedom of action that, without proper oversight, could allow it to conduct activities that are not in the State's best interests. A six-year Sunset date would give the Legislature the timely oversight necessary to ensure the proper functioning of and the need for the Corporation.

2.2 Create six-year terms for Corporation Board members.

Board members should hold office for six years. Appointments to the Board should be staggered so that the terms of one or two board members would expire on January 31 of each odd-numbered year. The Across-the-Board Recommendations section of this report addresses the grounds for removal of Board members. Specific terms of service and grounds for removal of Board members would further improve the accountability of the Corporation to the Governor and the Legislature.

2.3 Require the Corporation to adopt a minimum dollar-for-dollar public benefit requirement for recipients of 501(c)(3) bonds.

The Corporation should require borrowers to provide at least one dollar of public benefit for every dollar of abated property tax revenue that they receive. The Corporation and the borrowers may determine the specific forms of public benefit, such as rent reductions, resident services, or Payments in Lieu of Taxes, on a case-by-case basis. A clear statutory standard would assure local communities that tax abatements for Corporation projects must be matched in full by public benefits provided through the creation of affordable housing and related services.

2.4 Require the Corporation to annually review policies for awarding 501(c)(3) bonds, specifically addressing public benefit requirements.

The Corporation should annually review its multifamily bond policies. The review should include a posting of any proposed policy revisions in the Texas Register, an adequate public comment period, and formal Board approval of changes to the policies.

The policies should specify reasonable expectations for rent reductions, rehabilitation, and resident service activities for low-income tenants. While the specific benefits may vary by property, the policies should help clarify for low-income tenants and for residents in the surrounding communities the range and minimal amount of expected public benefits from Corporation projects.

2.5 Require the Corporation to contribute information to the State Low Income Housing Plan.

Before the publication of the State Low Income Housing Plan (SLIHP), the Department of Housing and Community Affairs should share the latest needs assessment information with the Corporation. The Board of the Corporation should review the needs assessment and provide the Department with information on the Corporation's plans for meeting the most pressing needs identified in the assessment. The Corporation's plans should include specific proposals to help serve rural and underserved areas of the state, and to provide affordable housing through methods that do not duplicate the efforts of the Department or local housing finance organizations.

The Department should include the Corporation's projects in the estimate and analysis of the housing supply in each region, and include the Corporation's plans in the resource allocation section of the SLIHP. Cooperation in developing the SLIHP would help ensure the Corporation's involvement in meeting the state's most pressing affordable housing needs.

2.6 Require the Corporation and the Department of Housing and Community Affairs to share compliance information on funding applicants.

The Corporation should provide the Department with electronic copies of all compliance information necessary to meet the requirements of their programs. The Department would include the information in its central compliance database and allow the Corporation timely access to information in the database. The Corporation and the Department should check the compliance history of their applicants with each other, and consider an applicant's overall compliance history as a factor in determining whether to award funds to the applicant. Cooperation on compliance monitoring would strengthen the State's ability for enforcement against non-compliant property owners/developers.

Management Action

2.7 The Corporation should provide information to be presented at the unified public hearings conducted by the Department of Housing and Community Affairs.

The Corporation should provide a full description of its programs and funding opportunities for affordable housing to Department staff, who would share the information with the public at the hearings. This information would increase public awareness of the Corporation's activities and clarify the public benefits required from its 501(c)(3) bond projects.

2.8 The Corporation should identify and encourage the use of alternative funding sources to improve the public benefits of its programs.

The Corporation should use its 501(c)(3) non-profit status to seek grants and donations to further its affordable housing mission. The Corporation should also encourage its borrowers to seek alternative funding sources to improve the public benefit ratio of its 501(c)(3) bond projects, so that low-income residents could benefit from lower rents and better resident services compared to current Corporation standards.

The Corporation should also adopt best practice regulations to ensure that any private donations raised are managed responsibly and used to maximize the public benefits provided by Corporation activities. The regulations should be publicly posted to allow for public comment, and adopted by the Board after consideration of all public comment received. The Corporation should also include a description of its fund-raising activities in its annual financial report submitted to the State Auditor's Office and the Legislature.

Impact

These recommendations would continue the Corporation and help resolve concerns with its current business focus of providing affordable housing through 501(c)(3) bonds. Adopting a dollar-for-dollar public benefit requirement and policies with public benefit expectations would improve the Corporation's ability to overcome opposition to property tax abatements tied to the loss of tax revenues. Through greater coordination with the Department, the public would have better opportunities to learn about and use Corporation resources, while the State would improve its affordable housing resource allocation and compliance monitoring.

Fiscal Implication

The recommendations would have no fiscal implication to the State. In addition, these recommendations are not anticipated to significantly impact the Corporation, and should be accomplished with existing resources.

[1] Government Code, §2306.554.

[2] Interview with Texas Bond Review Board, Executive Director (Austin, Texas, September 9, 2002).

[3] Mike Snyder, "Non-Profit Exemptions Siphon School Revenues" *Houston Chronicle* (December 10, 2001), p. A-1; J. Taylor Rushing, "State Housing Law Under Scrutiny" *Fort Worth Star-Telegram* (February 18, 2002), News Section, p. 1.

[4] Texas House Bill 3383, 77th Legislature (2001).

[5] Texas Association of Community Development Corporations (TACDC), *2002 CHDO Tax Exemption Survey Report* (Austin, Texas, August 2002), p. 8.

[6] Texas State Affordable Housing Corporation, e-mail to Sunset Advisory Commission, September 30, 2002, and telephone interview with staff, October 9, 2002. Does not include the first three Corporation projects because the Corporation does not have information about public benefits for those projects.

[7] TACDC, 2002 CHDO Tax Exemption Survey Report, p. 8.

[8] Telephone interviews with a Corporation borrower (Austin, Texas, September 17, 2002, and October 3, 2002).

[9] Telephone interview with Corporation staff (Austin, Texas, October 17, 2002).

Across-the-Board Recommendations

Texas State Affordable Housing Corporation	
Recommendations	**Across-the-Board Provisions**
	A. GENERAL
Do Not Apply	1. Require at least one-third public membership on state agency policymaking bodies.
Apply	2. Require specific provisions relating to conflicts of interest.
Apply	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Already in Statute	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Apply	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Apply	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Already in Statute	9. Provide for public testimony at meetings of the policymaking body.
Apply	10. Require information to be maintained on complaints.
Modify	11. Require development of an equal employment opportunity policy.
N/A	12. Require information and training on the State Employee Incentive Program.

AGENCY INFORMATION

Agency Information

Agency at a Glance

The Texas Department of Housing and Community Affairs (Department) awards funds to acquire, build and maintain affordable housing, provides community assistance, and regulates the manufactured housing industry. The Legislature created the Department in 1991 by merging the Texas Housing Agency, the Texas Department of Community Affairs, and the Community Development Block Grant Program from the Department of Commerce.

On the Internet

Information about the Department, including the State of Texas Low Income Housing Plan and Annual Report, proposed rules, program applications, and information about other agency activities is available at www.tdhca.state.tx.us.

The Department's major functions include:

- assisting low income individuals and families to obtain affordable housing by allocating tax credits or awarding funds to for-profit and non-profit organizations, local governments, lenders, and developers;
- funding homeless shelters, community action agencies, and other organizations to weatherize homes, pay utility bills, and provide other services to address poverty issues among low income people; and
- regulating the manufactured housing industry.

Key Facts

The Department funded the construction of more than 16,000 multifamily housing units in fiscal year 2002.

- **Funding.** The Department operated on a budget of $158 million in fiscal year 2002 — $127 in federal funds, $9 million in General Revenue funds, and $22 million of appropriated receipts and other funds.
- **Staffing.** The Department had 323 full time positions, including 278 positions at its Austin headquarters.
- **Affordable housing.** The Department helped 2,233 families purchase single-family homes through mortgage loans and down-payment assistance; and funded the construction of 16,156 affordable housing units in multifamily developments through tax credits, mortgage revenue bonds, and state and federal funds.
- **Border housing and community services.** The Department provided contract-for-deed conversions and other forms of technical assistance to 4,800 colonia residents through its field offices in Edinburg, Laredo, Eagle Pass, and El Paso.

- **Poor and homeless programs.** The Department's community services programs helped 1,399 people transition out of poverty.
- **Repair and energy assistance.** The Department weatherized 5,781 homes and provided energy/utility assistance to 61,705 very low income households.
- **Manufactured housing regulation.** The Department performed 14,422 installation inspections on manufactured homes and resolved 2,121 complaints.

Major Events in Agency History

The Legislature restructured the Department's Board in 2001 to consist of seven public members.

1991 Texas Department of Housing and Community Affairs (TDHCA) created by merger of the Texas Department of Housing and the Texas Department of Community Affairs.

Community Development Block Grant (CDBG) Program transferred to TDHCA from the Texas Department of Commerce.

1995 Regulation of manufactured housing transferred to TDHCA from the Texas Department of Licensing and Regulation.

1999 The Legislature mandated that the Department's Board, rather than the Governor, employ the Executive Director, with the consent of the Governor.

2001 **Sunset Review.** Based on the Sunset Commission recommendation, the Legislature continued the Department for two years and directed the Sunset Commission to re-evaluate the Department for the 2003 legislative session.

Governing Board. Based on the Sunset Commission recommendation, the Legislature replaced the nine previous board positions with seven new public member positions.[1] All current Board members were appointed in September 2001.

CDBG Transfer. The Legislature transferred the CDBG program and the Local Government Services division to the newly-created Office of Rural Community Affairs (Office), effective as of December 2001.[2] Fifty one staff positions, $83 million in federal funds, and $2 million in state funds were transferred from the Department to the Office.

Manufactured Housing Board. Based on the Sunset Commission recommendation, the Legislature created a separate governing Board for the Division of Manufactured Housing.[3] The new Board, composed of five public members, selects the Executive Director of the Division, sets policies related to the regulation of manufactured housing, and allocates expenditures to the Division's various regulatory activities.

Organization

Policy Body

A seven-member Board composed entirely of public members governs the Department. The Governor appoints the members and designates the Chair. Members serve staggered six-year terms, and may not serve more than two terms. The Board employs an Executive Director to run the Department and determines departmental policy by adopting administrative rules, making final program award decisions, reviewing the Department budget, and other activities. The table, *Governing Board*, identifies each Board member, their place of residence, and the expiration date of their current term.

Governing Board

Name	Residence	Term Expires
Michael Jones, Chair	Tyler	January 2003
C. Kent Conine, Vice Chair	Frisco	January 2003
Elizabeth Anderson	Dallas	January 2007
Shadrick Bogany	Houston	January 2005
Vidal Gonzalez	Del Rio	January 2005
Norberto Salinas	Mission	January 2005
Vacant		January 2007

Staff

The Executive Director oversees the Department's operations. The Department has 323 staff positions, of which 308 were filled at the end of fiscal year 2002. Manufactured housing field offices operate with 39.5 staff positions throughout the state, and the Office of Colonia Initiatives operates with 5.5 staff positions in the Edinburg, Laredo, Eagle Pass, and El Paso field offices.

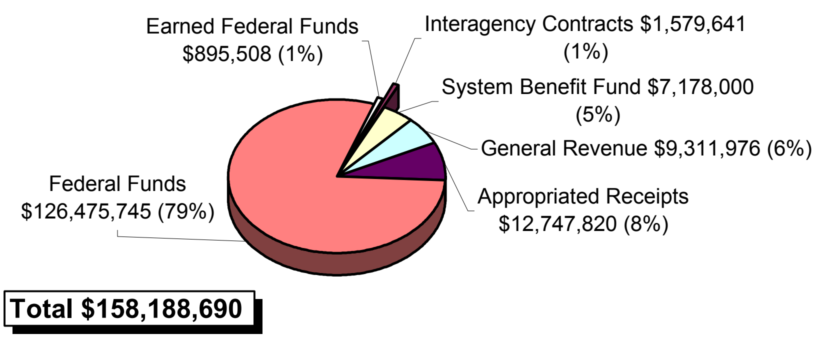
The Department recently began an extensive reorganization of its housing finance staff and processes. The changes aim to eliminate duplication across the various housing finance programs, increase staff productivity and accountability, and improve the overall efficiency and effectiveness of Department operations.[4]

Funding

Revenues

The Department received $158.2 million in appropriated funds in fiscal year 2002. The chart, *Sources of Revenue*, identifies each source of funds. Approximately 79 percent, or $126.5 million, of the Department's revenue came from federal grants and payments. The remaining 21 percent of the revenue came from appropriated receipts, General Revenue, interagency contracts, earned federal funds, and the System Benefit Fund. The State's general revenue contribution to the entire budget amounted to $9.3 million, or 6 percent.

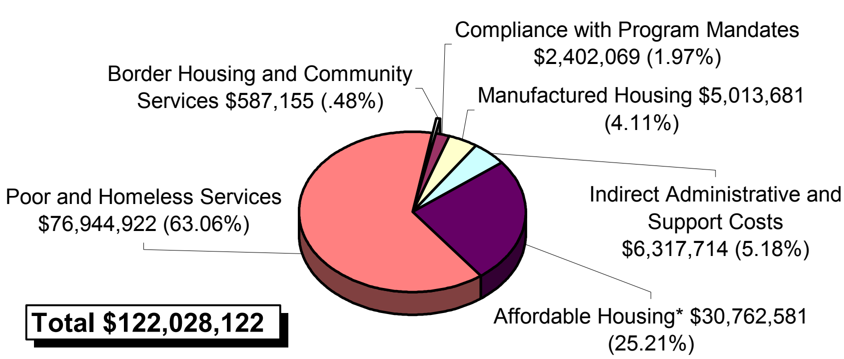
Sources of Revenue
FY 2002



Expenditures

The Department spent $122 million in fiscal year 2002 on six goals: affordable housing, border housing and community services, poor and homeless programs, compliance with program mandates, manufactured housing, and indirect administration and support. Poor and homeless programs accounted for 63 percent of the Department's expenditures, while affordable housing made up 25 percent. The chart, *Expenditures by Goal*, and the table, *Expenditures by Strategy*, provide detailed information on how the Department spent its appropriated funds.

Expenditures by Goal
FY 2002



*Does not include $244 million of non-appropriated affordable housing resources

Not all funds distributed by the Department come from appropriated funds. The Low Income Housing Tax Credit Program does not involve the distribution of any funds by the Department. Instead, the Department issues about $37 million in tax credits used for a dollar-for-dollar reduction of an applicant's federal tax liability in exchange for developing rental units for low-income families. The Mortgage Revenue Bond Single-Family and

Expenditures by Strategy - FY 2002	
Goal 1: Affordable Housing	**$30,762,581**
Housing Trust Fund	3,525,871
HOME Program	16,284,888
Section 8 Rental Assistance	8,163,774
Federal Tax Credits[1]	1,165,921
Mortgage Revenue Bond Program - Single Family[2]	1,334,338
Mortgage Revenue Bond Program - Multifamily[3]	287,789
Goal 2: Border Housing and Community Services	**$587,155**
Colonia Service Centers	587,155
Goal 3: Poor and Homeless Services	**$76,944,922**
Poor and Homeless Programs	33,000,741
Energy Assistance Programs	43,944,181
Goal 4: Compliance with Program Mandates	**$2,402,069**
Review Property Documents	2,041,142
Review Financial Documents	360,927
Goal 5: Manufactured Housing	**$5,013,681**
Titling and Licensing	1,039,803
Installation Inspections	1,694,431
Enforcement	2,279,447
Goal 6: Indirect Administrative and Support Costs	**$6,317,714**
Central Administration	4,406,424
Information Resource Technologies	1,320,537
Operating/Support	590,753
Total	**$122,028,122**

[1] Does not include value of tax credits (approximately $37 million)
[2] Does not include value of single-family bonds (approximately $95 million)
[3] Does not include value of multifamily bonds (approximately $112 million)

Multifamily Programs finance new affordable housing units by issuing bonds to fund loans to housing developers. In fiscal year 2002, the Department issued $112 million in multifamily bonds and $95 million in single-family bonds across the state. The federal government determines the amount of tax credits and bond funds that each state can distribute on a per-capita basis.

Agency Functions

In fiscal year 2002, the Department issued $112 million in multifamily bonds and $95 million in single-family bonds.

To achieve its mission, the Department manages multiple programs in four strategic areas, including the key programs described below.

Affordable Housing

The Department supports affordable housing through programs for construction and rehabilitation, preservation, rental assistance, and home purchasing assistance.

Construction and Rehabilitation

The following three programs provide funds to developers to build, acquire, or renovate affordable housing units while requiring developers to set aside a certain percentage of units for families at specific income levels.

The **Low Income Housing Tax Credit Program** awards federal tax credits to developers through a competitive scoring process. The developers generally sell the credits to investors and use the proceeds to develop affordable housing units.

The **Multifamily Bond Division** issues Private Activity Bonds and 501(c)(3) Bonds to fund loans to developers of affordable housing. Private Activity Bonds, available to for-profit and non-profit developers, are awarded by a Bond Review Board lottery and are eligible for a 4 percent tax credit allocation. The Department awards 501(c)(3) bonds on a case-by-case basis, though they do not include tax credits and are available only to non-profit developers.

In addition to funding construction and rehab, the Department also provides rental and down payment assistance.

The **HOME Program** awards federal HOME funds to community housing development organizations, municipal governments, and other organizations in small cities and rural areas that do not receive their HOME funds directly from the federal government.

Rental Assistance

The Department allocates Section 8 vouchers and Tenant-Based Rental Assistance from federal HOME funds to local governments and organizations to assist low income renters. The Department issues Section 8 vouchers only in areas not served by local public housing authorities.

Home Purchasing Assistance

The First Time Home Buyer Program provides low-interest loans to qualified individuals and families of low income, financed through tax-exempt mortgage revenue bonds. The Department also offers down payment assistance to low-income home buyers who cannot afford full down payment and closing costs, and home buyer education programs.

Border Housing and Community Services

The Department's Office of Colonia Initiatives offers the following programs to address the needs of colonia residents, the vast majority of whom live near the Texas-Mexico border.

The **Contract for Deed Conversion Program** allows colonia residents to convert land titles held under contracts for deed into traditional mortgages. The Department also supports consumer education for colonia residents, developers, and local officials on the rights of consumers who purchase land using a contract for deed.

The Department runs six Self-Help Centers, serving 28 colonias along the Texas-Mexico border.

The **Owner-Builder Loan Program** provides home loans to low-income residents who provide at least 60 percent of the labor to build their houses. The Department also awards funds to non-profit organizations to operate self-help home construction programs, which must include owner-builder training for the residents.

The **Colonia Self-Help Centers** provide housing, infrastructure improvements, community development activities, and education to low-income households in 28 colonias along the Texas-Mexico border. Six Self-Help Centers in El Paso, Maverick, Webb, Starr, Hidalgo, and Cameron counties serve approximately 10,000 colonia residents.

Poor and Homeless Services

The Department's Community Affairs Division helps local agencies provide services to Texans defined as poor and/or homeless.

The Department awards federal Community Services Block Grant funds that serve all 254 counties statewide.

The Department awards federal **Community Services Block Grant** (CSBG) funds to local Community Action Agencies to support activities to eliminate poverty, promote self-sufficiency, and promote community revitalization. The Department uses a formula based on poverty and population density to distribute CSBG funds that serve all 254 counties.

The Department awards federal **Emergency Shelter Grant** funds through a competitive process to service providers and homeless shelters for job training, drug abuse treatment, education, and homelessness prevention services such as rental assistance.

The **Emergency Nutrition and Temporary Relief Program**, funded by General Revenue, provides emergency assistance to low-income

The Department uses federal funds to help low-income households pay their energy bills.

individuals and families, including food, shelter, and short-term energy-related assistance.

The **Community Food and Nutrition Program** addresses hunger and related issues by awarding federal funds to Community Action Agencies to distribute surplus commodities and game donated by hunters, and to support child-feeding programs.

The **Comprehensive Energy Assistance Program** uses federal funds to help low-income households pay energy bills and achieve energy self-sufficiency. The Department uses a formula to distribute the funds to cities, counties, and Councils of Governments that serve all 254 counties.

Using federal funds and state Oil Overcharge funds, the **Weatherization Assistance Program** finances energy conservation measures such as caulking, weather-stripping, and repairing and replacing inefficient heating and cooling systems in low-income households. The Department also uses a portion of the state's Systems Benefit Fund, supported by fees charged to customers of deregulated utilities, to support energy conservation measures under the program.

Manufactured Housing Regulation

The Department's Manufactured Housing Division regulates the manufactured housing industry in Texas to protect public safety and the stability of the manufactured housing industry. Through its regulatory and licensing powers, the Division strives to ensure that manufactured homes are well constructed and properly installed. The Division's major functions include licensing, issuing manufactured home titles, inspecting installations, and responding to consumer complaints.

[1] Senate Bill 322, 77th Legislature (2001).

[2] House Bill 7, 77th Legislature (2001).

[3] Senate Bill 322, 77th Legislature (2001).

[4] Texas Department of Housing and Community Affairs, *Strategic Plan for Fiscal Years 2003-2007*, p. 123.

CORPORATION INFORMATION

Corporation Information

Corporation at a Glance

The Legislature established the Texas State Affordable Housing Corporation (the Corporation) in 1995 as a self-sustaining non-profit entity to facilitate the provision of affordable housing for low income Texans. To achieve its mission, the Corporation:

- issues tax-exempt mortgage revenue bonds to finance the creation of affordable multifamily housing units by non-profit organizations;
- issues taxable mortgage revenue bonds to finance the purchase of single-family homes by Texas educators under the Teacher Home Loan Program; and
- engages in loan servicing, asset oversight, and other housing-related activities.

Mission Statement

The Texas State Affordable Housing Corporation serves the housing needs of low, very low, and extremely low-income Texans and other underserved populations, as defined by the Texas Legislature, who do not have comparable housing options through conventional financial channels.

Key Facts

- **Funding.** In fiscal year 2002 the Corporation generated $3.3 million in operating revenues and spent $2.59 million in operating expenses. The Corporation is a self-sustaining entity that does not receive any State funding, and is not subject to the legislative appropriations process.
- **Staffing.** The Corporation is governed by a five member Board and employs 18 staff at its Austin headquarters. As of November 2002, six of the 18 positions were vacant.
- **501(c)(3) Bond Program.** Since April 2001, the Corporation has issued $487 million in tax-exempt mortgage revenue bonds to finance more than 7,700 multifamily affordable housing units. The bonds are payable solely from the rental income of the property, without any obligation on behalf of the State to repay the bonds.
- **Teacher Home Loan Program.** The Corporation offers grants for down payment and closing cost assistance to eligible Texas educators. To date, the Corporation has assisted 60 teachers to purchase a home, with an average of $4,730 in assistance per teacher.

Corporation Goals[1]

- Promote statewide partnerships that leverage public/private resources for the creation, preservation and/or redevelopment of affordable housing.
- Increase lending and housing production in rural and underserved markets.
- Develop loan products, financing options and special programs not available through conventional lenders.
- Supplement the technical and financial capacity of other appropriate non-profit organizations to provide for multifamily and single-family housing needs of individuals and families of low, very low and extremely low income.
- Achieve and ensure the Corporation's self-sufficiency.

Major Events in Corporation History

1994 Created by the Texas Department of Housing and Community Affairs (the Department) as an internal division of the Department to convert contracts for deed to mortgages for the residents of the El Cenizo colonia near Laredo.

1995 Established in law by the Legislature as an independent entity, though still governed by the Board of the Department and operated by Department staff.

1997 The Legislature created a Board of Directors for the Corporation and required the hiring of independent staff.

1999 The Legislature authorized the Corporation to issue both single-family and multifamily bonds statewide.

2000 The Board of the Corporation approved a change in focus from mortgage banking to creating and preserving affordable housing by issuing single-family and multifamily mortgage revenue bonds.

2001 The Corporation issued its first multifamily bonds and restructured itself as a 501(c)(3) corporation. The Legislature continued the Corporation for two years and directed the Sunset Commission to re-evaluate the ongoing need for the Corporation prior to the 2003 legislative session. The Legislature also created the Teacher Home Loan Program and charged the Corporation with operating the program.

2002 The Corporation issued the first single-family bonds under the Teacher Home Loan Program. The Corporation also sold the remainder of the El Cenizo mortgage loan portfolio to La Gloria Development Corporation.

Organization

Policy Body

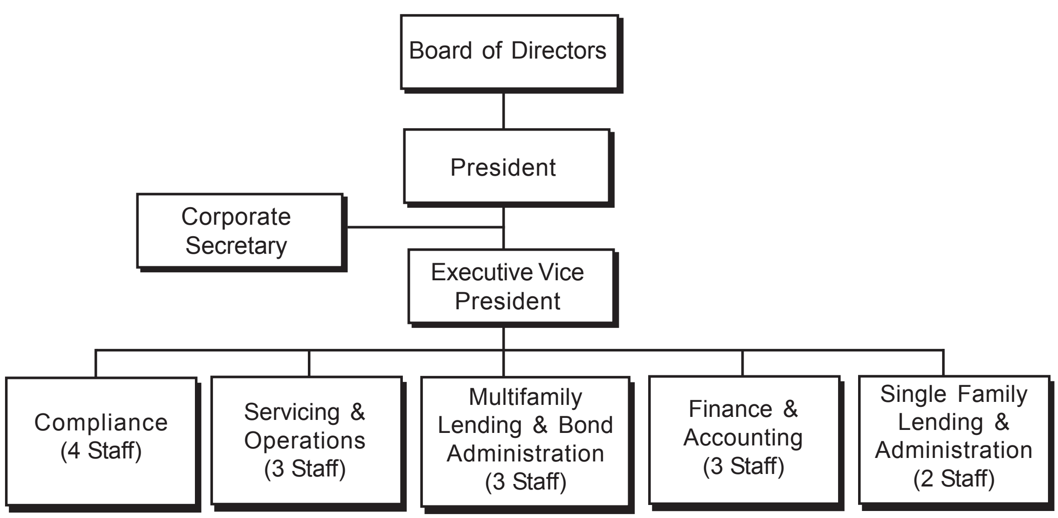
The Corporation is governed by a five member Board appointed by the Governor for indefinite terms. By law, members may represent "[any] area of expertise that the governor finds necessary for the successful operation of the corporation."[2] The Board sets the focus and direction of the Corporation and hires a President to run the Corporation. The table, *Governing Board*, lists the current Board members, their place of residence, and appointment date.

Governing Board		
Name	**Residence**	**Appointment Date**
Dawn Enoch Moore, Chair	Dallas	December 1997
Jerry Romero, Vice Chair	El Paso	December 1997
Jeffrey Baloutine	Austin	December 1997
Donald Currie	Brownsville	December 1997
Karen S. Lugar	San Antonio	October 2000

Staff

The Corporation has 18 staff positions, as shown in the *Texas State Affordable Housing Corporation Organizational Chart*. As of November 2002, six of the 18 positions were vacant. The Corporation also contracts with attorneys, financial advisors, underwriters, and other consultants for professional services.

Texas State Affordable Housing Corporation
Organizational Chart

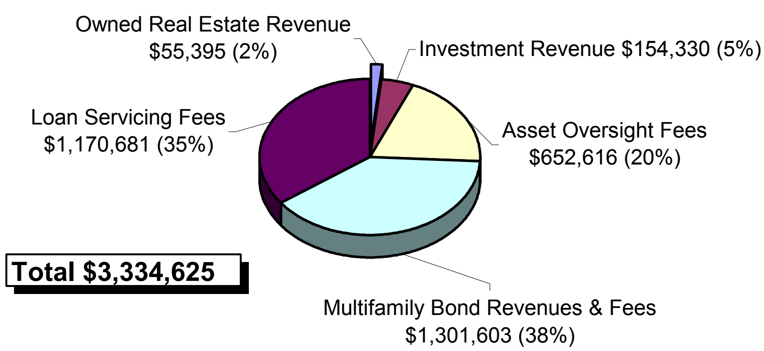


Funding

Revenues

In fiscal year 2002, the Corporation generated $3.33 million in operating revenues. The Corporation is a self-sustaining entity that does not receive any State funding, and is not subject to the legislative appropriations process. The Corporation's primary revenue sources are loan servicing and asset oversight fees, as well as proceeds from multifamily bond issuances and the direct lending program, as shown in the chart, *Sources of Revenue*.

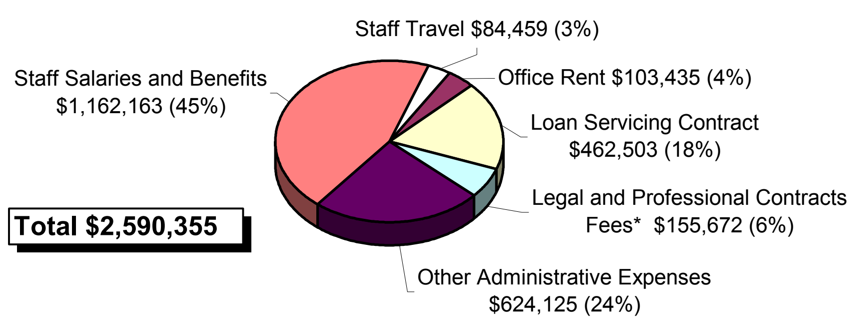
Sources of Revenue
FY 2002



Expenditures

The Corporation's operating expenses in fiscal year 2002 totaled $2.59 million. Salaries and benefits for Corporation employees account for 45 percent of expenses, as shown in the chart, *Expenditures*. The Corporation had a net income of $774,270 in fiscal year 2002.

Expenditures
FY 2002



*Includes thirdy-party contracts for bond counsel, compliance monitoring, auditing, and information resources

While not subject to appropriations oversight or approval, the Corporation must receive approval for each bond issuance from the Bond Review Board. The Corporation must also file an annual financial report with the Governor and the Legislature, and is subject to audit by the State Auditor.

Corporation Functions

To achieve its mission, the Corporation performs the activities described below.

501(c)(3) Bond Program

The Corporation issues tax-exempt mortgage revenue bonds to finance the creation of affordable housing units by non-profit organizations that renovate existing multifamily properties or develop new properties. Since April 2001, the Corporation has issued $487 million in revenue bonds to finance 39 properties with more than 7,700 total affordable housing units. Eighty percent of the affordable units are in Harris, Dallas, Tarrant, and Bexar counties. The bonds are payable solely from the rental income of the property, without any obligation on behalf of the Corporation, the State, or any political subdivision to repay the bonds.

The Corporation issues mortgage revenue bonds to finance affordable housing.

To ensure the public benefit of the properties acquired or built with tax-exempt bonds, the Corporation requires property owners to reserve a portion of their housing units for persons of low income. The details of the income restrictions and other Corporation requirements are described in the text box, *Corporation 501(c)(3) Bond Requirements*. The Corporation earns annual fees from the property owners to service the bonds and to check compliance with Corporation requirements, as well as a one-time closing fee.

Corporation 501(c)(3) Bond Requirements

The Corporation requires borrowers to provide:

- a Resident Services Agreement specifying the resident services to be provided to low income tenants;
- a Payment in Lieu of Taxes (PILOT) to local taxing districts equal to 25 percent of any tax abatement awarded;
- a PILOT of up to 100 percent of any taxes owed to special taxing districts with small tax bases, such as fire districts and municipal utility districts;
- a letter explaining why they are not pursuing local financing;
- evidence of a need for affordable housing in the areas where the properties are located;
- a benefit analysis showing the total benefits and the total amount of abated taxes for each property in a transaction; and
- a list of all companies and individuals receiving payments from bond proceeds.

In addition, one-third of the board members of the borrower must be low-income residents in projects owned by the borrower. The borrower must also establish an advisory committee for each property, with membership consisting of low-income residents of the property and other individuals from the surrounding community.

Teacher Home Loan Program

The Legislature created the Teacher Home Loan Program in 2001 to offer home purchasing assistance to eligible Texas educators earning 115 percent or less of the local AMFI.[3] The text box, *Eligibility for the Teacher Home Loan Program*, outlines the eligibility requirements for the program.

Eligibility for the Teacher Home Loan Program

To qualify, teachers must:

- not hold ownership interest in any principal residence for the three years prior to the loan application date;
- be employed by a public school district as a classroom teacher for the three years prior to the application date;
- live in Texas for the five years prior to the application date;
- meet the income and purchase price eligibility limits for the program;
- meet standard mortgage underwriting requirements which demonstrate credit worthiness; and
- intend to occupy the purchased home as their primary residence.

Source: Government Code, §2306.562.

The program receives an annual allocation of $25 million dollars of the state private activity bond cap to finance the loans through participating lenders. The Corporation offers grants for down payment and closing cost assistance on 30-year, fixed rate mortgage loans equal to 5.5 percent of the amount of the mortgage. To date, the Corporation has assisted 60 teachers purchase a home with a total of $284,000 in assistance, for an average of $4,730 in assistance per teacher.

Loan Servicing

The Corporation owns and services $14.67 million in single-family mortgage loans from the HOME Program and the Down Payment Assistance Program at the Department of Housing and Community Affairs, and $2.3 million of the Department's multifamily mortgage loans.[4] The Corporation expects to return the HOME loans to the Department in the near future. The Corporation also owns the servicing rights to an additional $239 million in single-family mortgage loans issued by the Department, which it has contracted to Countrywide Home Loans, Inc.

Compliance

The Corporation contracts with a third-party consultant to assist staff with monitoring the compliance requirements for properties funded through the Corporation's bonds. Monitoring responsibilities include desk reviews of compliance reports, trustee reports, annual budgets, operating statements and other documents submitted by property owners; as well as site visits to confirm rental restrictions and provision of resident benefits.

Asset Oversight

The Department contracts with the Corporation to provide asset oversight management for 85 properties containing more than 21,000 housing units. The oversight duties typically include physical site inspections, resident service audits, and reviews of annual budgets and operating statements. The Corporation earns an annual fee, determined by the Department, for asset oversight management based on either the number of units managed or a percentage of the outstanding bond balance.

Direct Lending and Real Estate Ownership

Since 2000, the Corporation has lent $5.7 million to non-profit and for-profit developers to preserve 360 affordable housing units, primarily occupied by elderly tenants. The Corporation also owns and operates one multifamily property in Rockdale with units restricted for low-income residents. The property is currently for sale, and the Corporation does not intend to purchase any additional properties in the future.[5]

The Corporation has made $5.7 million in loans to preserve 360 affordable housing units.

[1] Texas State Affordable Housing Corporation, *Business Implementation Plan 2002-2004*.

[2] Government Code, §2306.554(a).

[3] House Bill 3451, 77th Legislature (2001).

[4] Figures as of April 30, 2002.

[5] Texas State Affordable Housing Corporation, *Business Implementation Plan 2002-2004*.

APPENDICES

Appendix A

SB 322, as adopted by the Legislature in 2001, included 81 provisions requiring action by the Texas Department of Housing and Community Affairs. Of these, the Department has implemented 70 with the remaining eleven partially implemented. The following chart lists the partially implemented provisions, with an explanation of the status and an estimate of when the agency anticipates full implementation.

Partially Implemented SB 322 Provisions

Number	Bill Provision	Implementation Status
1	Applies standard Sunset language requiring the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.	The Board will consider proposed policies on this topic at its November 2002 meeting.
2	Requires the Department to conduct risk-based monitoring of projects during construction. Requires the Department to routinely follow up on actual project performance to validate the accuracy of its initial evaluation. Requires the Department to maintain compliance information in a central database.	The Compliance tracking database has been completed and is in its final testing phase. The Department anticipates that it will take a year to roll-out the product to properties in the field. Upon successful field implementation, the Department will have real-time information on all of its properties. The risk-based monitoring and performance validation will be implemented upon the completion of the Department's reorganization in December 2002.
3	Requires the Department to develop a strategic plan, customized by region, to provide affordable housing and community support services. Allows the Department to subdivide regions for planning if necessary. The Department must use the Councils of Governments to develop the plan and use the most recent census data combined with data from local housing entities.	The majority of provisions have been met, including housing supply analysis, inclusion of latest available census information, inventory of available housing resources, and consultation of Councils of Governments in development of the plan. The Department anticipates submitting regional funding strategic plans for public comment for the FY 2004 funding cycle.
4	Requires the Department to give priority to certain economically distressed communities through its housing program scoring criteria, consistent with the regional allocation formulas.	The rules for the tax credit program have been modified to give priority to economically distressed communities. The HOME program has yet to allocate its 2002 funds towards economically distressed areas. The Department plans to allocate HOME funds towards such areas in 2003.
5	Requires the Department to develop and implement rules outlining formal rulemaking procedures for the Low Income Housing Tax Credit Program and the Multifamily Housing Mortgage Revenue Bond Program.	Relevant policies will be considered at the Board's November 2002 meeting.

Appendix A

Partially Implemented SB 322 Provisions

Number	Bill Provision	Implementation Status
6	Requires the Department to provide for public input before developing rules for programs with Requests for Proposal and Notices of Funding Availability.	Relevant policies will be considered at the Board's November 2002 meeting.
7	Requires the Department to develop an annual assessment of colonia resident needs and a biennial action plan to address the needs.	A draft version of the plan has been developed and will be made available for public comment.
8	Updates standard Sunset language requiring the Manufactured Housing board to develop continuing education programs for licensees.	The ability to develop continuing education programs for licensees has been approved, but at present no specific educational programs (other than the quarterly licensing school) have been implemented.
9	Requires the Department to establish the colonia model subdivision program to promote the development of new, high-quality, residential subdivisions that provide alternatives and housing options.	The source of funds identified from the Community Development Block Grant program's 10 percent colonia set-aside could not be used for the model subdivision program due to restrictions under federal law. The Department has, however, obtained funds under the HOME program's CHDO set-aside and will determine dates for a notice of funds availability within the next three to four months, with possibly $1 million available for program years 2002-2003.
10	Requires the Department to employ or contract with a regional development coordinator for each uniform state service region of this state. Requires the Department to appoint a database information specialist.	The Department anticipates that all 11 regional development coordinators will be contracted with by the end of 2002. Funding of $330,000 for regional coordinators has been identified. The Department has outlined performance expectations and drafted appropriate contracts. The Department intends to contract with one Council of Governments (COG) per Uniform State Service Region through interagency agreements. In addition, the Department signed memorandums of understanding with COGs agreeing on the requirements of legislation, developed a framework for the Regional Advisory Committee meetings, and attended 20 focus group meetings during the summer 2002. The database information specialist was appointed on November 1, 2001.

Appendix A

Partially Implemented SB 322 Provisions		
Number	**Bill Provision**	**Implementation Status**
11	Requires the Department, in conjunction with the Comptroller's Office, to assess the present and future affordable housing needs of the border region and of the uniform state service regions of the state.	The Department has contacted the Comptroller's Office regarding the requirements of this report. The Department is gathering pertinent Census information as it is released. Final Census figures are not expected to be released until the Spring of 2003. The report is due 180 days after the information is released.

Appendix B

TDHCA Compliance with Management Actions Recommended by the Sunset Commission

Number*	Management Action Recommendation	Implementation Status
3.5	Develop a system that encourages local housing providers to use innovative products and tools that best meet the housing needs in their region.	Fully implemented. The Department has worked with regional Councils of Governments to identify potential new sources of funding for housing needs.
4.9	The Department should publish the final tax credit syndication rates and payment schedules used by projects receiving allocations from the previous year.	**Not implemented**. Tax credit syndication rates are subject to fluctuating market conditions, making the publication of syndication schedules ineffectual.
4.10	Require that all multi-family private activity bond projects with a bond reservation automatically receive their 4-percent tax credit allocation.	**Not implemented.** The Department maintains that it will underwrite all bond projects to determine appropriate tax credit allocation amounts and feasibility. The Department believes that automatically maximizing the allocation of 4-percent credits would be a violation of its fiduciary responsibility.
4.11	Require that the Department study and assess other types of housing finance program options.	Fully implemented. In 2002 the Department developed two new programs, the Expanded Approval and the Junior Lien programs, to assist low-income homebuyers.
5.5	Allow tenants to seek relief from tax credit landlords if denied housing on the basis of their Section 8 status. Allow tenants seeking relief to be awarded compensation and attorney's fees.	Fully implemented. TDHCA's Board has adopted rules allowing Section 8 tenants similar relief.
5.6	Require the Department to train all employees on fair housing laws, and maintain at least one employee with experience in fair housing in the Compliance Division.	Fully implemented. The Department has provided fair housing training for all employees.
6.4	The Department should establish an Office of Housing Preservation.	Fully implemented. Although the Department has not created an Office per se, the agency now has one FTE dedicated to preservation efforts.
6.5	The Department should adopt a policy for the release of a Resolution Trust Corporation (RTC) property land use restriction agreement.	**Not implemented**. The Department does not have the authority to release RTC properties' land use restriction agreements.

Appendix B

TDHCA Compliance with Management Actions Recommended by the Sunset Commission

Number*	Management Action Recommendation	Implementation Status
7.2	Require the Compliance Division to conduct risk-based monitoring of projects during construction.	Partially implemented. The Department's Compliance and Underwriting divisions are in the process of identifying a set of criteria to conduct risk-based monitoring by the Fall of 2002.
7.3	Require the Department to maintain compliance information in a central database.	Partially implemented. The compliance information for all tax credit properties has been entered into the database. All other program information is expected to be entered into the database by FY 2004.
7.4	Require Credit Underwriting to routinely follow up on actual project performance to validate the accuracy of its initial evaluation.	Fully implemented. The Department's Underwriting and Tax Credit divisions began sharing cost certification data in FY 2002.
8.3	Require the Department to develop recommendations to the Legislature identifying options to improve the funding system for colonia programs.	Fully implemented. The Department is requesting $15 million and one FTE as an exception item in its FY 2004-05 Legislative Appropriations Request to give colonia programs a source of dedicated funds.
8.4	Require the Department to improve its management and coordination of the Colonia Self-Help Centers.	Fully implemented. The Department has strengthened its relationships with local units of government and self-help centers to expedite transfer of funds.
1.4**	Require the Department to maintain information about the Texas Interagency Council for the Homeless on its web site, and require each member agency to have a link to this site.	Fully implemented. The Council's Web site was designed and is currently hosted by the Department on its network server.

* The number of each management action corresponds with that in the section of the 2001 Sunset Commission *Report to the 77th Legislature* relating to the Department.

** This management action appeared in the section of the 2001 Sunset Commission *Report to the 77th Legislature* relating to the Texas Interagency Council for the Homeless.

Sunset Review of the Texas Department of Housing and Community Affairs and Texas State Affordable Housing Corporation

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