

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Agency at a Glance

The Texas Department of Housing and Community Affairs (TDHCA) works to ensure the availability of affordable housing, provides funding for community assistance, and regulates the manufactured housing industry. The Department's functions include the following activities.

- Assisting low-income individuals and families to obtain affordable rental housing by awarding federal and state funds, as well as federal tax credits, to nonprofit and for-profit organizations and local governments.
- Assisting low- and moderate-income families with home rehabilitation, reconstruction, or first time home purchase.
- Assisting low-income individuals and families through a network of public and private service providers to obtain community-based support services, including services to address homelessness, foreclosure, high utility costs, home weatherization, and other concerns.
- Acting as an information clearinghouse on affordable housing resources in Texas.
- Regulating the manufactured housing industry and maintaining official records of manufactured home ownership, location, and status, including liens.

*Most of Sunset's
recommendations from
2011 remain appropriate.*

Summary

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

Based on the re-examination, the Sunset Commission concluded that most of Sunset's previous recommendations remain appropriate, and that the

Department continues to need statutory authority and direction to implement them. The following material summarizes Sunset Commission recommendations on the Department, including the Manufactured Housing Division.

Issue 1

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

The TDHCA-administered federal tax credit program provides incentives for private investment in affordable multifamily rental housing, creating more affordable housing in Texas than any other program. The Sunset Commission found several statutory requirements that impede the effective administration of this key housing program. First, state law requires TDHCA to measure community support for tax credit developments based on neighborhood organization letters and letters from state senators and representatives. Neighborhood organization letters do not always reflect local interests and are regularly contested. Nowhere else in state law are state elected officials required to provide support letters of this nature. In addition, fixed statutory deadlines could restrict the State's ability to distribute federal tax credit assistance in emergency circumstances.

Recommendations

Change in Statute

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

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

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

State senators and representatives could still provide input in the tax credit awards process, but their participation would not be a required scoring item.

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

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

Issue 2

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

The Department monitors TDHCA-sponsored affordable multifamily developments to ensure properties are well constructed, remain suitable for tenants, appropriately restrict rents, and generally perform well for the life of the contract. Properties that do not comply with requirements can face fines and appeal those fines. The Sunset Commission found that the Department's current appeals process is not consistent with most state agencies and wastes agency resources. In addition, statute unnecessarily limits the agency's ability to prevent bad actors from applying to TDHCA programs to just one program.

Recommendations

Change in Statute

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

This recommendation would require TDHCA to refer penalty appeals to the State Office of Administrative Hearings (SOAH), following the same process as TDHCA's Manufactured Housing Division. In conducting hearings, SOAH would consider the Department's applicable substantive rules or policies. Like other agencies that have hearings conducted by SOAH, the Department's Board would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge.

2.2 Require judicial review of appeals of the Department's decisions to be based on the substantial evidence rule, instead of a *de novo* review.

Any party subject to a penalty would continue to be authorized to appeal board decisions to district court, but this recommendation would specify that appeals be made under the substantial evidence rule, consistent with the vast majority of other administrative appeals.

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

This recommendation would clearly permit the Department to debar individuals for significant performance failures across all programs, not just the housing tax credit program. Participants facing debarment would be authorized to appeal decisions to the Board.

Issue 3

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

The Sunset Commission has reviewed approximately 100 occupational licensing agencies. In doing so, the Commission has identified standards that are common practices throughout the agencies' statutes, rules, and procedures. In reviewing licensing functions at the Manufactured Housing Division, the Sunset Commission found that certain licensing and enforcement processes in the agency's statute do

not match these model standards. The Sunset Commission identified changes needed to bring the Division in line with model standards to better protect owners of manufactured homes and the public.

Recommendations

Change in Statute

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

This recommendation would require the Division to conduct fingerprint criminal background checks, through the Department of Public Safety (DPS), on all licensees to review complete federal and state criminal histories of applicants. The DPS system provides automatic updates, eliminating the need for additional background checks at the time of renewal. Applicants would pay the one-time \$42 cost.

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

This recommendation would allow the Division to take action to stop an individual or entity operating without a license. The Division would also be authorized to assess administrative penalties on unlicensed individuals or entities of up to \$1,000 for each day of the violation, consistent with the Division's current penalty authority for licensed individuals and entities. These changes would not impact the Division's authority to also seek an injunction through the Attorney General.

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

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

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

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

3.5 Eliminate manufactured housing branch and rebuilder licenses from statute.

This recommendation would eliminate the unnecessary branch and rebuilder licenses as the Division has never issued a branch license and does not anticipate issuing either license in the future.

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

This recommendation would permit the Division to collect a nominal fee, as determined by the Division's Board, for reprinted licenses requested by a licensee to ensure the licensee bears the associated cost.

Issue 4

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

Texas faces a shortage of affordable housing that will continue for the foreseeable future. The federal government and the Texas Legislature have established numerous programs to help communities increase housing and community-based services options for low- and moderate-income people. The Sunset Commission concluded that the Department acts as a necessary partner in these programs, disbursing hundreds of millions of dollars annually.

Recommendations

Change in Statute

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

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

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

This recommendation would ensure that the Division develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution. The Division would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures.

Issue 5

Department Statutes Contain Unnecessary Reporting Requirements.

The Sunset Act establishes a process for state agencies to provide information to the Sunset Commission about reporting requirements imposed on them by law and requires the Commission, in conducting reviews of state agencies, to consider if each reporting requirement needs to be continued or abolished. The Sunset Commission found three unnecessary reporting requirements for TDHCA.

Recommendation

Change in Statute

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

This recommendation would eliminate these three reports from law.

Fiscal Implication Summary

These recommendations would have no fiscal impact to the State.