

SUNSET ADVISORY COMMISSION

FINAL REPORT



*Texas State Affordable
Housing Corporation*

July 2011

Sunset Advisory Commission



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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 130 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency’s operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

*Texas State Affordable
Housing Corporation*

SUNSET FINAL REPORT
JULY 2011

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

- *Sunset Staff Report, November 2010* – Contains all Sunset staff recommendations on an agency, including both statutory and management changes, developed after extensive evaluation of the agency.
 - *Hearing Material, December 2010* – Summarizes all responses from agency staff and the public to Sunset staff recommendations, as well as new policy issues raised for consideration by the Sunset Commission at its public hearing.
 - *Decision Material, January 2011* – Includes additional responses, testimony, or new policy issues raised during and after the public hearing for consideration by the Sunset Commission at its decision meeting.
 - *Commission Decisions, January 2011* – Contains the decisions of the Sunset Commission on staff recommendations and new policy issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency's Sunset bill.
 - *Final Report, July 2011* – Summarizes action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency's Sunset bill.
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Summary

Summary

This special purpose review of the Texas State Affordable Housing Corporation follows up on the full Sunset review of the Corporation conducted in 2008. At that time, the Sunset Commission adopted and forwarded to the 81st Legislature recommendations on the Corporation. However, the Legislature did not pass the Sunset bill on the Corporation. Instead, the Legislature continued the Corporation for two years in separate legislation, and focused the current Sunset staff review of the Corporation on the appropriateness of the recommendations voted on and adopted by the Commission in 2008.

Based on this re-examination, Sunset staff concluded that all of the Sunset Commission recommendations from 2008 remain appropriate for consideration in 2010, including the recommendation to continue the Corporation for six years. The current status of each of the recommendations is shown in the chart, *Status of 2008 Sunset Commission Recommendations on the Texas State Affordable Housing Corporation*, on page 8 of this report.

*All of the Sunset Commission's
recommendations on the
Corporation remain appropriate.*

As reflected in the chart, the Corporation has made progress on maximizing the benefits of its unique status as a statewide nonprofit entity to raise public and private funds to support affordable housing initiatives. In addition, the Corporation continues to effectively administer its single family homebuyer programs. Through these efforts, the Corporation helps meet the State's need for affordable housing with no cost to the State because the Corporation self-funds its operations with no appropriations from the State.

The following material summarizes the 2008 recommendations on the Corporation that continue to be appropriate for consideration in 2010. For additional information on the Sunset Commission's 2008 decisions, see the Sunset Advisory Commission's Report to the 81st Legislature, published in February 2009. For more detailed information on the original Sunset staff recommendations, see the Sunset Advisory Commission's Final Report on the Texas State Affordable Housing Corporation, published in July 2009. Both reports are available on the Sunset Commission's website.

Issue and Recommendations

Issue 1

The Corporation Helps Meet the State's Need for Affordable Housing, but Could Benefit From Changes to Its Board and Enforcement Abilities.

Recommendations

- Continue the Texas State Affordable Housing Corporation for six years, and require the Corporation to report annually to the Legislature on its fundraising and grant activities.
- Increase the size of the Corporation's Board by adding one member to represent the interests of families served by the Corporation's single family programs and one member to represent nonprofit housing organizations.
- Require the Corporation to include a range of enforcement options in its multifamily contracts to ensure developers provide safe and decent housing.
- Update standard Sunset across-the-board requirements for the Corporation.

Fiscal Implication Summary

None of the recommendations in this report would have a fiscal impact to the State because the Corporation is self-funded and does not receive state appropriations.

Summary of Legislative Action

H.B. 1818 Harper-Brown (Hinojosa)

House Bill 1818 continues the Corporation for 12 years, requiring the Corporation to report additional financial information to the Legislature and placing new stakeholders on the Board. The Legislature adopted all of the Sunset Commission's recommendations and added several statutory modifications to H.B. 1818, primarily to increase the transparency of Board decisions. The list below summarizes the major provisions of H.B. 1818, and more detailed discussion is located in each issue.

Sunset Provision

1. Continue the Texas State Affordable Housing Corporation for 12 years, and ensure the Corporation operates with greater transparency and accountability.

Provisions Added by Legislature

1. Require the Corporation to make its meetings and information related to its meetings open and easily available to the public.
2. Exempt certain public housing authorities from requirements to appoint resident members to their governing boards.
3. Require the Corporation to make a good faith effort to contract with Historically Underutilized Businesses.

Fiscal Implication Summary

House Bill 1818 will not have a fiscal impact to the State.

Corporation at a Glance
(November 2010)

Corporation at a Glance

The Legislature created the Texas State Affordable Housing Corporation (the Corporation) in 1995 as a self-sustaining nonprofit corporation to help low-income Texans obtain affordable housing. To achieve its mission, the Corporation carries out the following key activities:

- issues bonds to finance the purchase of single family homes by qualifying low-income first-time homebuyers and Texas educators, firefighters, corrections officers, emergency medical personnel, and law enforcement personnel;
- seeks out grants and donations to help support affordable housing initiatives;
- provides grants to nonprofits and rural governmental entities to build or rehabilitate homes or provide supportive services to multifamily residents;
- provides support to the Texas Foreclosure Prevention Taskforce, and provides grants to local organizations providing foreclosure counseling services;
- partners with nonprofit organizations and local governments to acquire and redevelop foreclosed homes, vacant land, and other properties; and
- provides loans to assist affordable housing developers with initial construction and start-up costs.

Key Facts

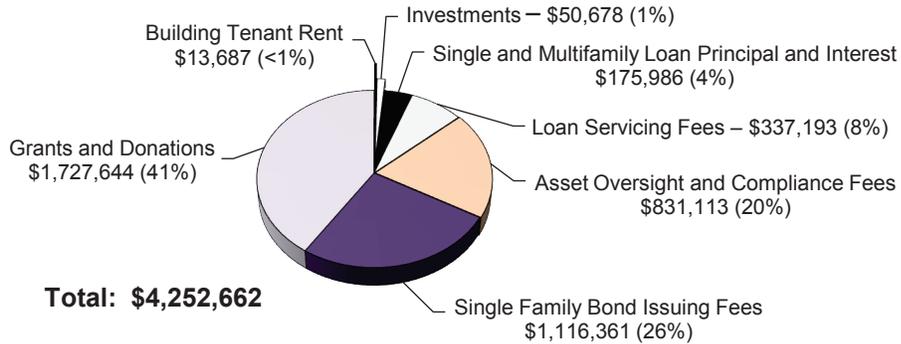
- **Board and Staff.** A five-member, Governor-appointed Board oversees the Corporation. The chart, *Texas State Affordable Housing Corporation Board*, provides information about each member. A three-member advisory council recommends Texas Foundations Fund grant applications for the Board's final approval. The Corporation employs 14 people, all based in Austin.

Texas State Affordable Housing Corporation Board

Member	City	Expertise	Term Expires
Robert Elliott Jones, Chair	Corpus Christi	Real Estate	2015
Jo Van Hovel, Vice Chair	Temple	Real Estate	2013
Jeran Akers	Plano	Public Administration	2011
William H. Dietz	Waco	Banking	2013
Cynthia Leon	Mission	Retired HUD Director	2015

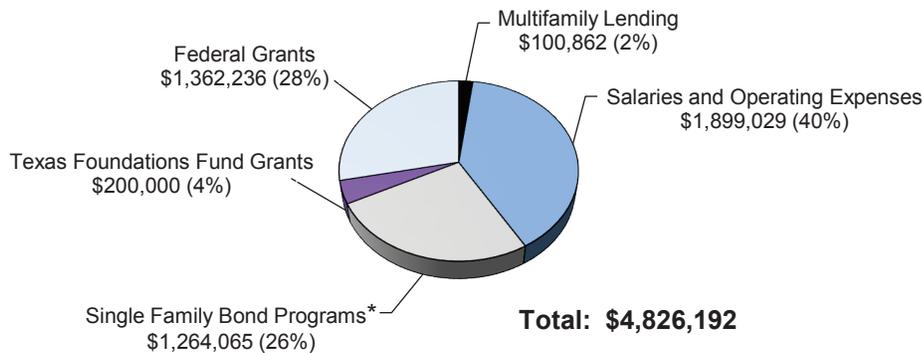
- **Funding.** The Corporation self-funds its operations and receives no state appropriations funding. As shown in the chart on the following page, *Texas State Affordable Housing Corporation Revenues*, in fiscal year 2010, the Corporation generated about \$4.2 million in revenues, primarily from raising public and private grants and donations, and from single family bond issuing fees.

**Texas State Affordable Housing Corporation
Revenues – FY 2010**



In fiscal year 2010, the Corporation spent a total of \$4.8 million, and of this amount about \$1.9 million directly supported its operations. As shown in the chart, *Texas State Affordable Housing Corporation Expenditures*, the Corporation passed through about \$1.5 million, or 32 percent of expenditures, in the form of federal and Texas Foundations Fund grants to local organizations involved in housing initiatives. Corporation spending exceeded revenues because it is awaiting reimbursement for single family program and Neighborhood Stabilization Program expenditures.

**Texas State Affordable Housing Corporation
Expenditures – FY 2010**



* Includes \$10,700 in Single Family/Multifamily Program expenditures.

- Single Family Programs.** The Corporation provides low-interest loans and down payment assistance to first-time homebuyers, and in fiscal year 2010 issued bonds to finance \$123 million in loans and down payment assistance. In fiscal year 2010, 549 families purchased homes, using \$69.3 million of the \$123 million. The remaining balance of funds is available for use in fiscal year 2011. The Corporation also converts bonds to Mortgage Credit Certificates (MCCs), offering a separate option for homebuyers to receive mortgage tax credits of up to \$2,000 annually. Since fiscal year 2009, the Corporation has assisted 980 homebuyers with MCCs, whose mortgage loans totaled approximately \$118 million.

- **Multifamily Programs.** The Corporation receives 10 percent of the State's private activity bond authority to help finance developers of affordable multifamily rental housing. Due to unfavorable market conditions, the Corporation has not issued multifamily bonds since 2007. The Corporation also makes small loans to developers for the construction or rehabilitation of multifamily properties. Since 2008, the Corporation has made \$1.6 million in these loans.
- **Fundraising.** Since 2008, the Corporation has raised about \$2.9 million in grants and donations, not including a \$6,274,100 Neighborhood Stabilization Program grant the Corporation has completely committed. As part of this fundraising, in fiscal year 2010 the Corporation received about \$1.7 million in funds to help support local foreclosure mitigation counseling services and, in cooperation with local nonprofit agencies, redevelop foreclosed properties.
- **Texas Foundations Fund Grants.** In 2008, the Corporation created the Fund to provide grants of up to \$50,000 to nonprofit organizations and rural communities to support housing initiatives for very low and extremely low-income families. Since 2008, the Corporation has awarded \$700,000 in grants to 14 organizations, primarily funded by Corporation revenues. Since 2008, the Corporation has raised about \$111,600 in private donations for the Fund.
- **Foreclosure Programs.** The Corporation provides administrative and fundraising support to the Texas Foreclosure Prevention Task Force, a consortium of state, local, and federal entities seeking to reduce foreclosures. In fiscal year 2010, in cooperation with the Texas Department of Housing and Community Affairs, the Corporation distributed about \$834,000 in grants to support local counseling services. In addition, the Corporation created the Affordable Communities of Texas program, in 2008, to work with local nonprofit agencies to redevelop foreclosed properties. The Corporation plans to spend about \$6.4 million, primarily Neighborhood Stabilization Program funding, to acquire over 300 properties.

Issue

Issue 1

The Corporation Helps Meet the State's Need for Affordable Housing, but Could Benefit From Changes to Its Board and Enforcement Abilities.

Background

The Texas State Affordable Housing Corporation is unique in state government, created as a nonprofit entity that self-funds its operations and receives no state appropriations. The Corporation's mission is to help develop affordable housing for low-income families and other underserved populations that cannot obtain housing through conventional means.

Sunset staff conducted a special purpose review of the Corporation as a follow up on the full review of the Corporation conducted in 2008. While the Sunset Commission forwarded recommendations from the 2008 review to the Legislature, the Corporation's Sunset bill did not pass. Instead, the Legislature continued the Corporation for two years and focused the current review on the appropriateness of the Sunset Commission's 2008 recommendations. Sunset staff's assessment of these recommendations is discussed below.

Finding

The Corporation has made progress in raising funds and awarding housing grants, and no significant changes have occurred to affect the Sunset Commission's 2008 decision to continue the Corporation for six years.

Finding that the Corporation was needed, the Sunset Commission made recommendations to the Legislature to increase stakeholder representation on the Board and grant authority needed to help the Corporation ensure multifamily housing developers comply with affordability and property condition requirements. The table on the following page summarizes the Sunset Commission's recommendations and their status.

Sunset staff examined the appropriateness of these recommendations and found that the Corporation helps meet the State's need for affordable housing. The Corporation has made progress in using its status as a nonprofit to raise grants and donations to support affordable housing initiatives, raising \$1.7 million, or 41 percent of its total revenues, in fiscal year 2010. To date the Corporation has also awarded \$700,000 in grants from its Texas Foundations Fund, primarily from Corporation revenues, to nonprofit organizations and rural governments that assist very low-income Texans with housing needs.

In addition, the Corporation, in cooperation with the Texas Department of Housing and Community Affairs, has raised more than \$7.5 million in public funds to work with affordable housing organizations to acquire and redevelop foreclosed properties and support foreclosure prevention programs.

In FY 2010, the Corporation raised \$1.7 million in grants and donations, or 41 percent of its total revenues.

While the Corporation has made significant progress in raising funds and awarding grants since the 2008 Sunset review, Sunset staff found that the Corporation still needs legislative and statutory direction to implement recommendations forwarded by the Sunset Commission to the Legislature, as discussed on the following page.

Status of 2008 Sunset Commission Recommendations on the Texas State Affordable Housing Corporation

2008 Recommendation	Status
Issue 1 – The Corporation Helps Meet the State’s Need for Affordable Housing, but Could Benefit From Changes to Its Board and Enforcement Abilities.	
Change in Statute	
1.1 Continue the Texas State Affordable Housing Corporation for six years, and require the Corporation to report annually to the Legislature on its fundraising and grant activities.	Change in law still needed – The Sunset Commission concluded that the Corporation is capable of soliciting funds and leveraging private funding to support housing initiatives. Since 2008, the Corporation has made progress towards maximizing the benefits of its status as a statewide nonprofit entity. However, the Corporation’s relatively short track record still warrants oversight through the Sunset process for a period less than the standard 12 year continuation.
1.2 Increase the size of the Corporation’s Board by adding one member to represent the interests of families served by the Corporation’s single family programs and one member to represent nonprofit housing organizations.	Change in law still needed – The Sunset Commission concluded that the boards of state agencies and entities tied to the State, such as the Corporation, should include members representing the broad interests of stakeholders served by the entity. Current statute provides for the representation on the Corporation’s Board of various housing industry sectors, such as banking and real estate development, but does not include representation for the interests of those in need of affordable housing or nonprofit organizations that provide affordable housing.
1.3 Require the Corporation to include a range of enforcement options in its multifamily contracts to ensure developers provide safe and decent housing.	Change in law still needed – The Corporation finances and oversees multifamily housing developments that must comply with requirements for affordability, availability, safety, and property condition. In the past, issuers of 501(c)(3) tax-exempt bonds, including the Corporation, have experienced significant compliance problems with properties financed using these bonds. In 2007, the Corporation adopted new multifamily enforcement measures that are included in each new multifamily transaction. However, these measures are not statutorily required and the State cannot be assured that the Corporation will consistently incorporate these safeguards in future development contracts.
1.4 Update standard Sunset across-the-board requirements for the Corporation.	Change in law still needed – These standards include prohibiting conflicts of interest by board members, authorizing the Governor to designate the board’s presiding officer, requiring training for board members, and requiring agencies to maintain information on complaints filed with the agency.

Recommendations

Change in Statute

1.1 Continue the Texas State Affordable Housing Corporation for six years, and require the Corporation to report annually to the Legislature on its fundraising and grant activities.

This recommendation would give the Corporation six years to continue to develop its capacity to leverage funds for affordable housing. The Corporation would be required to annually provide the Legislature with information that shows its effectiveness at competing for grant funds, raising private donations, leveraging private funds for lending, and making grants.

1.2 Increase the size of the Corporation's Board by adding one member to represent the interests of families served by the Corporation's single family programs and one member to represent nonprofit housing organizations.

This recommendation would expand the Board from five members to seven members and ensure needed expertise and input from stakeholders served by the Corporation's single family programs and nonprofit organizations that work to provide affordable housing.

1.3 Require the Corporation to include a range of enforcement options in its multifamily contracts to ensure developers provide safe and decent housing.

This recommendation would require the Corporation to include, at a minimum, the following range of enforcement options in all multifamily development contracts financed fully, or in part, by the Corporation.

- Assessment of financial penalties for non-compliance with bond documents and Corporation policies.
- Withdrawal of reserve funds by the Corporation to make needed repairs and replacements to a property.
- Removal of the property manager and replacement with one acceptable to the Corporation.
- Appointment of the Corporation as receiver to protect and operate the property.

Placing these enforcement measures in statute will ensure that the Corporation consistently includes these provisions in its multifamily development contracts and has these remedies available if needed.

1.4 Update standard Sunset across-the-board requirements for the Corporation.

- **Conflict of interest.** This recommendation would update current statute prohibiting an individual from serving as a member of the Board if the person or the person's spouse is an officer, employee, or paid consultant of a Texas trade association in the field of mortgage lending.
- **Presiding officer designation.** This recommendation would update current statute requiring the Governor to designate a member of the Board as the presiding officer to serve in that capacity at the pleasure of the Governor.
- **Board member training.** This recommendation would update current statute establishing the type of information to be included in Board member training.

- **Complaint information.** This recommendation would update current statute requiring the Corporation to maintain a system to act promptly on complaints filed with the Corporation and to make available information describing its complaint investigation and resolution procedures.

Fiscal Implication Summary _____

These recommendations would not have a fiscal impact to the State because the Corporation is self-funded and does not receive state appropriations.

Responses to Issue 1

Recommendation 1.1

Continue the Texas State Affordable Housing Corporation for six years, and require the Corporation to report annually to the Legislature on its fundraising and grant activities.

Agency Response to 1.1

The Texas State Affordable Housing Corporation agrees with Sunset staff's recommendation to report annually to the Legislature on its fundraising and grant activities. However, the Corporation states that it can be more successful with a longer continuation date. Continuing the Corporation for only six years will hamper the Corporation's ability to raise Program Related Investments (PRIs), which are the primary source of funding for its Direct Lending programs. Included with the Corporation's written response is a letter from the F.B. Heron Foundation declining the Corporation's request for a PRI due to the Corporation's Sunset provision.

Agency Modification

1. Continue the Texas State Affordable Housing Corporation for at least 10 years, and require the Corporation to report annually to the Legislature on its fundraising and grant activities.

(Bob Jones, Chair and David Long, President – Texas State Affordable Housing Corporation)

Staff Comment: If the Sunset Commission chooses to recommend continuing the Corporation for longer than the six-year period proposed in Recommendation 1.1, Sunset staff recommends a standard, 12-year continuation to align the Corporation's Sunset date with that of the Texas Department of Housing and Community Affairs.

For 1.1

None received.

Against 1.1

None received.

Modification

2. Continue the Texas State Affordable Housing Corporation for 12 years, and require the Corporation to report annually to the Legislature on its fundraising and grant activities. (Representative Linda Harper-Brown, Member – Sunset Advisory Commission)

For Modification 2

Jeran Akers, Board Member – Texas State Affordable Housing Corporation, Plano

The Honorable Steven Carriker, Executive Director – Texas Association of Community Development Corporations, Austin

Bob Jones, Chair – Texas State Affordable Housing Corporation, Corpus Christi

David Long, President – Texas State Affordable Housing Corporation, Austin

Joyce McDonald, Executive Director – Frameworks Community Development Corporation, Austin

Jo Ann DePenning – J. DePenning Consulting Inc., Austin

Jerry Romero, Former Chair – Texas State Affordable Housing Corporation, Austin

Recommendation 1.2

Increase the size of the Corporation's Board by adding one member to represent the interests of families served by the Corporation's single family programs and one member to represent nonprofit housing organizations.

Agency Response to 1.2

The Texas State Affordable Housing Corporation agrees with the recommendation. (Bob Jones, Chair and David Long, President – Texas State Affordable Housing Corporation)

For 1.2

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

Against 1.2

None received.

Modification

3. The Corporation's Board should also include representation from nonprofit corporations that do not do business with or otherwise have a conflict of interest with the Corporation, and from a consumer of the Corporation's services, such as a lower-income person. (John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin)

Recommendation 1.3

Require the Corporation to include a range of enforcement options in its multifamily contracts to ensure developers provide safe and decent housing.

Agency Response to 1.3

The Texas State Affordable Housing Corporation agrees with the recommendation. (Bob Jones, Chair and David Long, President – Texas State Affordable Housing Corporation)

For 1.3

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

Against 1.3

None received.

Modification

4. In addition to the requirements of 1.3, the Corporation should be required to conduct resident satisfaction surveys on a regular basis. Owners and property developers that fail to achieve a reasonable standard of satisfaction through these surveys should be barred from further participation in financing programs through either the Corporation or the Texas Department of Housing and Community Affairs. (John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin)

Recommendation 1.4

Update standard Sunset across-the-board requirements for the Corporation.

Agency Response to 1.4

The Texas State Affordable Housing Corporation agrees with the recommendation. (Bob Jones, Chair and David Long, President – Texas State Affordable Housing Corporation)

For 1.4

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

Against 1.4

None received.

Commission Decision

Adopted Recommendation 1.1 with Modification 2 for a 12-year Sunset date; 1.2 with a modification to add the new representation without increasing the size of the current five-member board; 1.3 and 1.4.

Legislative Action

House Bill 1818 continues the Corporation for 12 years, and requires it to regularly provide the Legislature information showing its effectiveness at raising funds and awarding grants. (Recommendation 1.1 with Modification 2) The bill maintains the current five member size of the Corporation's Board and requires one member to represent the interests of families served by the Corporation's single family programs and one member to represent nonprofit housing organizations. (Recommendation 1.2 with Commission modification) The bill requires the Corporation to add a range of enforcement options in all multifamily development contracts it finances. (Recommendation 1.3) In addition, the bill updates standard Sunset across-the-board requirements for the Corporation regarding conflicts of interest, designation of the presiding officer, board member training, and complaint information. (Recommendation 1.4)

New Issues

New Issues

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

2. Align the Corporation's statutory purpose with its operating mission by incorporating a reference to serving "underserved populations who do not have comparable housing options through conventional financial channels" in the Corporation's statutory purpose. (John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin and Belinda Carlton, Public Policy Specialist – Texas Council for Developmental Disabilities, Austin)
3. Direct the Corporation to develop innovative strategies to address the housing needs of underserved populations by testing innovative programs on a small scale. The Legislature could charge the Corporation each biennium with developing programs for a specific underserved market, such as rural populations, farm workers, SSI recipients, or homeless populations. (John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin and Belinda Carlton, Public Policy Specialist – Texas Council for Developmental Disabilities, Austin)
4. Direct the Corporation to seek innovative ways to solicit funding for service-enriched housing and to explore the use of the Multifamily Direct Lending Program as an avenue for implementing a set-aside for elderly and people with disabilities in affordable multi-family housing. (Belinda Carlton, Public Policy Specialist – Texas Council for Developmental Disabilities, Austin)
5. Direct the Corporation to collect and publish data on the population it serves. These reports should be similar to the Housing Sponsor Reports issued by the Texas Department of Housing and Community Affairs, and include the following information in a comparable format:
 - contact information for each property;
 - total number of units;
 - number of accessible units;
 - rent amounts for units by type;
 - racial composition information for the property;
 - number of units occupied by individuals receiving supported housing assistance;
 - number of units occupied delineated by income group; and
 - a statement as to whether there have been Fair Housing violations at the property.(John Henneberger, Co-Director – Texas Low Income Housing Information Service, Austin)

Commission Decision

The Commission did not adopt any new issues.

Legislative Action

No action needed.

Provisions Added By Legislature

Provisions Added by Legislature

1. Require the Corporation to make its meetings and information related to its meetings open and easily available to the public.

House Bill 1818 clarifies that the Board must conduct its meetings in accordance with the Open Meetings Act. In addition, H.B. 1818 requires the Corporation to post meeting-related information provided to the Board on its website at least three days in advance of meetings and make it available in hardcopy at meetings, post complete transcripts of Board meetings on its website, provide for public comment on Board agenda items, and adopt rules ensuring reasonable opportunity for public testimony at Board meetings.

2. Exempt certain public housing authorities from requirements to appoint resident members to their governing boards.

The bill exempts a public housing authority that oversees 150 units or fewer from requirements to appoint a tenant member to its board, if the authority provides public notice of the vacancy and cannot fill the seat within 60 days. The bill also exempts these public housing authorities from restrictions on board members serving more than two consecutive two-year terms.

3. Require the Corporation to make a good faith effort to contract with Historically Underutilized Businesses.

The bill requires the Corporation to make a good faith effort to provide opportunities for, and to increase contract awards to, Historically Underutilized Businesses (HUBs). The bill also specifies that, in accordance with the Comptroller's HUB rules, a good faith effort must include awarding to HUBs at least a portion of its contract value each year.

SUNSET STAFF REVIEW OF THE TEXAS STATE AFFORDABLE HOUSING CORPORATION

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