

CHAPTER 725

S.B. No. 1356

AN ACT

relating to the Texas Department of Housing and Community Affairs.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (b), Section 1.01, Article 4413(501), Revised Statutes, is amended to read as follows:

(b) It is hereby declared:

(1) that it is a goal of the state that every Texan should have a decent, safe, and affordable living environment;

(2) that government at all levels should be involved in assisting persons and families of low income in obtaining decent, safe, and affordable living environments;

(3) that there exists within both rural and urban areas of this state a shortage of sanitary and safe residential housing at prices or rentals which persons and families of low income and families of moderate income can afford; that this shortage has contributed to and will contribute to the creation and persistence of substandard living conditions and is inimical to the health, welfare, and prosperity of the residents and communities of this state;

(4) that it is imperative that the supply of affordable and standard condition residential housing for such persons and families and for persons and families displaced by public actions or natural disaster be increased;

(5) that private enterprise and investment are often unable to provide in sufficient quantities the needed construction or rehabilitation of sanitary and safe residential housing at prices or rentals which persons and families of low income and families of moderate income can afford and to provide sufficient long-term mortgage financing for residential housing for occupancy by such persons and families; [~~and~~](6) that for profit and nonprofit private enterprise and investment should be encouraged to develop land and to build and to rehabilitate residential housing for such persons and families, and that private financing be supplemented by financing as provided in this article in order to help prevent the creation and recurrence of substandard living conditions and to assist in their permanent elimination throughout this state; *and*

(7) that the development and diversification of the economy, the elimination of unemployment or underemployment, and the development or expansion of commerce in this state should be encouraged.

SECTION 2. Subdivisions (6), (17), and (18), Section 1.02, Article 4413(501), Revised Statutes, are amended to read as follows:

(6) "Federal government" means the United States of America or any department, division, agency, or instrumentality, corporate or otherwise, of the United States of America, *including the Resolution Trust Corporation*.

(17) "Persons and families of low income" means persons and families earning not more than 80 percent of the area median income or *applicable federal poverty line*, as determined under Section 3.10 [3.13] of this article.

(18) "Persons and families of very low income" means persons and families earning not more than 60 percent of the area median income or *applicable federal poverty line*, as determined under Section 3.10 [3.13] of this article.

SECTION 3. Subsection (n), Section 1.05, Article 4413(501), Revised Statutes, is amended to read as follows:

(n) *A person is not eligible for appointment as a public member of the board if the person or the person's spouse:*

(1) *is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;*

(2) *owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or*

(3) *uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for department membership, attendance, or expenses [It shall be the duty of the board to consult with and advise the director with respect to the affairs and problems of local government and work of the department. The board shall meet at least three times annually at the call of the chairman and at such other times as the board shall determine, the time and place of such other meetings to be fixed by majority vote of the board. It shall be the responsibility of the department to furnish such information, equipment and staff as is necessary to implement the work of the board].*

SECTION 4. Section 1.06, Article 4413(501), Revised Statutes, is amended by adding Subsection (g) to read as follows:

(g) *The chairman may appoint committees composed of board members as the chairman considers necessary to carry out the board's duties. The board may take into account a recommendation of a committee in making a decision under this article. A committee is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments, and the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments.*

SECTION 5. Section 1.07, Article 4413(501), Revised Statutes, is amended to read as follows:

Sec. 1.07. GENERAL POWERS OF THE DEPARTMENT. The department is hereby granted, has, and may exercise all powers necessary or appropriate to carry out, achieve, or effectuate the purposes of this article, including without limitation the following powers:

(1) to sue and be sued and plead and be impleaded in the name of the department; and it is specifically enacted that the department is and constitutes a separate governmental agency and a body politic and corporate of this state, acting for and on behalf of this state;

(2) to adopt an official seal and alter same when deemed advisable;

(3) to adopt and enforce bylaws and rules for the conduct of its affairs not inconsistent with bylaws and this article;

(4) to maintain an office or offices throughout the state and appoint and determine the duties, tenure, qualifications, and compensation of its agents, professional advisors, and

counselors, including without limitation financial consultants, accountants, architects, engineers, real estate consultants, appraisers, housing construction and financing experts, as are determined necessary or advisable;

(5) to make, enter into, and enforce contracts and agreements with the federal government, the state, any public agency, or any person, firm, corporation, or other entity in performing its duties and exercising its powers under this article; to make and enter into all contracts, agreements, and other arrangements with mortgage lenders; to designate mortgage lenders to act for and in behalf of the department, with respect to originating, servicing, and processing mortgage loans of the department, under the terms and conditions agreed on between the parties; and to provide, contract, or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication;

(6) to do anything authorized by this article or by contracts with the federal government, the state, any public agency, or any person, firm, corporation, or other entity;

(7) to do all things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied by this article; ~~and~~

(8) to encourage homeless persons and persons of low and very low income to attend educational programs of the department and assist homeless persons and persons of low and very low income in attending the programs;

(9) to administer federal housing, community affairs, or community development programs, including the low income housing tax credit program; and

(10) to establish eligibility criteria for persons and families of low, very low, and moderate income to participate in and benefit from programs administered by the department.

SECTION 6. Subsection (a), Section 1.09, Article 4413(501), Revised Statutes, is amended to read as follows:

(a) The administrator and head of the department shall be known as the executive director and shall be a person qualified by training and experience to perform the duties of the office. The director shall be appointed by the Governor with the advice and consent of the Senate and shall serve at the pleasure of the Governor during the Governor's terms of office. The director shall receive a salary as provided by the Governor within authorized appropriations. The director, as head of the department, shall:

(1) administer the work of the department;

(2) appoint and remove ~~officers and other~~ personnel employed within the department ~~[subject to the annual budget and the provisions of any resolution authorizing the issuance of bonds under this article];~~

(3) submit through and with the approval of the Governor requests for appropriations and other moneys to operate the department;

(4) administer all moneys entrusted to the department;

(5) organize the work of the department consistent with this article and with sound organizational management designed to promote efficient and effective operation;

~~(6) administer all moneys and investments of the department subject to department indentures and contracts, Section 3.06 of this article, and an action of the board taken under Subdivision (4), Section 3.03, of this article [make an annual report to the Governor and the Legislature of the department's operations and provide such other reports as the Governor or the Legislature shall require]; and~~

(7) perform such other functions as may be prescribed by law or assigned by the Governor.

SECTION 7. Section 1.14, Article 4413(501), Revised Statutes, is amended to read as follows:

Sec. 1.14. OFFICES AND DIVISIONS. (a) There shall be established in the department:

(1) a community affairs division;

(2) a housing finance division; and

(3) any other *divisions* [~~division~~] established by the director to carry out the duties of the department.

(b) The duties of the housing finance division shall be kept separate and distinct from the duties of the community affairs division and any other division established in the department. The funds and revenues of the housing finance division shall be kept separate from the funds and revenues of the community affairs division and any other division, and the community affairs division or any other division may ~~not~~ use funds or revenues of the housing finance division *only to administer housing-related programs. The department is subject to the General Appropriations Act [for any purpose].* Except for legislative appropriations, *funds necessary for the operation of the housing finance division, and trustee-held funds of the department under a multifamily bond indenture,* all funds and revenue received by the housing finance division are to be kept outside the state treasury. Legislative appropriations to the housing finance division *and operating funds* are to be deposited in the state treasury. *Trustee-held funds of the department under a multifamily bond indenture are held by the trustee in accordance with the indenture.*

(c) [~~In the community affairs division, the director may establish such offices as are necessary to carry out the functions of the department relating to community affairs, and these functions shall include: intergovernmental cooperation, regional and community services, rural community services, research, economic opportunity, and education and training.~~]

[(d)] The director is authorized to assign functions and duties to the various offices and divisions, to provide for additional offices, and to reorganize the department when necessary to improve efficiency or effectiveness.

(d) [(e)] The director may enter into reciprocal agreements to loan or detail department employees to State agencies and instrumentalities and to local governments.

(e) [(f)] The department shall maintain suitable headquarters for the department and such other quarters as the director shall deem necessary to the proper functioning of the department.

SECTION 8. Subsection (a), Section 1.19, Article 4413(501), Revised Statutes, is amended to read as follows:

(a) The department shall operate on a fiscal year beginning September 1 and ending August 31. The department shall have an audit of its books and accounts for each fiscal year by the state auditor or by a certified public accountant. The cost of the audit is an expense of the department. A copy of the audit shall be filed with the governor and the legislature on or before ~~March~~ [January] 1 of each year, except if the audit is being made by the state auditor and is not available by ~~March~~ [January] 1, it shall be filed as soon as it is available. [~~Also, on or before January 1 of each year, the department shall prepare a report of its activities for the preceding fiscal year for the governor and the legislature. The report shall set forth a complete operating and financial statement.~~]

SECTION 9. Subsection (a), Section 1.20, Article 4413(501), Revised Statutes, is amended to read as follows:

(a) The executive director, with the approval of the board, shall appoint an internal auditor who reports directly to the board *and serves at the pleasure of the board* [~~on housing finance matters and on community affairs division matters or any other division matters~~].

SECTION 10. Section 1.21, Article 4413(501), Revised Statutes, is amended to read as follows:

Sec. 1.21. [OUTSIDE] LEGAL COUNSEL. (a) The department shall follow the requirements for hiring outside legal counsel that are set out in the General Appropriations Act or in other law. Before the department requests approval to hire outside legal counsel from the attorney general, the department must obtain and evaluate information regarding the affirmative action policies and practices of proposed legal counsel. The evaluation must be included by the department in any request made to the attorney general for outside legal counsel.

(b) *The department may hire its own in-house legal counsel. The director shall prescribe the duties of legal counsel hired by the department.*

SECTION 11. Article 4413(501), Revised Statutes, is amended by adding Sections 1.23 through 1.28 to read as follows:

Sec. 1.23. STATE LOW INCOME HOUSING PLAN. (a) Not later than 100 days following the close of the fiscal year, the executive director shall prepare and submit to the board an integrated state low income housing plan for the upcoming year.

(b) Not later than the 30th day after the date the board receives the plan, the board shall submit the plan to the governor and legislature.

(c) The state low income housing plan must include:

(1) an estimate and analysis of the housing needs of the following populations in the state:

(A) persons and families of moderate, low, and very low income;

(B) persons with special needs; and

(C) the homeless;

(2) an annual plan for the use of all available housing resources to address the housing needs of the populations described by Subdivision (1) by establishing funding levels for all housing-related programs;

(3) an estimate of the number of federally assisted housing units available for persons and families of low and very low income and persons with special needs in each uniform state service region of the state;

(4) a program resource allocation plan and state rules and policies that govern the use of all available housing resources and target those resources to families of low and very low income and persons with special needs;

(5) a report on the department's:

(A) monitoring of and recommendations for further analysis by the department of the unused or underused federal resources of other state agencies for the provision of housing-related services and services for the homeless; and

(B) recommendations regarding the use of federal resources by other state agencies for those services to ensure full use by the state of all available federal resources for those services; and

(6) strategies to provide housing for persons and families with special needs.

Sec. 1.24. ANNUAL REPORT. (a) Not later than 100 days following the close of the fiscal year, the executive director shall prepare and submit to the board an annual report of the department's activities for the preceding fiscal year.

(b) Not later than the 30th day after the date the board receives the report, the board shall submit the report to the governor and legislature.

(c) The report must contain:

(1) a complete operating and financial statement of the department;

(2) a comprehensive statement of the activities of the department over the preceding 12-month period in addressing the needs identified in the state low income housing plan, including:

(A) a statistical and narrative analysis of the department's performance in addressing the housing needs of persons and families of low and very low income;

(B) the ethnic and racial composition of families and individuals applying for and receiving assistance from each housing-related program operated by the department; and

(C) the department's progress in meeting the goals established in the previous housing plan;

(3) an explanation of the efforts made by the department to ensure the participation of persons of low income and their community-based institutions in every aspect of department programs that affect them;

(4) evidence that the department has made an affirmative effort in the allocation of funds and the planning process to ensure the involvement of persons of low income and their community-based institutions;

(5) a statistical report delineated according to each ethnic and racial group served by the department that indicates the progress made by the department in implementing the state low income housing plan in each of the uniform state service regions; and

(6) a report on fair housing opportunities in each housing development that receives financial assistance from the department that includes the following information for each housing development that contains 20 or more living units:

(A) the street address and city or county where the property is located;

(B) the total number of units broken down by bedroom size;

(C) the total number of units designed for persons who are physically challenged or who have special needs and the number of such tenants served annually as reported by each housing sponsor;

(D) a statistical analysis of average rents reported by region as defined in the comprehensive housing affordability strategy;

(E) the race or ethnic makeup of each project as reported annually by each housing sponsor;

(F) the number of units occupied by tenants receiving government-supported housing assistance as reported by each housing sponsor;

(G) whether the department has been notified of a violation of the fair housing law that has been filed with the United States Department of Housing and Urban Development, the Commission on Human Rights, or the United States Department of Justice;

(H) whether the development has any instances of material noncompliance with bond indentures or deed restrictions discovered through the normal monitoring activities and procedures which include meeting occupancy requirements or rent restrictions imposed by deed restriction or financing agreements.

Sec. 1.25. PREPARATION OF PLAN AND REPORT. *In preparing the state low income housing plan and report under Sections 1.23 and 1.24 of this article, the director shall:*

(1) coordinate local, state, and federal housing resources, including tax exempt housing bond financing and low income housing tax credits;

(2) prioritize the available housing resources to those persons who are most in need;

(3) evaluate the success of publicly supported housing programs;

(4) survey and identify the unmet housing needs of persons the department is required to assist;

(5) ensure that housing programs benefit a person regardless of the person's race, ethnicity, sex, or national origin;

(6) develop housing opportunities for persons of low and very low income and persons with special housing needs;

(7) develop housing programs through an open, fair, and public process;

(8) prioritize assistance in a manner that is appropriate and consistent with the housing needs of the populations described by Section 1.23(c)(1) of this article; and

(9) incorporate the director's recommendations that must be consistent with the comprehensive housing affordability strategy and performance report submitted annually by the state to the United States Department of Housing and Urban Development.

Sec. 1.26. PUBLIC HEARINGS. (a) *Before the director submits the state low income housing plan and annual report to the board under Sections 1.23 and 1.24 of this article, the department shall hold a public hearing on the plan and annual report.*

(b) *The board shall hold a public hearing on the state low income housing plan before the board submits the plan to the governor and legislature under Section 1.23 of this article.*

(c) *The board shall include with the plan the board submits to the governor and legislature under Section 1.23 of this article a written report of public comments on the plan.*

Sec. 1.27. INSURANCE. *The board may purchase from department funds liability insurance for the coverage of the director and board members and officers in amounts the board considers reasonably necessary to insure against reasonably foreseeable liabilities and to provide for all costs of defending against those liabilities, including court costs and attorney fees.*

Sec. 1.28. TEXAS HOUSING CORPORATION. (a) *The Texas Housing Corporation on behalf of the state shall carry out the public purposes of this article. The creation of the corporation does not limit or impair the rights, powers, and duties of the department provided by this article. The corporate existence of the Texas Housing Corporation, or any similarly named corporation, begins on the issuance of a certificate of incorporation by the secretary of state. The members of the board serve as the board of directors of the corporation. The corporation has the powers and is subject to the limitations provided for the department by this article in carrying out the public purposes of this article. The corporation has the rights and powers of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396–1.01 et seq., Vernon’s Texas Civil Statutes) except to the extent inconsistent with this section. The corporation may contract with the department and with bond counsel, financial advisors, or underwriters as its board of directors considers necessary.*

(b) *The corporation may engage exclusively in the performance of charitable functions and is exempt from all taxation by this state or a municipality or other political subdivision of this state.*

(c) *The corporation is a nonprofit corporation, and no part of its net earnings remaining after payment of its expenses may inure to any individual, firm, or corporation, except that if the corporation’s board of directors determines that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation, the additional net earnings of the corporation shall be deposited to the credit of the general revenue fund for the benefit of the department.*

(d) *At any time the corporation’s board of directors by written resolution may alter the structure, organization, programs, or activities of the corporation or terminate and dissolve the corporation, subject only to any limitation provided by the law of the state on the impairment of contracts of the corporation and this section.*

(e) *If the corporation’s board of directors by resolution determines that the purposes for which the corporation was formed have been substantially complied with and that all bonds issued by the corporation have been fully paid, the corporation’s board of directors shall dissolve the corporation. On dissolution, the title to funds and properties then owned by the corporation shall be transferred to the department.*

(f) *The Texas Housing Corporation, and any other corporation whose charter specifically dedicates the corporation’s activities to the benefit of the department, shall file with the department an annual report of the financial activity of the corporation. The annual report shall be filed prior to the 90th day after the last day for the corporation’s fiscal year and shall be prepared in accordance with generally accepted accounting principles. The report must include a statement of support, revenue, and expenses and change in fund balances, a statement of functional expenses, and balance sheets for all funds.*

SECTION 12. Subsection (a), Section 2.01, Article 4413(501), Revised Statutes, is amended to read as follows:

(a) The department shall, through the community affairs division or any other division, and in addition to other powers and duties invested in it by this article or by any other law:

- (1) maintain communications with local governments and serve as their advocate at the State and federal levels;
- (2) assist local governments with advisory and technical services;
- (3) provide financial aid to local governments and combinations of local governments for programs which are authorized such assistance;

- (4) act as an information center and referral agency for information on State and federal services and programs affecting local government;
- (5) administer, conduct, or jointly sponsor educational and training programs for local government officials;
- (6) conduct research on problems of general concern to local governments;
- (7) collect, publish, and disseminate information useful to local government including, but not limited to, data on local governmental finances and employment, housing, population characteristics, and land use patterns;
- (8) encourage cooperative action by local governments where appropriate;
- (9) advise and inform the Governor and the Legislature concerning the affairs of local government and make recommendations for necessary action;
- (10) assist the Governor in the coordination of federal and State activities affecting local governments;
- (11) administer, as appropriate, State responsibilities for programs created under the Federal Economic Opportunity Act of 1964, any programs which may be assigned to the department in accordance with the Omnibus Budget Reconciliation Act of 1981, and other federal acts creating economic opportunity programs assigned to the department;
- (12) promulgate and adopt such rules and regulations as may be necessary and proper to carry out programs and responsibilities assigned by the Legislature or the Governor;
- (13) perform any other duties concerning local government which may be assigned by the Legislature or the Governor.

SECTION 13. Section 2.02, Article 4413(501), Revised Statutes, is amended to read as follows:

Sec. 2.02. SPECIAL ADVISORY COUNCILS. The Governor *or director* may, ~~[with the advice of the director,]~~ from time to time, appoint ~~[other]~~ special advisory councils to assist the *department* ~~[board]~~ in basic policy formulation ~~[for the community affairs division]~~ or to advise on technical aspects of certain programs ~~[the community affairs division may administer]~~. Special advisory councils are dissolved automatically on completion of the council's stated purpose unless continued by order of the Governor *or director*.

SECTION 14. Section 2.03, Article 4413(501), Revised Statutes, is amended to read as follows:

Sec. 2.03. TRANSFERS FROM GOVERNOR. The Governor is authorized to transfer personnel, equipment, records, obligations, appropriations, functions, and duties of ~~[the Division of State-Local Relations and of other]~~ appropriate divisions of the Governor's office to the community affairs division *or any other division*.

SECTION 15. Section 2.05, Article 4413(501), Revised Statutes, is amended to read as follows:

Sec. 2.05. ENERGY SERVICES PROGRAM FOR LOW-INCOME PEOPLE. There is created within the community affairs division an office, to operate in conjunction with the community *services* ~~[service]~~ block grant program, to be known as the Energy Services Program for Low-Income People having jurisdiction and responsibility for administration of the following elements of the State Low-Income Energy Assistance Program:

- (1) the Energy Crisis Intervention Program, from whatever sources funded; ~~[and]~~
- (2) the weatherization program, from whatever sources funded; *and*
- (3) *the Home Energy Assistance Program, from whatever sources funded.*

SECTION 16. Section 2.06, Article 4413(501), Revised Statutes, is amended to read as follows:

Sec. 2.06. ADMINISTRATION OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM. The department~~[- through the community affairs division,]~~ shall, under the federal Omnibus Budget Reconciliation Act of 1981 (Pub.L. No. 97-35) and 24 CFR, Part 570, Subpart I, administer the state's allocation of federal funds provided under the community development block grant nonentitlement program authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.).

SECTION 17. Section 2.08, Article 4413(501), Revised Statutes, is amended to read as follows:

Sec. 2.08. ALLOCATION SHARING. The department may enter into interagency agreements with the Texas Department of Commerce to *reimburse the Texas Department of Commerce for providing on behalf of the department marketing and underwriting services on the portion of the federal funds allocated by the department for economic development activities. The department shall allocate [transfer] not more than 20 percent of the federal funds received by the department to the Texas Department of Commerce to be used for economic development activities. [The federal funds transferred to the Texas Department of Commerce include the amount of federal funds to be used for administrative expenses in accordance with federal law. Any income generated from the economic development programs of the Texas Department of Commerce remain with that agency.]* The activities undertaken by [use of funds transferred to] the Texas Department of Commerce under this section must be approved by the department[, and all rules of the Texas Department of Commerce relating to the funds transferred under this section must be approved by the department].

SECTION 18. Subsection (b), Section 3.01, Article 4413(501), Revised Statutes, is amended to read as follows:

(b) *The department, through the housing finance division or any other division established by the director, shall administer the federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12704 et seq.). The housing finance division shall adopt a goal to apply a minimum of 25 percent of the division's total housing funds to provide housing assistance for persons and families of very low income.*

SECTION 19. Section 3.10, Article 4413(501), Revised Statutes, is amended to read as follows:

Sec. 3.10. AREA MEDIAN INCOME AND FEDERAL POVERTY LINE. (a) The department may determine the median income of a person or family for an area by using any source or methodology acceptable under federal law or rule.

(b) *The department shall use the applicable federal poverty line in determining eligibility for each federal or state program administered by the department that requires poverty instead of area median income to be used as a criterion of program eligibility.*

SECTION 20. Subsections (c) and (d), Section 3.17, Article 4413(501), Revised Statutes, is amended to read as follows:

(c) ~~The department [housing finance division]~~ may use money from the housing trust fund, [or] unencumbered fund balances, appropriations, allocations, grants, gifts, or donations from the State of Texas, the federal government, or any source, public or private, to purchase property under this section. The division may not use more than 10 percent of the yearly balance of the housing trust fund to acquire real property.

(d) If property has been acquired by the department under this section, the ~~department [housing finance division]~~ shall have an independent audit conducted annually to analyze the financial stability of the property ownership program, the cost-effectiveness of the program, and the effectiveness of the program in serving persons of low and very low income.

SECTION 21. Sections 1.08 and 2.04, and Subsection (c), Section 3.13, Article 4413(501), Revised Statutes, are repealed.

SECTION 22. The executive director of the Texas Department of Housing and Community Affairs shall submit the initial report and state low income housing plan required under Sections 1.23 and 1.24, Article 4413(501), Revised Statutes, as added by this Act, no later than December 1, 1994.

SECTION 23. This Act takes effect September 1, 1993.

SECTION 24. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 10, 1993, by a viva-voce vote; passed the House on May 26, 1993, by a non-record vote.

Ch. 725, § 24

Approved June 16, 1993.

Effective Sept. 1, 1993.