

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

Dewitt C. Greer State Highway Building
Ric Williamson Hearing Room
125 E. 11th Street
Austin, Texas

January 16, 2020
9:00 a.m.

MEMBERS:

LESLIE BINGHAM ESCAREÑO, Vice Chair
PAUL A. BRADEN, Member
SHARON THOMASON, Member
LEO VASQUEZ, Member

BOBBY WILKINSON, Executive Director

ON THE RECORD REPORTING
(512) 450-0342

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PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS
 FOR WHICH THERE WERE POSTED AGENDA ITEMS none

EXECUTIVE SESSION none

OPEN SESSION --

ADJOURN 35

P R O C E E D I N G S

1
2 MS. BINGHAM ESCAREÑO: Good morning. Welcome to
3 the January meeting of the Texas Department of Housing and
4 Community Affairs.

5 I'm Leslie Bingham, and I will be your host for
6 today. Nice to see all of you. Happy New Year.

7 Let's do roll call first. Paul Braden?

8 MR. BRADEN: Here.

9 MS. BINGHAM ESCAREÑO: Sharon Thomason?

10 MS. THOMASON: Here.

11 MS. BINGHAM ESCAREÑO: Leo Vasquez?

12 MR. VASQUEZ: Here.

13 MS. BINGHAM ESCAREÑO: And I'm here. That makes
14 four of us, so we do have quorum to do business.

15 Shall we get started with the pledge?

16 (The Pledge of Allegiance and the Texas
17 Allegiance were recited.)

18 MS. BINGHAM ESCAREÑO: Has everybody had a
19 chance to look at the consent agenda, and does anyone
20 recommend pulling, tabling or moving an item to action
21 items?

22 (No response.)

23 MS. BINGHAM ESCAREÑO: If not, we'll entertain a
24 motion.

25 MS. THOMASON: I move to approve the consent

1 agenda.

2 MS. BINGHAM ESCAREÑO: Ms. Thomason moves.

3 MR. BRADEN: Second.

4 MS. BINGHAM ESCAREÑO: Mr. Braden seconds.

5 Any further discussion?

6 (No response.)

7 MS. BINGHAM ESCAREÑO: All those in favor, aye.

8 (A chorus of ayes.)

9 MS. BINGHAM ESCAREÑO: Opposed, same sign.

10 (No response.)

11 MS. BINGHAM ESCAREÑO: Motion carries.

12 Item number 3. Michael. Good morning.

13 MR. DeYOUNG: Good morning. It's been a while
14 since you've seen me. Michael DeYoung, Community Affairs
15 Division director.

16 Item 3 requests approval of a modification to
17 our 2020 CSBG plan in order to address a need within the
18 network of eligible entities. You'll remember we have 40
19 eligible entities that we grant fund to though the CSBG
20 grant. Staff is requesting to reprogram approximately
21 \$400,000 of our discretionary funds to provide specific
22 financial training.

23 I'll go back in background for you. In July we
24 came to you with the CSBG plan. We get about \$34 million
25 annually. Ninety percent of those funds go to the eligible

1 entities. Those 40 entities work across the state and
2 cover all 254 counties. The remaining 10 percent is split
3 in half, 5 percent for state admin and the other 5 percent
4 for discretionary activities.

5 In the past we've used discretionary funds for a
6 series of activities. You'll recall some of them are some
7 direct client assistance, migrant seasonal farm worker
8 initiatives, network operational investments, we've done
9 some disaster relief funding, there's also some funds spent
10 on staff to be able to do training at those eligible
11 entities.

12 Since that time, staff has received the results
13 of the American Community Satisfaction Survey, which
14 surveys all the eligible entities and asks them how we do
15 as an entity.

16 One of the things that was highlighted in the
17 survey, this most recent survey which came out just a few
18 months ago, was that they requested more training on cost
19 allocation plans within their organizations.

20 That also lines up with what our monitoring
21 group is seeing when they go out to these community action
22 agencies. So what we're proposing is to take some of the
23 funds that end up from each pot not being fully utilized
24 and some unobligated funds and rolling those together so we
25 can provide some third-party training on cost allocation

1 plans.

2 I don't know exactly how this will line up.
3 We'll do an RFP, we'll ask for the consultant to give us an
4 idea of what the best way to do this, and the goal would be
5 that we provide over the next two years each of the
6 eligible entities personalized training for cost
7 allocation, if they desire that training.

8 Staff anticipates that this would begin -- with
9 your approval, hopefully -- quickly, we'll do an RFP and
10 hopefully before too far into the summer we would begin
11 with the first training starting across the State of Texas,
12 and that would continue over the next year, year and a
13 half.

14 We do have some unobligated balances that are
15 already available, and then as we go through the year and
16 we see any balances that remain, we'll move those balances
17 over to assist with this contract, with your approval.

18 MS. BINGHAM ESCAREÑO: Does anybody have any
19 questions for Michael?

20 (No response.)

21 MS. BINGHAM ESCAREÑO: So of the 5 percent, how
22 much of the 5 percent do you think goes into those new
23 plans?

24 MR. DeYOUNG: So when we came to you in July
25 with the CSBG plan, we showed the figure as \$1.6 million in

1 CSBG discretionary. With what our anticipated funding is,
2 it's really \$1.7- now that we're getting closer to a true
3 budget figure.

4 From the plan that we presented to you, there's
5 about \$300,000 already unobligated, so this is asking for
6 us to be able to grab that \$100,000 of the seven or eight
7 pots that we have. If they're not used, we would pull
8 those dollars into this contract.

9 I don't know if this would be a \$400,000
10 contract, it could be a \$200,000 contract. We want to go
11 out for the RFP first and figure out how much we're going
12 to spend. If it goes higher than \$300,000 -- the approval
13 is for that -- should we be able to find unused balances,
14 we would pull those back into this contract and utilize
15 them for the network.

16 These entities have had a contract with TDHCA,
17 many of them, for 35-40 years. We've been working with
18 these eligible entities and they get funding annually
19 through the CSBG grant.

20 Many of them also get our LIHEAP contracts as
21 well. LIHEAP, you'll remember, is about \$170 million a
22 year. So we have a lot of dollars flowing into these
23 entities. It's in our interest to see them get their cost
24 allocation plans in alignment and actually execute them.

25 MS. BINGHAM ESCAREÑO: I'll entertain a motion.

1 MR. BRADEN: Move to approve.
2 MS. BINGHAM ESCAREÑO: Mr. Braden moves.
3 MS. THOMASON: Second.
4 MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.
5 No further discussion. All those in favor, aye.
6 (A chorus of ayes.)
7 MS. BINGHAM ESCAREÑO: Opposed?
8 (No response.)
9 MS. BINGHAM ESCAREÑO: Motion carries.
10 MR. DeYOUNG: Thank you very much.
11 MS. BINGHAM ESCAREÑO: Thank you.
12 Item 4, Brooke. Good morning.
13 MS. BOSTON: Good morning.
14 I'm Brooke Boston. I'm presenting item 4 to
15 you.

16 The item is requesting that you authorize staff
17 to submit an application to HUD in response to a notice of
18 funding availability, or NOFA, for their Fair Housing
19 Initiative Program, specifically the Education and Outreach
20 Initiative. The action item also includes, if we apply and
21 are awarded, those funds that we're allowed to operate the
22 program.

23 On December 19, 2019, HUD released a NOFA for
24 their Fair Housing Initiative Program, specifically for
25 education and outreach. The funds are made available so

1 that applicants, which include state agencies, can develop,
2 implement, carry out and coordinate education and outreach
3 programs.

4 Essentially, the funds allow agencies to develop
5 or bolster their capacity to educate members of the public
6 about fair housing rights and responsibilities.

7 HUD has made available \$7.5 million. Applicants
8 may request up to a million, however, most applicants are
9 expected to apply for much lower amounts. Staff estimates
10 that we think we would apply for \$200- to \$300,000.

11 As you know, the Department just wrapped up its
12 2019 analysis to impediments of fair housing choice which
13 included recommendations on expanding outreach and
14 training. These funds would help support that effort. We
15 do have a fair housing data management and reporting unit
16 at the Department that has the appropriate expertise and
17 partnerships and systems in place to operate the grant if
18 it were awarded.

19 Our NOFA submission to HUD would propose the
20 funds be used in two primary ways. The first would be
21 expanding our training efforts to increase the number of
22 attendees and registrants that we have participate in our
23 Fair Housing Month webinars, to offer the webinars and
24 other similar webinars at other times throughout the year,
25 and then to offer training in other formats across the

1 state.

2 The second would be to produce some fair housing
3 materials that are specific to the State of Texas and
4 TDHCA's programs that could be distributed by Department
5 staff when attending conferences and could also be provided
6 to local organizations who serve low income households.

7 One additional note for you. TDHCA has a very
8 close relationship with the Texas Workforce Commission who
9 oversees enforcement of the Fair Housing Act for the State
10 of Texas. When the properties involved are in our
11 portfolio, we share information and collaborate with the
12 Texas Workforce Commission as needed.

13 TWC has indicated interest in collaborating with
14 TDHCA on this grant application, with the likely effort
15 falling under the category of training in other formats
16 because they're interested in producing a guide or manual
17 to assist property owners.

18 If our executive director and counsel find that
19 their proposal is ultimately acceptable, we would include
20 that collaboration in our request to HUD, but we haven't
21 reached that point yet.

22 I'm happy to answer any questions you have.

23 MS. BINGHAM ESCAREÑO: Does anybody have any
24 questions for Brooke?

25 (No response.)

1 MS. BINGHAM ESCAREÑO: Motion?

2 MS. THOMASON: I make a motion to approve.

3 MS. BINGHAM ESCAREÑO: Mr. Braden moves
4 acceptance.

5 MR. VASQUEZ: Second.

6 MS. BINGHAM ESCAREÑO: Mr. Vasquez seconds.

7 If there's no further discussion, all those in
8 favor, aye.

9 (A chorus of ayes.)

10 MS. BINGHAM ESCAREÑO: Opposed, same sign.

11 (No response.)

12 MS. BINGHAM ESCAREÑO: Motion carries.

13 Thank you, Brooke.

14 Item 5, Raul.

15 MR. GONZALES: Good morning. My name is Raul
16 Gonzales, the director of OCI, HTF and NSP.

17 Today I'm presenting item 5, which is to amend
18 an NSP contract with a nonprofit developer, Citywide CDC,
19 who will be developing a 23-acre parcel of land in Dallas
20 County known as Kleberg Village.

21 Citywide CDC has requested to amend their NSP
22 contract in three ways, all of which staff has found to be
23 reasonable and which uphold the ability of the property to
24 be brought into what NSP calls final eligible use.

25 First, some brief background on the contract.

1 The Department originally executed an NSP contract in 2013
2 with a different nonprofit developer called Urban Progress
3 CDC to develop the Kleberg Village property with \$1.87
4 million in NSP funds.

5 Capacity and personnel issues prevented Urban
6 Progress from starting the project. In 2018, Urban
7 Progress, with consent from the Department assigned the NSP
8 contractor responsibility and ownership of Kleberg Village
9 to Citywide CDC.

10 Citywide CDC reassessed the feasibility of the
11 original plans for this tract of land and requested three
12 main modifications to the project scope and contract.

13 First, to modify the project from multifamily
14 units to single-family units. All future single-family
15 buyers at Kleberg Village shall earn less than 120 percent
16 area median income and will receive homebuyer assistance.
17 In addition, Citywide will transfer 12 acres of the parcel
18 to the City of Dallas for parkland and community center
19 which meet NSP national objectives.

20 The second modification is to increase NSP
21 funding by up to \$700,000 in the form of a non-amortizing
22 zero percent interest loan. Citywide will repay this loan
23 proportionally as it completes each unit.

24 The third and final modification to Citywide's
25 NSP contract is to waive an NSP requirement that at least

1 25 percent of the award be used to develop housing for
2 those earning less than 50 percent of the area median
3 income.

4 The federal requirement is not imposed on a per
5 project basis, just on TDHCA's overall NSP portfolio.
6 TDHCA has chosen to enforce this set-aside requirement on
7 this project but with some flexibility, if granted by the
8 Board.

9 Based on TDHCA's most recent NSP quarterly
10 report, the Department's entire portfolio has well exceeded
11 the 25 percent set-aside requirement with more than half of
12 the entire portfolio assisting households earning less than
13 50 percent.

14 The NSP program as a whole is already meeting
15 the federal requirements, so staff believes it is not
16 necessary to incorporate into Citywide CDC's project. All
17 households in this project will earn less than 120 percent
18 of the area median income, and the Department will still
19 require that six of the 48 units be available to households
20 earning less than 50 percent.

21 In summary, the three modifications of this
22 contract are to change the scope from multifamily to
23 single-family, to increase the original NSP award by up to
24 \$700,000, and to waive the NSP requirement that 25 percent
25 of the units be set aside.

1 A footnote regarding this developer: Last week
2 the Department was notified of a tax suit related to the
3 23-acre tract of land. Citywide CDC owes approximately
4 \$4,700 for 2018 taxes.

5 Staff recommends approval of the contract
6 modification but upon confirmation that all property taxes
7 to the Dallas County taxing entities have been received for
8 both 2018 and 2019. In the meantime, the Department has
9 referred this tax suit to the Office of the Attorney
10 General to reply and preserve the Department's land use
11 restriction agreement.

12 With that, I'm happy to answer any questions?

13 MS. BINGHAM ESCAREÑO: Do you have any
14 questions? Mr. Vasquez.

15 MR. VASQUEZ: A couple of questions. So the
16 \$700,000 is non-amortizing but is actually being paid
17 back --

18 MR. GONZALES: That's correct, yes, sir. As
19 each single-family unit is constructed and transferred over
20 to a household, that lien usually transfers over to the
21 household in the form of either a permanent loan or as a
22 homebuyer assistance loan.

23 MR. VASQUEZ: Okay. Great.

24 And then did you just say this will be
25 contingent on them paying the back taxes and the 2019

1 taxes?

2 MR. GONZALES: Right. The taxes that the suit
3 was filed for 2018, however 2019 taxes are also coming due
4 at the end of the month.

5 MR. VASQUEZ: Right, at the end of the month.

6 MR. GONZALES: So, yes, sir. No contract would
7 be executed until the Department receives confirmation.

8 MR. VASQUEZ: Okay. Does that include if they
9 in turn do a payment arrangement for the 2019 taxes?

10 MR. GONZALES: You know, that hasn't been
11 discussed but it's definitely something we would discuss
12 with the executive director and with them and entertain
13 that notion. In a conversation I had with the executive
14 director last night, their intent is to pay both taxes
15 within the next two to three weeks for 2018 and 2019.

16 MR. VASQUEZ: So 2019 doesn't seem to be a
17 problem.

18 MR. GONZALES: No, sir.

19 MR. VASQUEZ: Okay. Great. Thanks. That's it.

20 MR. BRADEN: So this is going from a multifamily
21 project to a single-family project.

22 MR. GONZALES: That's correct.

23 MR. BRADEN: Does our LURA envision that, or are
24 we going to have to amend the LURA?

25 MR. GONZALES: The LURA will be amended, as well

1 as the agreement. Yes, sir.

2 MR. BRADEN: And the money that we are providing
3 to them, that's not being used to make mortgage loans to
4 the people buying the houses?

5 MR. GONZALES: Well, it could be utilized for
6 that because any household that we assist at a 50 percent
7 or below AMFI is eligible for permanent financing from the
8 Department, so it could very well be used for the families
9 that are 50 percent or below.

10 MR. BRADEN: But wouldn't those families come to
11 us and get a mortgage through our program?

12 MR. GONZALES: Right, they would come through
13 us, however, that money is repayable. The money that's
14 been used for land acquisition on this project, along with
15 the \$700,000 is repayable back to the Department.

16 So what we normally do on those situations is
17 that at the time of closing with the homebuyer either the
18 current administrator will have us back those funds, and
19 then those funds are in turn used for permanent financing
20 or homebuyer assistance. If there's any residual funds or
21 funds that are left over, those funds are repaid back to
22 the Department that become program income.

23 MR. BRADEN: If the homebuyer doesn't get a
24 conventional mortgage, right? So let's say they still
25 qualify under the AMI standards and they get a conventional

1 mortgage so there's many strings attached to the money
2 they're getting in terms of income and things like that.
3 How do we police that, I mean, once they own their house
4 and then they sell it to somebody else?

5 MR. GONZALES: There's still an affordability
6 period because we will put in a second lien or a
7 subordinate lien on those and we will supply them and
8 provide them some homebuyer assistance money as well.

9 As long as they're 120 percent or below, we're
10 able to provide some homebuyer assistance on that to the
11 affordability period because that is a requirement of the
12 NSP program.

13 MR. BRADEN: Even if there's a subsequent
14 transfer of the property.

15 MR. GONZALES: Yes, sir, correct.

16 MR. BRADEN: And I guess that's part of the LURA
17 that's on the whole thing?

18 MR. GONZALES: Correct, yes, sir.

19 MS. BINGHAM ESCAREÑO: Any other questions for
20 Raul?

21 MR. WILKINSON: Raul, is this your last time
22 addressing the Board?

23 MR. GONZALES: It is my last time, yes, sir. I
24 will be retiring at the end of the month.

25 MR. BRADEN: Oh, my goodness. Pretty young.

1 MR. WILKINSON: Thank you for your service.

2 MR. GONZALES: Thank you, sir.

3 MS. BINGHAM ESCAREÑO: I mean, we could amend
4 the motion that you stay on to monitor this period.

5 MR. ECCLES: That would be perfectly legal.

6 (General laughter.)

7 MS. BINGHAM ESCAREÑO: Thank you very much for
8 your service.

9 Entertain a motion.

10 MR. BRADEN: I'll make a motion to adopt the
11 resolution presented.

12 MS. BINGHAM ESCAREÑO: Mr. Braden moves staff
13 recommendation.

14 Second?

15 MR. VASQUEZ: Second.

16 MS. BINGHAM ESCAREÑO: Mr. Vasquez seconds.

17 Any further discussion?

18 (No response.)

19 MS. BINGHAM ESCAREÑO: All those in favor, aye.

20 (A chorus of ayes.)

21 MS. BINGHAM ESCAREÑO: Opposed, same sign.

22 (No response.)

23 MS. BINGHAM ESCAREÑO: Motion carries. Thank
24 you.

25 Teresa, item 6.

1 And I didn't mention at the beginning, I think
2 we all know, but anybody that wants to speak on an item can
3 come up to the first couple of rows just so we know you're
4 here.

5 MS. MORALES: Teresa Morales, director of
6 Multifamily Bonds.

7 Item 6(a) involves the award of approximately
8 \$4-1/2 million in 4 percent housing tax credits associated
9 with 23 multifamily developments totaling just over 1,100
10 units. The first 22 applications listed under this item
11 are part of a portfolio of rural developments located
12 across the state that involve USDA financing.

13 I wanted to offer a minor correction to the
14 application ID number listed for the second application
15 from the bottom of this list. Windwood I & II should be
16 identified as application 20443, not 20423.

17 While the majority of applications funded
18 through the 4 percent housing tax credit program are
19 located in urban areas, combining a number of small rural
20 properties into a single bond issuance is a way to
21 reposition such properties that may not be competitive
22 under the 9 percent program or otherwise have access to
23 funds to make property improvements. Specific information
24 relating to each of these developments is included in your
25 package.

1 The last application listed under this item,
2 Austin Manor, is separate from the portfolio transaction
3 and proposes the new construction of 280 units in the
4 Austin ETJ.

5 Included in your materials is a 2019 4 percent
6 application log reflecting the status of those applications
7 that staff has processed throughout this year. Also
8 included in your materials is a 2020 application log that
9 reflects those applications that have been submitted for
10 2020.

11 Specifically, those applications noted as being
12 active on the 2020 log are those that were part of the 2020
13 private activity bond lottery that the Department received
14 on December 13. The number of applications that
15 participated in that lottery and the two regions, Regions 6
16 and 7, that became oversubscribed demonstrates what could
17 be a return of the competitive nature of private activity
18 bond volume cap.

19 Staff recommends approval that would allow for
20 determination notices associated with all 23 applications
21 to be issued in their respective amounts as noted in your
22 package.

23 MS. BINGHAM ESCAREÑO: Does anybody have any
24 questions for Teresa?

25 (No response.)

1 MS. BINGHAM ESCAREÑO: Anyone that wants to
2 speak?

3 (No response.)

4 MS. BINGHAM ESCAREÑO: Okay. Very good.

5 And the correction was the second to the last
6 one 20423 is 20443?

7 MS. MORALES: Yes.

8 MS. BINGHAM ESCAREÑO: Great.

9 MR. VASQUEZ: So is this final approval or is
10 this just notice?

11 MS. MORALES: It's final approval.

12 MR. VASQUEZ: Okay. Good.

13 MS. BINGHAM ESCAREÑO: I'll entertain a motion
14 on item 6(a).

15 MR. VASQUEZ: I move to approve the staff's
16 recommendation.

17 MS. BINGHAM ESCAREÑO: Mr. Vasquez moves.

18 Second?

19 MS. THOMASON: Second.

20 MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

21 Any further discussion?

22 (No response.)

23 MS. BINGHAM ESCAREÑO: All those in favor, aye.

24 (A chorus of ayes.)

25 MS. BINGHAM ESCAREÑO: Opposed, same sign.

1 (No response.)

2 MS. BINGHAM ESCAREÑO: Motion carries. Thank
3 you.

4 You don't look like Marni.

5 (General laughter.)

6 MS. BOSTON: I'm not. Marni is at a conference,
7 so I'm here presenting on Marni's behalf.

8 MS. BINGHAM ESCAREÑO: Item 6(b). Thank you,
9 Brooke.

10 MS. BOSTON: Thank you.

11 At the Board's meeting in November 2019, the
12 Board made a change to the 2020 QAP relating to the
13 definition of supportive housing. They adjusted the
14 portion of units that had to be supported by project-based
15 or operating subsidy from all or 100 percent to 25 percent.

16

17 Inadvertently, in the publication of the QAP in
18 the *Texas Register* that change was not included.

19 Unfortunately, because of the timing of the cycle, that did
20 not leave us time to go in and actually make that change in
21 formal rule.

22 So to make sure that the wishes of the Board are
23 implemented as needed, staff is recommending that a waiver
24 be provided to that applicable section that would apply to
25 any applicants applying as supportive housing.

1 So staff is recommending that the waiver be
2 adopted today. This is in the section of the QAP that's 10
3 TAC, Section 11.1(d)(122)(E)(ii), and that basically we
4 change the wording from all units to 25 percent of units so
5 that that section can be applied equitably to all
6 applicants. And I'm happy to answer any questions.

7 MR. VASQUEZ: So I assume this mistake was
8 Marni's fault. Is that what you're saying?

9 (General laughter.)

10 MS. BOSTON: No. It was just kind of a royal
11 staff mistake.

12 MR. VASQUEZ: How many people reviewed this
13 after all the discussion we did on this?

14 MS. BOSTON: Yes. It was just a mix-up.

15 MR. WILKINSON: So we will be implementing a new
16 process next go-round when we post the final version of the
17 QAP, with more than quadruple, quintuple checks, something
18 like that.

19 MS. BOSTON: We'll Google check it.

20 MR. BRADEN: Just to confirm, the correct
21 version was the one approved by the governor. Right?

22 MR. WILKINSON: I had this argument with my
23 lawyer, like that's the real QAP, doesn't matter what's in
24 the *Register*, but to avoid this kind of fight we're having,
25 you just waive it to make them match.

1 MR. BRADEN: I don't disagree with the lawyering
2 involved, but what went to the governor said a minimum of
3 25 percent?

4 MR. WILKINSON: Yes. The correct version was
5 sent to the governor and returned with that change intact
6 and unmoved, and then it was from that point that somehow
7 that version, that section was incorrectly posted to the
8 *Register*.

9 MR. BRADEN: Okay. I'm fine with it.

10 MS. BOSTON: Our apologies.

11 MR. BRADEN: Move to approve.

12 MS. THOMASON: Second.

13 MS. BINGHAM ESCAREÑO: Motion by Mr. Braden,
14 seconded by Ms. Thomason. All those in favor, aye.

15 (A chorus of ayes.)

16 MS. BINGHAM ESCAREÑO: Opposed, same sign.

17 (No response.)

18 MS. BINGHAM ESCAREÑO: Motion carries. Thank
19 you very much.

20 All right. Moving quickly along, item 7, Rules,
21 item (a).

22 MS. MURPHY: Good morning. Happy New Year.

23 MS. BINGHAM ESCAREÑO: Good morning, Patricia.

24 MS. MURPHY: Patricia Murphy, director of
25 Compliance.

1 Item 7(a) on your agenda is presentation,
2 discussion and possible action on a proposed repeal of the
3 Department's previous participation rule and a proposed new
4 rule.

5 Texas Government Code Chapter 2306.057 requires
6 a compliance assessment before Board approval of any
7 project application. This previous participation rule is
8 how we satisfy this requirement. Both the existing and
9 proposed rule classify an applicant's compliance history as
10 Category 1, 2 or 3.

11 Under the current rule, staff is required to
12 recommend denial of all applicants who are classified as a
13 Category 3 and then bring those disputes before this Board.

14 Under the proposed rule, only disputes where the applicant
15 is classified as a Category 3 and staff believes that the
16 compliance record should prevent them from getting another
17 award would come before this Board.

18 Although we're doing the rule as repeal and
19 replace, in your Board book it's shown as black line so you
20 can see what we're changing, and it looks like we're
21 changing a lot of stuff because there's a lot of strike-
22 throughs but the proposed rule uses approximately the same
23 method when evaluating an applicant's compliance history, a
24 lot of it is just streamlining things.

25 We released a staff draft of this rule and we

1 had a roundtable discussion about it on December 13 with
2 stakeholders, and people did not seem concerned with what
3 we're proposing. So with your approval, this will be
4 published in the *Texas Register* and out for comment January
5 31 through March 2.

6 MS. BINGHAM ESCAREÑO: Any questions from the
7 Board? No public comment, questions?

8 (No response.)

9 MS. BINGHAM ESCAREÑO: We'll entertain a motion.

10 MR. BRADEN: Move to approve.

11 MS. BINGHAM ESCAREÑO: Mr. Braden moves.

12 MR. VASQUEZ: Second.

13 MS. BINGHAM ESCAREÑO: Mr. Vasquez seconds.

14 All those in favor, aye.

15 (A chorus of ayes.)

16 MS. BINGHAM ESCAREÑO: Opposed, same sign.

17 (No response.)

18 MS. BINGHAM ESCAREÑO: Motion carries.

19 That takes us to item 7(b). Tom.

20 MR. GOURIS: Good morning, Madam Chair, Board
21 members. My name is Tom Gouris. I'm the director of
22 Special Initiatives for the Department, and I'm before you
23 today to recommend the repeal and adoption of the rules for
24 licensing migrant labor housing.

25 As previously reported to you, we've been

1 working on changes to help providers of migrant labor
2 housing to comply with the state law. To date our efforts
3 have resulted in nearly a sevenfold increase in the number
4 of facilities that are licensed.

5 Staff believes that the changes proposed in
6 these rules will clarify who is responsible for getting
7 licensed, it will eliminate the duplication of inspections
8 in many cases, and reduce the cost of licensure for many
9 employers using the H-2A visa program, thereby resulting in
10 even more facilities getting licensed.

11 We received formal public comment from seven
12 parties on eleven different topics and staff is
13 recommending changes to three of the areas that were part
14 of those comments, as well as a couple of administrative
15 clean-ups as suggested by the folks at *Texas Register*.

16 The biggest changes are somewhat related having
17 to do with the applicability section and the definition of
18 provider. Who is responsible for getting licensed has been
19 an issue of much concern both from an employer's
20 perspective and worker advocates' perspective.

21 The rule clarifies that we generally do not
22 require licensing by two different entities on the same
23 property for the same worker residence, and that could
24 happen that there's an owner of a property that leases
25 property to an employer or someone else and that person is

1 the provider. So what we're trying to do is eliminate the
2 duplicate -- the necessity for having two licenses.
3 Tongue-tied this morning.

4 (General laughter.)

5 MR. GOURIS: Let's see. We want to make sure
6 that everyone understands who is responsible for getting
7 licensed, and we think that the changes to the rules
8 clarify that.

9 We also want to make sure that workers who found
10 their own housing did not inadvertently fall into having to
11 be licensed for their personal housing because their
12 immediate family had three members or something like that,
13 so we wanted to clear some of those things up.

14 Before turning it over for questions and public
15 comment, I wanted to make the Board aware that the last
16 section of the proposed rules that we presented to you at
17 the Board meeting was inadvertently left out of the *Texas*
18 *Register* posting. It was Section 90.9.

19 The old rules only had 90.8 rules in it. We did
20 some numbering changes and when it was sent over, it was
21 sent over through .8 and not .9, so that last section was
22 something that was in the old rule, there weren't
23 significant changes to it being proposed.

24 We're going to go ahead and publish that this
25 month and so that one piece will come back to you for

1 adoption at a future meeting. But we don't think that's
2 going to have much of an impact because much of that
3 section has to do with dispute resolution, appeals and
4 hearings, and a lot of that is covered in other areas but
5 included in this rule for convenience sake, so we think
6 we're still covered, we just want to button it up in coming
7 months.

8 So with that, I will close, but I'm available
9 for any questions.

10 MS. BINGHAM ESCAREÑO: Any questions?

11 MR. VASQUEZ: Just more generally speaking, so
12 do you feel like we're getting more momentum built and
13 spreading the word?

14 MR. GOURIS: I definitely do. I mean, we've had
15 to reach out to folks over the last year and a half or so
16 to try to get folks aware and we have some more to do on
17 our relationship with TWC to make sure we can get
18 information more fluid there, but a lot of the employers
19 who get inspections are providing their inspections to us
20 from TWC.

21 We're getting the word out. Folks are
22 contacting us to participate in their conferences and such,
23 whereas, we've had to kind of search for them in the past,
24 so I think the word is really getting out.

25 There's a lot more work to do, but we're making

1 great progress. Like I said, we've gone from 40 licensees
2 to about 265, and hopefully by midyear we'll be closer to
3 400 with these rule changes.

4 MS. BINGHAM ESCAREÑO: Any other questions?

5 (No response.)

6 MS. BINGHAM ESCAREÑO: So the recommendation
7 from staff is to publish it in the *Register*?

8 MR. GOURIS: We will publish the adoption but
9 we're repealing the old rule finally and adopting the new
10 rule. The extra section is already approved to be
11 published so we're going to just go ahead and do that, and
12 then we'll bring that back for adoption only.

13 MS. BINGHAM ESCAREÑO: Okay. Very good.

14 Is there a motion?

15 MR. BRADEN: I'll make a motion to accept the
16 staff's recommendation to repeal the old rule and adopt the
17 new rule.

18 MS. BINGHAM ESCAREÑO: Very good. Motion to
19 accept staff's recommendation. Is there a second?

20 MS. THOMASON: Second.

21 MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

22 All those in favor, aye.

23 (A chorus of ayes.)

24 MS. BINGHAM ESCAREÑO: Opposed, same sign.

25 (No response.)

1 MS. BINGHAM ESCAREÑO: Motion carries.

2 Thank you, Tom, very much.

3 MR. GOURIS: Thank you.

4 MS. BINGHAM ESCAREÑO: All right. That
5 concludes all of the agenda items. That's not a record; I
6 think 28 minutes was the record, missed it by a little.

7 But we do have time for public comment. Anybody
8 that has any comment for future agenda items or anything
9 that's not on the agenda today?

10 (No response.)

11 MS. BINGHAM ESCAREÑO: Anything from staff?

12 MR. WILKINSON: I have a brief announcement.
13 It's been brought to our attention that due to some wording
14 changes, a feasibility report which previously was not
15 required for a rehab development is now required.

16 The way it was done, I believe the old language
17 said for construction and for reconstruction this is
18 required, and that part was struck, and then during all the
19 discussion of the QAP process it was never really said out
20 loud "and now this is required for rehabs."

21 And so actually people are putting their full
22 apps now, it was noticed. So I believe staff will be
23 bringing a waiver request to the February Board meeting to
24 waive some aspects of the feasibility report for a rehab
25 development. And any questions about that, you can feel

1 free to contact me.

2 MS. BINGHAM ESCAREÑO: So, Bobby, is that
3 something that's getting communicated right now? Does it
4 impact anything anybody is doing right this minute in terms
5 of pre-application?

6 MR. WILKINSON: Yes. I would think that if you
7 knew that we were bringing this waiver request to February,
8 you could expect, given if the Board agrees, that that
9 would give you some relief on things like a new survey for
10 a rehab and stuff like that that would cost money, you
11 could save that money and not spend it.

12 MS. BINGHAM ESCAREÑO: Great. Very good.
13 Anything else?

14 MR. WILKINSON: We'll also be sending out a
15 Listserv just for people that didn't happen to watch today.

16 MS. BINGHAM ESCAREÑO: Is there a motion to
17 adjourn?

18 MS. THOMASON: So moved.

19 MS. BINGHAM ESCAREÑO: Thomason moves.

20 Thank you guys very much. Happy New Year.

21 (Whereupon, at 9:36 a.m., the meeting was
22 adjourned.)

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C E R T I F I C A T E

MEETING OF: TDHCA Board meeting

LOCATION: Austin, Texas

DATE: January 16, 2020

I do hereby certify that the foregoing pages, numbers 1 through 3536, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

DATE: January 21, 2019

(Transcriber)

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