



Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
on August 26, 2002

Don Stouder, Chair

Jack Davis, Member

Clement "Pete" Moreno, Member

Joan Tavarez, Member

Cary Yates, Member

**Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting**

August 26, 2002

ROLL CALL

| | <u>Present</u> | <u>Absent</u> |
|-------------------------------|----------------|---------------|
| Don Stouder, Chair | _____ | _____ |
| Jack Davis, Member | _____ | _____ |
| Clement "Pete" Moreno, Member | _____ | _____ |
| Joan Tavarez, Member | _____ | _____ |
| Cary Yates, Member | _____ | _____ |
| Number Present | _____ | |
| Number Absent | | _____ |

_____, Presiding Officer

**MANUFACTURED HOUSING BOARD MEETING
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
507 Sabine, Room 437, Austin, Texas 78701
August 26, 2002 10:00 a.m.**

AGENDA

**CALL TO ORDER, ROLL CALL
CERTIFICATION OF QUORUM**

Don Stouder
Chair

The Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA) will meet to consider and possibly act upon:

ACTION ITEMS

- | | | |
|---------|---|-------------|
| Item 1. | Presentation, Discussion and Possible Approval of Minutes of Board Meeting of July 24, 2002. | Don Stouder |
| Item 2. | Presentation, Discussion and Possible Approval of the Manufactured Housing Division's proposed budget for fiscal year 2003. | Don Stouder |
| Item 3. | Presentation, Discussion and Possible Approval of publication for comment of proposed rule §80.136. | Don Stouder |

EXECUTIVE SESSION

Don Stouder

- | | |
|---------|--|
| Item 1. | Litigation and Anticipated Litigation (Potential or Threatened under Sec. 551.071 and 551.103, Texas Government Code Litigation Exception) |
| Item 2. | Personnel Matters under Sec. 551.074, Texas Government Code |

OPEN SESSION

Don Stouder

Action in Open Session on Items Discussed in Executive Session

ADJOURN

Don Stouder
Chair

To access this agenda or request information, please visit our website at www.tdhca.state.tx.us or contact Nancy Stone, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-2894, nstone@tdhca.state.tx.us.

Individuals who require auxiliary aids, services or translators for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Agenda Action Item No. 1

MINUTES OF THE BOARD OF DIRECTORS

DIVISION OF MANUFACTURED HOUSING

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

On Wednesday, July 24, 2002, at 9:58 a.m., a duly called meeting of the Board of Directors of the Division of Manufactured Housing (the "Division") was held in the fourth floor board room of the Texas Department of Housing and Community Affairs ("TDHCA"), 507 Sabine, Austin, Texas. Don Stouder presided, and Tim Irvine recorded the minutes. The following directors, constituting a quorum, were in attendance: Don Stouder, Joan Tavarez, and Clement "Pete" Moreno. Jack Davis and Cary Yates were absent. Bobbie Hill, Executive Director of the Division, was also present.

The following members of Division staff were present: Ed Cervenka, Sharon Choate, Joe Garcia, Jim Hicks, Tim Irvine, Barbara Landreth, Kassu Asfaw, and Jerry Schroeder. The following members of TDHCA were present: Bill Dally, David Gaines, Curtis Howe, and Michael Lyttle. The following members of the public were present: Jake Dyer, Kevin Jewell and Wade Long.

Chairman Stouder opened the meeting by asking if there were any general public comments. There being none, he asked if the directors had had an opportunity to review the minutes of the previous meeting, and they were duly approved as presented.

Jerry Schroeder presented to the Board staff recommendations regarding two administrative actions, one involving Payless Housing dba American Spirit and one involving Blue Sky. Detailed presentations are in the Board packages. Both recommendations were approved as presented.

Chairman Stouder thanked Jerry Schroeder, who is retiring next week, for his service to the Division.

Bill Dally presented a discussion of a draft budget for fiscal year 2003 and solicited comments and questions from directors, preparatory to presentation of approval in August.

Bill Dally presented a request for the Board to authorize the execution of an amended agreement with the TDHCA to share certain operating expenses and staff. The board unanimously approved authorizing and directing Bobbie Hill, the Executive Director, to finalize and execute such an agreement.

Tim Irvine presented for approval regulations to be adopted to implement the Texas Manufactured Housing Standards Act. After the motion was duly made and seconded there was an opportunity for discussion. Kevin Jewell, on behalf of Consumers Union, raised several points. He asked that the time for conducting inspections not be adopted and that language be adopted providing that a down payment cannot be taken until after a contract of sale has been executed. Although the rules under consideration did not contain any language differentiating between a manufactured home being

attached versus being affixed, he noted that the matter was discussed in the preamble and stated the view that any such action would be inconsistent with the legislative intent.

Chairman Stouder concluded discussion by thanking Mr. Jewell for his comments but stating that the rules were adopted as presented.

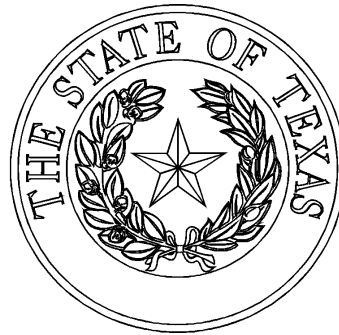
There being no further business to come before the Board, the meeting was adjourned at 10:47 a.m.

/s/ _____
Tim Irvine
Acting Secretary

Don Stouder
Chairman

Agenda Item No. 2

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MANUFACTURED HOUSING DIVISION**



FY-2003 DRAFT OPERATING BUDGET

(September 1, 2002 through August 31, 2003)

August 15, 2002

Prepared by the Financial Services Division

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MANUFACTURED HOUSING DIVISION
FY-2003 OPERATING BUDGET**

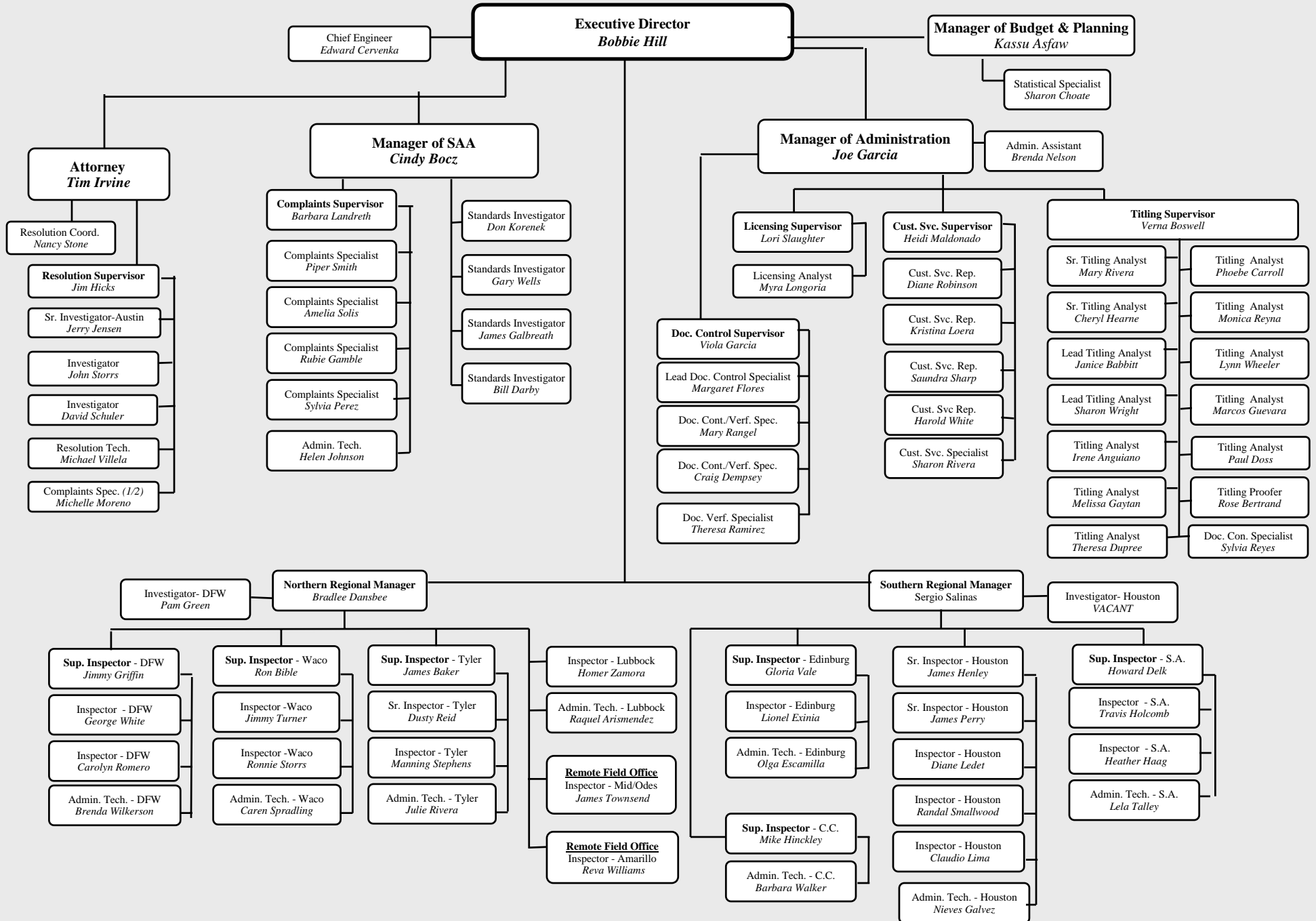
T A B L E O F C O N T E N T S

| | |
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Manufactured Housing Division

August 2002



Texas Department of Housing and Community Affairs
Historical Budget Analysis
Manufactured Housing Division

| | FY02 Budget (a) | FY03 Budget (b) | Variance (b-a) | Percentage Change |
|--|-----------------------|-----------------------|-------------------|----------------------|
| Salaries and Wages | 3,328,100 | 3,542,921 | 214,821 | 6.5% |
| Payroll Related Costs (Other Personnel Cost) | 392,486 | 428,094 | 35,608 | 9.1% |
| Professional Fees and Services | 247,000 | 434,000 | 187,000 | 75.7% |
| Material and Supplies (Consumable Supplies) | 85,471 | 73,554 | (11,917) | -13.9% |
| Communication and Utilities | 207,565 | 139,847 | (67,718) | -32.6% |
| Travel In-State | 221,324 | 282,000 | 60,676 | 27.4% |
| Travel Out-of-State | - | 2,000 | 2,000 | - |
| Rentals and Leases | 356,965 | 369,965 | 13,000 | 3.6% |
| Other Operating Expenses: | | | | |
| Repairs/Maintenance | 45,762 | 25,088 | (20,674) | -45.2% |
| Printing and Reproduction | 47,006 | 45,053 | (1,953) | -4.2% |
| Membership Fees | 1,000 | 1,000 | 0 | 0.0% |
| Registration Fees | 58,018 | 30,000 | (28,018) | -48.3% |
| Employee Tuition | 2,500 | 3,000 | 500 | 20.0% |
| Advertising | 3,000 | 1,500 | (1,500) | -50.0% |
| Freight/Delivery | 70,000 | 7,000 | (63,000) | -90.0% |
| Temporary Help | 117,456 | 22,647 | (94,809) | -80.7% |
| Furniture and Equipment | 12,550 | 15,700 | 3,150 | 25.1% |
| State Office of Risk Management | - | 67,284 | 67,284 | - |
| Office Renovation/Consolidation | 41,292 | - | (41,292) | -100.0% |
| Capital Outlay | 112,366 | 81,279 | (31,087) | -27.7% |
| Subtotal | 5,349,861 | 5,571,932 | 222,071 | 4.2% |
| Indirect Support | 623,449 | 570,661 | (52,788) | -8.5% |
| Total, Manufactured Housing | 5,973,310 | 6,142,593 | 169,283 | 2.8% |
| FTE's | 87.50 | 87.50 | 0.00 | - |
| Method of Finance: | | | | |
| General Revenue | 2,476,692 | 2,544,152 | 67,460 | 2.7% |
| Appropriated Receipts | 2,485,874 | 2,518,796 | 32,922 | 1.3% |
| Federal Funds | 1,010,744 | 1,079,645 | 68,901 | 6.8% |
| Total, Method of Finance | 5,973,310 | 6,142,593 | 169,283 | 2.8% |

Manufactured Housing
Administrative Support Schedule
Fiscal Year 2003

| | FTEs | Salaries | Payroll Related | Total |
|--|-------------|----------------|--------------------|----------------|
| Support: | | | | |
| Executive Office | | \$ - | \$ - | - |
| Legal Services | | - | - | - |
| Internal Audit | 0.30 | 18,671 | 4,108 | 22,779 |
| Governmental Communications | 0.50 | 27,466 | 6,043 | 33,509 |
| Human Resources | 1.00 | 48,694 | 10,713 | 59,407 |
| Facilities and Support | 1.00 | 39,820 | 8,760 | 48,580 |
| Information Systems | 2.85 | 154,066 | 33,895 | 187,961 |
| Financial Services: | | | | |
| Chief Financial Officer/Support Staff | 0.30 | 21,049 | 4,631 | 25,680 |
| Budget | 0.25 | 18,300 | 4,026 | 22,326 |
| Payroll | 0.25 | 11,637 | 2,560 | 14,197 |
| Accounting Manager | 0.30 | 21,960 | 4,831 | 26,791 |
| Travel | 0.35 | 15,017 | 3,304 | 18,321 |
| Payables | 0.30 | 13,961 | 3,072 | 17,033 |
| Program Accountant | 1.00 | 40,947 | 9,008 | 49,955 |
| Purchasing | 0.80 | 36,166 | 7,956 | 44,122 |
| Total Support, Manufactured Housing | 9.20 | 467,754 | 102,907 | 570,661 |

Manufactured Housing Division
 Operating Budget Allocation to Direct Strategies
 For FY 2003

| LBB OOE Code | Description | Expenditures | E.1.1. Titling & Licensing 16% | E.1.2. Installation Inspections 37% | E.1.3. Complaints Enforcement 47% | Total Budget Total |
|--------------------|--------------------------------|---------------------|---|--|--|--------------------------|
| 1001 | Salaries & Wages | \$ 3,542,921 | \$566,867 | \$1,310,881 | \$1,665,173 | \$3,542,921 |
| 1002 | Other Personnel Costs | 428,094 | \$68,495 | \$158,395 | \$201,204 | 428,094 |
| 2001 | Professional Fees and Services | 434,000 | \$69,440 | \$160,580 | \$203,980 | 434,000 |
| 2003 | Consumable Supplies | 73,554 | \$11,769 | \$27,215 | \$34,570 | 73,554 |
| 2004 | Utilities | 139,847 | \$22,376 | \$51,743 | \$65,728 | 139,847 |
| 2005 | Travel | 284,000 | \$45,440 | \$105,080 | \$133,480 | 284,000 |
| 2006 | Rent-Building | 318,000 | \$50,880 | \$117,660 | \$149,460 | 318,000 |
| 2007 | Rent-Machine and Other | 51,965 | \$8,314 | \$19,227 | \$24,424 | 51,965 |
| 2009 | Other Operating Expenses | 218,272 | \$34,924 | \$80,761 | \$102,588 | 218,272 |
| 5000 | Capital Outlay | 81,279 | \$13,005 | \$30,073 | \$38,201 | 81,279 |
| | | <u>\$ 5,571,932</u> | <u>\$ 891,509</u> | <u>\$ 2,061,615</u> | <u>\$ 2,618,808</u> | <u>\$ 5,571,932</u> |

FTE's 87.5

| Method of Finance: | 46% General Revenue | 35% Appropriated Receipts | 19% Federal Funds | Total Total |
|--------------------|---------------------------|---------------------------------|-------------------------|--------------------|
| Strategy One: | \$ 891,509 | \$407,241 | \$173,131 | \$891,509 |
| Strategy Two: | 2,061,615 | \$941,746 | \$400,365 | 2,061,615 |
| Strategy Three: | 2,618,808 | \$1,196,272 | \$508,572 | 2,618,808 |
| | <u>\$5,571,932</u> | <u>\$2,545,259</u> | <u>\$1,082,069</u> | <u>\$5,571,932</u> |

| Indirect Support: | F.1.1. | F.1.2. | F.1.3. | Total Budgeted |
|-----------------------------------|------------------|------------------|-----------------|-------------------|
| Central Administration | 296,744 | 296,744 | | 296,744 |
| Information Resource Technologies | | 182,612 | | 182,612 |
| Operating Support | | | 91,305 | 91,305 |
| | <u>\$296,744</u> | <u>\$296,744</u> | <u>\$91,305</u> | <u>\$ 570,661</u> |

| | | | | |
|-----------------------|-----------|-----------|----------|-----------|
| Method of Finance: | | | | |
| Appropriated Receipts | \$296,744 | \$296,744 | \$91,305 | \$570,661 |

Manufactured Housing Division
 Division Budget and Expense (FY 2002 Ending August 31, 2002)
 Expenses Reported thru July 2002

| | Annual Budget | YTD Expenses | Remaining Budget | YTD Variance (Under)/Over |
|--|------------------|------------------|---------------------|------------------------------|
| Salaries and Wages | 3,328,101 | 3,031,644 | 296,457 | (19,115) |
| Payroll Related Costs (Other Personnel Cost) | 392,485 | 360,184 | 32,301 | 406 |
| Professional Fees and Services | 247,275 | 427,454 | (180,179) | 200,785 |
| Material and Supplies (Consumable Supplies) | 62,996 | 91,003 | (28,007) | 33,257 |
| Communication and Utilities | 207,565 | 127,260 | 80,305 | (63,008) |
| Travel | 243,323 | 261,949 | (18,626) | 38,903 |
| Rentals and Leases | 358,065 | 371,667 | (13,602) | 43,441 |
| Other Operating Expenses: | | | | |
| Repairs/Maintenance | 21,651 | 5,573 | 16,078 | (14,274) |
| Printing and Reproduction | 47,557 | 40,332 | 7,225 | (3,262) |
| Membership Fees | 1,551 | 235 | 1,316 | (1,187) |
| Registration Fees | 66,070 | 19,829 | 46,241 | (40,735) |
| Employee Tuition | 2,500 | 263 | 2,238 | (2,029) |
| Advertising | 3,000 | 141 | 2,859 | (2,609) |
| Freight/Delivery | 71,651 | 7,340 | 64,311 | (58,340) |
| Temporary Help | 125,708 | 59,302 | 66,406 | (55,930) |
| Furniture and Equipment | 15,301 | 7,943 | 7,359 | (6,083) |
| Office Renovation/Consolidation | 41,292 | | 41,292 | (37,851) |
| Capital Outlay | 112,366 | 65,221 | 47,145 | 37,781 |
| Total, Manufactured Housing | 5,348,457 | 4,877,340 | 423,974 | 25,412 |

*Note: Last column variance takes annual budget divided by 12 multiplied by 11 less actual expenditures thru July.

Manufactured Housing Division
Revenue Summary and Projections
For FY 2002-03

| Comp Object | FEE TYPE | (b) | (C) | (c-b) Variance | % Change |
|----------------|----------------------------------|-----------------------|-------------------------|-------------------|-------------|
| | | FY 2002 Act/Est | FY 2003 Projected | | |
| 3158 | Training * | \$ 46,375.00 | \$ 92,750.00 | \$ 46,375.00 | 100% |
| 3159 | Titles | 4,006,635.00 | 4,006,635.00 | - | 0% |
| 3160 | Licenses * | 788,650.00 | 1,155,000.00 | 366,350.00 | 46% |
| 3161 | Inspections * | 823,430.00 | 949,430.00 | 126,000.00 | 15% |
| 3163 | Admin. Penalties | 130,264.00 | 150,000.00 | 19,736.00 | 15% |
| 3719 | Public Information | 8,000.00 | 8,000.00 | - | 0% |
| 3775 | Returned Check Charge | 1,300.00 | 1,300.00 | - | 0% |
| | Subtotal | \$ 5,804,654.00 | \$ 6,363,115.00 | \$ 558,461.00 | 10% |
| | Federal Funds: | | | | |
| 3767 | Floors Shipped | \$ 289,854.00 | \$ 247,788.00 | (42,066.00) | -15% |
| 3767 | Floors Produced | 98,705.00 | 78,595.00 | (20,110.00) | -20% |
| 3767 | Federal Inspection Reimbursement | 27,845.00 | 24,786.00 | (3,059.00) | -11% |
| | Subtotal | \$ 416,404.00 | \$ 351,169.00 | -\$ 65,235.00 | -16% |
| | Total | \$ 6,221,058.00 | \$ 6,714,284.00 | \$ 493,226.00 | 8% |

NOTE: * The assumptions for FY 2003 revenues use the actual # or quantity for FY 2002 times the new rates effective Sept., 2003 to project FY 2003 revenues. Title fees remain unchanged and we expect the same level of activity.

Agenda Item No. 3

Proposed Manufactured Housing New Rule

10 Texas Administrative Code, Chapter 80

§80.136 ***Homes Acquired on or after January 1, 2002***

- (a) When the a retail sale of a manufactured home occurs and that home will be treated as real property under §19A of the Standards Act:
 - (1) The closing of that sale must occur at either a title company authorized to do business in Texas, an attorneys' office, or an office of a federally insured depository institution, regardless of whether the sale is financed or is for cash and regardless of whether the manufactured home or the real property on which it will be located is or will be the homestead of the purchaser.
 - (2) It is the responsibility of the seller of the home to surrender the document of title or manufacturer's certificate of origin for cancellation in accordance with §19(l) of the Standards Act. If the document of title or manufacturer's certificate of origin has been delivered to a third party, such as an inventory lender or a title company, that third party must agree, in writing, to act as the retailer's agent and surrender such documents as required by §19(l) of the Standards Act and these rules.
 - (3) If §19(l) of the Standards Act requires a document of title or manufacturer's certificate of origin to be surrendered for cancellation, the surrender is to be effected not later than one calendar month, not to exceed thirty-one (31) days, from the date of the closing of the transaction that gave rise to the requirement of surrendering for cancellation.
 - (4) The installation must occur in a manner that satisfies either:
 - (A) the requirements for FHA Title I mortgage insurance;
 - (B) the requirements for FHA Title II mortgage insurance;
 - (C) the requirements of FHLMC for long term mortgages, or
 - (D) the requirements of FNMA for long term mortgages.
 - (5) The method or manner of installation must be supported by documentation establishing the particular requirement with which it complies and the basis on which it was concluded that such particular requirement and particular department standard were met, such as a report by:
 - (A) an FHA, FNMA, or FHLMC approved inspector;

- (B) an engineer, architect, real estate inspector, or appraiser licensed by the state of Texas; or
 - (C) an inspector employed by and inspecting for the state of Texas or a local government in Texas.
- (b) When a manufactured home is installed or re-installed, the licensed installer (or, in the case of a retail sale of a new home, the retailer) shall provide to the Department a statement as to the name of the legal owner(s) of the property on which such manufactured home is being installed.
- (c) Regardless of the manner in which ownership of a manufactured home is classified under the Property Code, whether as real property or as a chattel, if it is affixed or attached to real property that is owned by the same person who owns the manufactured home, then it is classified and taxed as an improvement to the real property. Any tax lien on such a manufactured home attaches to the real property on which it is located.

District Office:
201 West Ellison, Suite 201
Burleson, Texas 76028-4725
(817) 295-5158
(800) 515-1208



Capitol Office:
P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0538

State of Texas
House of Representatives

Arlene Wohlgemuth
Representative

August 6, 2002

Mr. Don Stouder, Presiding Officer
Division of Manufactured Housing
Texas Department of Housing & Community Affairs
PO Box 12489
Austin, TX 78711-2489

Dear Mr. Stouder:

Thank you for the opportunity to comment on the proposed language for rules on House Bill 1869. I suppose that I should not be surprised that the agency has continued to ignore the actual language of HB 1869 by proffering language that directly contradicts both the letter and spirit of the law. If additional rulemaking is indeed in order, I would suggest that such rulemaking not say the exact opposite of the law it purports to "clarify."

The clear intention of HB 1869, as I have said in as many ways as I know how, was to re-define manufactured housing as real property, with limited exceptions, and for the sale of that home to be conducted as a real estate transaction. I am not sure why the agency has decided to focus on whether a manufactured home is "permanently affixed" or "permanently attached." The only explanation I can fathom from the tortured logic of this language is that it is intended to subvert the intent of the law. It is not necessary for the agency to distinguish between "affixed" and "attached" since HB 1869 makes it clear that the only question is whether or not the land upon which the home is placed is owned by the consumer. If it is, it is real property. If it is not owned by the consumer, or it is placed in a rental community, it is personal property.

To put it in other terms, there is no legal basis for the agency to invent new law by passing the proposed rules. I have had a independent legal review conducted of these proposed rules. It clearly shows that the terms "affixed" and "attached" are used interchangeably not only in case law and dictionaries (including Black's Law Dictionary Fifth Edition), but also elsewhere in the Manufactured Housing Standard's Act itself. The ramifications and confusion that would result from creating such a distinction in one section of this Act should be seriously considered.

HB 1869 was signed into law a year ago. I believe that this legislation has been clarified. Please

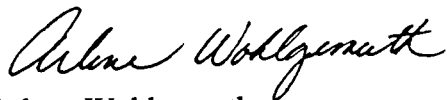
Stouder

August 6, 2002

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draft rules that conform to the language of HB 1869 and put an end to debate over a bill that passed both houses of the legislature, was signed into law by the governor, and is currently the law in Texas.

Sincerely,

A handwritten signature in cursive script that reads "Arlene Wohlgemuth". The signature is written in black ink and is positioned above the printed name.

Arlene Wohlgemuth

cc: The Honorable Rick Perry
Members, Division of Manufactured Housing
Ms. Bobbie Hill, TDHCA



DIVISION OF MANUFACTURED HOUSING

Rick Perry
GOVERNOR

Bobbie Hill
EXECUTIVE DIRECTOR

BOARD MEMBERS
Presiding Officer, Don Stouder
Jack Davis
Clement P. Moreno
Joan Tavarez
Cary Yates

August 13, 2002

The Honorable Arlene Wohlgemuth
Texas House of Representatives
P. O. Box 2910
Austin, TX 78768-2910

Dear Representative Wohlgemuth:

Thank you for your letter responding to my letter of July 12th and subsequent draft of a request to the Attorney General. Please be assured that the Board and staff of the Division of Manufactured Housing are trying to manage the rulemaking process after the enactment of HB 1869 in a manner that is fully consistent with the law. Your comments, as the bill sponsor, are invaluable, and we appreciate them.

In the process of promulgating the rules that have been adopted thus far we received extensive testimony, oral and written, including testimony from the industry, from consumer groups, and from other legislators. Although the majority of this testimony was really nothing more than views on the apparent effect of HB 1869, there were several very thoughtful comments, pro and con, on the issue of whether HB 1869 effectively foreclosed chattel lending on manufactured homes to be situated on the owner's property.

In light of the views you have expressed, the staff will proceed with any additional proposed rules in a manner consistent with your views. While I cannot speak for the entire board, I will be supportive of such rules and defer to the legislature on any revisiting of the intent and effect of HB 1869. I am certainly supportive of legislative efforts to enhance the collectibility of *ad valorem* taxes and bolster consumer protections.

Please do not hesitate to contact me if there is any aspect of these matters that you would like to discuss.

Sincerely,

/s/

Don Stouder
Presiding Officer

cc: Governor Perry
Senator Harris
Division of Manufactured Housing – Board of Directors
Bobbie Hill, Executive Director, Division of Manufactured Housing