

BILL ANALYSIS

C.S.H.B. 1632
By: Mercer
Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently the Low Income Housing Tax Credit program, administered by the Texas Department of Housing and Community Affairs (TDHCA) under Subchapter D, Chapter 2306, Government Code, has a number of areas that do not adequately address issues of financial feasibility and community support. Although intended by the legislature to ensure that state administered affordable housing programs emphasize both issues as cornerstones in the process of tax credit and tax exempt awards, these criteria lack sufficient statutory standing and are therefore subject to misinterpretation, excessive discretionary actions or circumvention. Additionally, as currently established, the statutes have allowed for the evolution of affordable housing programs in many areas of the state that are at risk, either from a standpoint of financial feasibility or because of unwarranted and unsupportable community influence.

This act is intended to ensure that inclusive, responsible and quantifiable community participation is a proportionate part of the planning, design, evaluation and award of affordable housing projects administered under the Low Income Housing Tax Credit program. It is also intended to ensure that the program adheres to the legislative intent of the affordable housing concept by establishing criteria that focus on the housing needs of those segments of the population that are not currently addressed in other housing assistance programs.

Considering the critical need for affordable housing throughout Texas, this act includes legislation that will make competition for tax credits and exemptions both equitable for all levels of applicant/developer participants as well as to restore the financial feasibility of projects. It is intended that the act will ensure investor confidence in the affordable housing industry in Texas and thus encourage even greater participation, resulting in an enhanced growth and financing availability.

Finally, it is the purpose of this act to restore public confidence in the application, evaluation, award and administration process directed by TDHCA through the statutory utilization of the State Office of Hearings and Administration in providing disinterested and binding arbitration procedures to all participants. Additionally public confidence will be enhanced by imposing Ex Parte procedures on application participants and department staff and board members.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Housing and Community Affairs in SECTION 1 of this bill in Section 2306.0661(f); in SECTION 2 in Section 2306.082; in SECTION 3 in Section 2306.111(c); in SECTION 4 in Section 2306.111(d - h); in Section 2306.1113 and in SECTION 7 in Section 2306.6710.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2306.0661, Government Code, by adding subsection (f) directing the department to adopt rules governing the topics that may be considered at a public hearing in relation to a proposed housing development.

SECTION 2. Amends Government Code by adding Section 2306.082, requiring that the department develop a policy for negotiated rulemaking and for an alternative dispute resolution process.

SECTION 3. Amends Section 2306.111(c), Government Code, by requiring the department to recognize as eligible applicants all community housing development organizations, for profit providers of affordable housing, and nonprofit providers of affordable housing – without preference as to taxpayer status - who apply under the Cranston-Gonzalez National Affordable Housing Act.

SECTION 4. Amends Section 2306.111(d - h), Government Code, by requiring the department to allocate housing funds based on the need for housing in each of the uniform state service region's urban, exurban, and rural areas. Conforming changes.

SECTION 5. Section 2306.1113 Ex Parte Communications adds Ex Parte restrictions onto department board members during the application process while allowing necessary but well documented and legitimate contact between applicants and appropriate TDHCA staff members. Conforming changes.

SECTION 6. Amends Section 2306.6702(10), Government Code, by deleting the requirement from the Qualified Application Plan that the department give greatest preference to developments that serve the lowest income tenants. Conforming changes.

SECTION 7. Amends Section 2306.6704, Government Code, by adding a new subsection (b) that requires tax credit applicants to notify certain entities in the pre-application phase of that program. Conforming changes.

SECTION 8. Amends Section 2306.6705, Government Code, by adding a new subsection (9) (A)-(E) that requires tax credit applicants to notify certain entities in the application phase of that program. Conforming changes.

SECTION 9. Amends Section 2306.6710(b), Government Code, by requiring the department to score and rank applications using a prescribed priority system. Adds Section 2306.6710(b)(3) to require the department to provide appropriate incentives through the qualified application plan to applicants who agree to equip the property with energy saving devices. Conforming changes. Amends Section 2306.6710(d), Government Code, by adding language requiring the department to underwrite an application solely in order to determine an appropriate level of tax credits by examining historical final cost certifications of all previous applications.

SECTION 10. Amends 2306.6711, Government Code, by requiring the department to not allocate more than \$2.0 million, rather than \$1.6 million, in tax credits to an applicant in a single tax credit round.

SECTION 11. Amends 2306.6717(b), Government Code, by requiring the department to make available on it's website all notices with regard to the tax credit program, including public hearings, applications, submitted applications, and applications approved for underwriting and recommended to the board, in addition to providing that information to a prescribed list of entities. Conforming changes.

SECTION 12. Repeals Section 2306.6725 and 2306.6732, Government Code.

SECTION 13. Provides that the changes in the law apply only to a proposed development for an application submitted on or after the effective date of this act.

SECTION 14. Effective date

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 1632 modifies the original by adding new public hearing requirements in new SECTION 1; by adding new negotiated rulemaking and alternative dispute resolution requirement in new SECTION 2; by adding a new federal program funding requirement in new SECTION 3; by requiring the department to allocate funds based on need by regions and within regions in a new SECTION 4; by requiring the department to apply Ex Parte procedures in new section 5; by deleting a requirement of the qualified allocation plan in a new SECTION 6; and by adding a new notification requirement of applicants in a new SECTION 7.

C.S.H.B. 1632 modifies the original SECTION 1 by adding a new notification requirement of applicants in a new SECTION 8, by reordering the prescribed priority system in new SECTION 9 and additionally modifies the original SECTION 1 by adding a requirement that the department provide incentives for the use of energy saving devices.

C.S.H.B. 1632 modifies the original by adding new language requiring the department to underwrite an application in a prescribed manner and by amending the level of tax credits that can be awarded to a single applicant in a new SECTION 10.

CSHB 1632 amends the amount of tax credit allocations in a new SECTION 11 and modifies the original SECTION 2 by adding for-profit organizations to the prescribed list of entities that must be notified by the department in a new SECTION 11.

C.S.H.B. 1632 modifies the original bill by adding a new repealer section in new SECTION 12.