

By: Mercer

H.B. No. 1632

Substitute the following for H.B. No. 1632:

By: Talton

C.S.H.B. No. 1632

A BILL TO BE ENTITLED

AN ACT

relating to the administration of the low income housing tax credit program by the Texas Department of Housing and Community Affairs and to other departmental functions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2306.0661, Government Code, is amended by adding Subsection (f) to read as follows:

(f) The board shall adopt rules governing the topics that may be considered at a public hearing. The rules must require the department to consider the following topics in relation to a proposed housing development:

(1) the developer's market study;

(2) the location;

(3) the compliance history of the developer;

(4) the financial feasibility;

(5) the appropriateness of the development's size and configuration in relation to the housing needs of the community in which the development is located;

(6) zoning and other land use considerations; and

(7) any other topics that the board by rule determines to be appropriate.

SECTION 2. Subchapter D, Chapter 2306, Government Code, is amended by adding Section 2306.082 to read as follows:

Sec. 2306.082. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE

1 RESOLUTION. (a) The department shall develop and implement a
2 policy to encourage the use of:

3 (1) negotiated rulemaking procedures under Chapter
4 2008 for the adoption of department rules; and

5 (2) appropriate alternative dispute resolution
6 procedures under Chapter 2009 to assist in the resolution of
7 internal and external disputes under the department's
8 jurisdiction.

9 (b) The department's procedures relating to alternative
10 dispute resolution must conform, to the extent possible, to any
11 model guidelines issued by the State Office of Administrative
12 Hearings for the use of alternative dispute resolution by state
13 agencies.

14 (c) The department shall designate a trained person to:

15 (1) coordinate the implementation of the policy
16 adopted under Subsection (a);

17 (2) serve as a resource for any training needed to
18 implement the procedures for negotiated rulemaking or alternative
19 dispute resolution; and

20 (3) collect data concerning the effectiveness of those
21 procedures, as implemented by the department.

22 SECTION 3. Section 2306.111, Government Code, is amended by
23 adding Subsections (c-1) and (c-2) to read as follows:

24 (c-1) The following entities are eligible to apply for
25 set-aside funds under Subsection (c):

26 (1) nonprofit providers of affordable housing,
27 including community housing development organizations; and

1 (2) for-profit providers of affordable housing.

2 (c-2) In allocating set-aside funds under Subsection (c),
3 the department may not give preference to nonprofit providers of
4 affordable housing, except as required by federal law.

5 SECTION 4. Sections 2306.111(d)-(g), Government Code, are
6 amended to read as follows:

7 (d) The department shall allocate housing funds provided to
8 the state under the Cranston-Gonzalez National Affordable Housing
9 Act (42 U.S.C. Section 12701 et seq.), housing trust funds
10 administered by the department under Sections 2306.201-2306.206,
11 and commitments issued under the federal low income housing tax
12 credit program administered by the department under Subchapter DD
13 to all urban, exurban, and rural areas of each uniform state service
14 region based on a formula developed by the department that is based
15 on the need for housing assistance and the availability of housing
16 resources in those urban, exurban, and rural areas, provided that
17 the allocations are consistent with applicable federal and state
18 requirements and limitations. The department shall use the
19 information contained in its annual state low income housing plan
20 and shall use other appropriate data to develop the formula. If the
21 department determines under the formula that an insufficient number
22 of eligible applications for assistance out of funds or credits
23 allocable under this subsection are submitted to the department
24 from a particular uniform state service region, the department
25 shall use the unused funds or credits allocated to that region for
26 all urban, exurban, and rural areas in other uniform state service
27 regions based on identified need and financial feasibility.

1 (e) The department shall include in its annual low income
2 housing plan under Section 2306.0721:

3 (1) the formula developed by the department under
4 Subsection (d); and

5 (2) the allocation targets established under the
6 formula for the urban, exurban, and rural areas of each uniform
7 state service region.

8 (f) The department shall include in its annual low income
9 housing report under Section 2306.072 the amounts of funds and
10 credits allocated to the urban, exurban, and rural areas of each
11 uniform state service region in the preceding year for each federal
12 and state program affected by the requirements of Subsection (d).

13 (g) For all urban, exurban, and rural areas of each uniform
14 state service region, the department shall establish funding
15 priorities to ensure that:

16 (1) funds are awarded to project applicants who are
17 best able to meet recognized needs for affordable housing, as
18 determined by ~~the~~ department rule;

19 (2) when practicable and when authorized under Section
20 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), the least
21 restrictive funding sources are used to serve the lowest income
22 residents; and

23 (3) funds are awarded based on a project applicant's
24 ability, when consistent with Section 42, Internal Revenue Code of
25 1986 (26 U.S.C. Section 42), practicable, and economically
26 feasible, to:

27 (A) provide the greatest number of quality

1 residential units;

2 (B) serve persons with the lowest percent area
3 median family income;

4 (C) extend the duration of the project to serve a
5 continuing public need;

6 (D) use other local funding sources to minimize
7 the amount of state subsidy needed to complete the project; and

8 (E) provide integrated, affordable housing for
9 individuals and families with different levels of income.

10 SECTION 5. Section 2306.1113, Government Code, is amended
11 to read as follows:

12 Sec. 2306.1113. EX PARTE COMMUNICATIONS. (a) During the
13 period beginning on the date a project application is filed and
14 ending on the date the board makes a final decision with respect to
15 any approval of that application, a member of the board [~~or a member~~
16 ~~of the advisory committee established under Section 2306.1112~~] may
17 not communicate with the following persons:

18 (1) the applicant or a related party, as defined by
19 state law, including board rules, and federal law; and

20 (2) any person who is:

21 (A) active in the construction, rehabilitation,
22 ownership, or control of the proposed project, including:

23 (i) a general partner or contractor; and

24 (ii) a principal or affiliate of a general
25 partner or contractor; or

26 (B) employed as a lobbyist by the applicant or a
27 related party.

1 (a-1) Subject to Subsection (a-2), during the period
2 beginning on the date a project application is filed and ending on
3 the date the board makes a final decision with respect to any
4 approval of that application, an employee of the department may
5 communicate about the application with the following persons:

6 (1) the applicant or a related party, as defined by
7 state law, including board rules, and federal law; and

8 (2) any person who is:

9 (A) active in the construction, rehabilitation,
10 ownership, or control of the proposed project, including:

11 (i) a general partner or contractor; and

12 (ii) a principal or affiliate of a general
13 partner or contractor; or

14 (B) employed as a lobbyist by the applicant or a
15 related party.

16 (a-2) A communication under Subsection (a-1) may be oral or
17 in any written form, including electronic communication through the
18 Internet, and must satisfy the following conditions:

19 (1) the communication must be restricted to technical
20 or administrative matters directly affecting the application;

21 (2) the communication must occur or be received on the
22 premises of the department during established business hours; and

23 (3) a record of the communication must be maintained
24 and included with the application for purposes of board review and
25 must contain the following information:

26 (A) the date, time, and means of communication;

27 (B) the names and position titles of the persons

1 involved in the communication and, if applicable, the person's
2 relationship to the applicant;

3 (C) the subject matter of the communication; and

4 (D) a summary of any action taken as a result of
5 the communication.

6 (b) Notwithstanding Subsection (a) or (a-1), a board member
7 or department employee [~~advisory committee member~~] may communicate
8 without restriction with a person listed in Subsection (a) or (a-1)
9 [~~described by that subsection~~] at any board meeting or public
10 hearing held with respect to the application.

11 SECTION 6. Section 2306.6702(a)(10), Government Code, is
12 amended to read as follows:

13 (10) "Qualified allocation plan" means a plan adopted
14 by the board under this subchapter that:

15 (A) provides the threshold, scoring, and
16 underwriting criteria based on housing priorities of the department
17 that are appropriate to local conditions;

18 (B) consistent with Section 2306.6710(e), gives
19 preference in housing tax credit allocations to developments that,
20 as compared to the other developments:

21 (i) when practicable and feasible based on
22 documented, committed, and available third-party funding sources,
23 serve the lowest income tenants per housing tax credit; and

24 (ii) produce [~~are affordable to qualified~~
25 ~~tenants~~] for the longest economically feasible period the greatest
26 number of high quality units committed to remaining affordable to
27 any tenants who are income-eligible under the low income housing

1 tax credit program; and

2 (C) provides a procedure for the department, the
3 department's agent, or another private contractor of the department
4 to use in monitoring compliance with the qualified allocation plan
5 and this subchapter.

6 SECTION 7. Section 2306.6704, Government Code, is amended
7 by adding Subsection (b-1) to read as follows:

8 (b-1) The preapplication process must require the applicant
9 to provide the department with evidence that the applicant has
10 notified the following entities with respect to the filing of the
11 application:

12 (1) any neighborhood associations incorporated under
13 the laws of this state and containing the development;

14 (2) the presiding officer of the board of trustees of
15 the school district containing the development;

16 (3) the presiding officer of the governing body of any
17 municipality containing the development and all elected members of
18 that body;

19 (4) the presiding officer of the governing body of the
20 county containing the development and all elected members of that
21 body; and

22 (5) the state senator and state representative of the
23 district containing the development.

24 SECTION 8. Section 2306.6705, Government Code, is amended
25 to read as follows:

26 Sec. 2306.6705. GENERAL APPLICATION REQUIREMENTS. An
27 application must contain at a minimum the following written,

1 detailed information in a form prescribed by the board:

2 (1) a description of:

3 (A) the financing plan for the development,
4 including any nontraditional financing arrangements;

5 (B) the use of funds with respect to the
6 development;

7 (C) the funding sources for the development,
8 including:

9 (i) construction, permanent, and bridge
10 loans; and

11 (ii) rents, operating subsidies, and
12 replacement reserves; and

13 (D) the commitment status of the funding sources
14 for the development;

15 (2) if syndication costs are included in the eligible
16 basis, a justification of the syndication costs for each cost
17 category by an attorney or accountant specializing in tax matters;

18 (3) from a syndicator or a financial consultant of the
19 applicant, an estimate of the amount of equity dollars expected to
20 be raised for the development in conjunction with the amount of
21 housing tax credits requested for allocation to the applicant,
22 including:

23 (A) pay-in schedules; and

24 (B) syndicator consulting fees and other
25 syndication costs;

26 (4) if rental assistance, an operating subsidy, or an
27 annuity is proposed for the development, any related contract or

1 other agreement securing those funds and an identification of:

2 (A) the source and annual amount of the funds;

3 (B) the number of units receiving the funds; and

4 (C) the term and expiration date of the contract
5 or other agreement;

6 (5) if the development is located within the
7 boundaries of a political subdivision with a zoning ordinance,
8 evidence in the form of a letter from the chief executive officer of
9 the political subdivision or from another local official with
10 jurisdiction over zoning matters that states that:

11 (A) the development is permitted under the
12 provisions of the ordinance that apply to the location of the
13 development; or

14 (B) the applicant is in the process of seeking
15 the appropriate zoning and has signed and provided to the political
16 subdivision a release agreeing to hold the political subdivision
17 and all other parties harmless in the event that the appropriate
18 zoning is denied;

19 (6) if an occupied development is proposed for
20 rehabilitation:

21 (A) an explanation of the process used to notify
22 and consult with the tenants in preparing the application;

23 (B) a relocation plan outlining:

24 (i) relocation requirements; and

25 (ii) a budget with an identified funding
26 source; and

27 (C) if applicable, evidence that the relocation

1 plan has been submitted to the appropriate local agency;

2 (7) a certification of the applicant's compliance with
3 appropriate state and federal laws, as required by other state law
4 or by the board; ~~and~~

5 (8) any other information required by the board in the
6 qualified allocation plan; and

7 (9) evidence that the applicant has notified the
8 following entities with respect to the filing of the application:

9 (A) any neighborhood associations incorporated
10 under the laws of this state and containing the development;

11 (B) the presiding officer of the board of
12 trustees of the school district containing the development;

13 (C) the presiding officer of the governing body
14 of any municipality containing the development and all elected
15 members of that body;

16 (D) the presiding officer of the governing body
17 of the county containing the development and all elected members of
18 that body; and

19 (E) the state senator and state representative of
20 the district containing the development.

21 SECTION 9. Sections 2306.6710(b), (d), and (e), Government
22 Code, are amended to read as follows:

23 (b) If an application satisfies the threshold criteria, the
24 department shall score and rank the application using a point
25 system that:

26 (1) prioritizes in descending order criteria ~~[based on~~
27 ~~criteria that are adapted to regional market conditions and adopted~~

1 ~~by the department, including criteria:~~

2 [~~1~~] regarding:

3 (A) financial feasibility of ~~[the income levels~~
4 ~~of tenants of]~~ the development;

5 (B) quantifiable community participation with
6 respect to the development, evaluated on the basis of written
7 statements from:

8 (i) any neighborhood associations
9 incorporated under the laws of this state and containing the
10 development; and

11 (ii) the board of trustees of the school
12 district containing the development ~~[the rent levels of the units];~~

13 (C) the income levels of tenants of the
14 development ~~[period of guaranteed affordability for low income~~
15 ~~tenants];~~

16 (D) the size and quality of the units ~~[cost by~~
17 ~~square foot of the development];~~

18 (E) the commitment of development funding by
19 local political subdivisions ~~[size, quality, and amenities of the~~
20 ~~units];~~

21 (F) input from local and state elected officials
22 ~~[the services to be provided to tenants of the development];~~

23 (G) the rent levels of the units ~~[commitment of~~
24 ~~development funding by local political subdivisions that enables~~
25 ~~additional units for individuals and families of very low income];~~

26 [~~and~~]

27 (H) the cost of the development by square foot

1 ~~[level of community support for the application, evaluated on the~~
2 ~~basis of written statements of support from local and state elected~~
3 ~~officials representing constituents in areas that include the~~
4 ~~location of the development]; and~~

5 (I) the services to be provided to tenants of the
6 development; ~~and~~

7 (2) uses criteria imposing penalties on applicants or
8 affiliates who have requested extensions of department deadlines
9 relating to developments supported by housing tax credit
10 allocations made in the application round preceding the current
11 round; and

12 (3) provides appropriate incentives as determined
13 through the qualified allocation plan to reward applicants who
14 agree to equip the property that is the basis of the application
15 with energy-saving devices that meet the standards established by
16 the state energy conservation office.

17 (d) The department shall underwrite the applications ranked
18 under Subsection (b) beginning with the applications with the
19 highest scores in each region described by Section 2306.111(d) and
20 in each set-aside category described in the qualified allocation
21 plan. Based on application rankings, the department shall continue
22 to underwrite applications until the department has processed
23 enough applications satisfying the department's underwriting
24 criteria to enable the allocation of all available housing tax
25 credits according to regional allocation goals and set-aside
26 categories. To enable the board to establish an applications
27 waiting list under Section 2306.6711, the department shall

1 underwrite as many additional applications as the board considers
2 necessary to ensure that all available housing tax credits are
3 allocated within the period required by law. The department shall
4 underwrite an application to determine the financial feasibility of
5 the development and an appropriate level of housing tax credits. In
6 determining an appropriate level of housing tax credits, the
7 department shall consider whether the cost of the development
8 remains within acceptable cost parameters as established by
9 historical final cost certifications of all previous housing tax
10 credit allocations.

11 (e) In [~~adopting criteria for~~] scoring [~~and underwriting~~]
12 applications for purposes of housing tax credit allocations, the
13 department shall award [~~attach~~], consistent with Section 42,
14 Internal Revenue Code of 1986 (26 U.S.C. Section 42), preference
15 points to a development that [~~the most weight to criteria that~~]
16 will:

17 (1) when practicable and feasible based on documented,
18 committed, and available third-party funding sources, serve
19 [~~result in an allocation of housing tax credits for developments~~
20 ~~servng~~] the lowest income tenants per housing tax credit, if the
21 development is to be located outside a qualified census tract; and

22 (2) produce for the longest economically feasible
23 period the greatest number of high quality units committed to
24 remaining affordable to any [~~qualified~~] tenants who are
25 income-eligible under the low income housing tax credit program
26 [~~for extended periods~~].

27 SECTION 10. Section 2306.6711(b), Government Code, is

1 amended to read as follows:

2 (b) Not later than the deadline specified in the qualified
3 allocation plan, the board shall issue commitments for available
4 housing tax credits based on the application evaluation process
5 provided by Section 2306.6710. The board may not allocate to an
6 applicant housing tax credits in any unnecessary amount, as
7 determined by the department's underwriting policy and by federal
8 law, and in any event may not allocate to the applicant housing tax
9 credits in an amount greater than \$2.0 [~~\$1.6~~] million in a single
10 application round.

11 SECTION 11. Section 2306.6717(b), Government Code, is
12 amended to read as follows:

13 (b) The department shall make available on the department's
14 website [~~provide~~] information regarding the low income housing tax
15 credit program, including notice regarding public hearings,
16 [~~board~~] meetings, [~~and~~] the opening and closing dates for
17 applications, submitted applications, and applications approved
18 for underwriting and recommended to the board, and shall provide
19 that information to:

20 (1) locally affected community groups;

21 (2) local and state elected officials;

22 (3) local housing departments;

23 (4) any appropriate [~~(2)~~] newspapers of general or
24 limited circulation that serve the community in which the
25 development is to be located;

26 (5) [~~(3)~~] nonprofit and for-profit organizations;

27 (6) [~~(4)~~] on-site property managers of occupied

1 developments that are the subject of applications for posting in
2 prominent locations in those developments; and

3 (7) [~~(5)~~] any other interested persons and [~~7~~
4 ~~including~~] community groups that [~~7~~ ~~who~~] request the information.

5 SECTION 12. Sections 2306.6725 and 2306.6732, Government
6 Code, are repealed.

7 SECTION 13. The changes in law made by this Act relating to
8 the awarding of financial assistance administered by the Texas
9 Department of Housing and Community Affairs apply only to an
10 application for that assistance submitted on or after the effective
11 date of this Act.

12 SECTION 14. This Act takes effect immediately if it
13 receives a vote of two-thirds of all the members elected to each
14 house, as provided by Section 39, Article III, Texas Constitution.
15 If this Act does not receive the vote necessary for immediate
16 effect, this Act takes effect September 1, 2003.