

BILL ANALYSIS

C.S.H.B. 1167
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Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Department of Housing and Community Affairs (TDHCA) Sunset Bill passed during the 78th Legislative Session, S. B. 264, sought to bring balance back to the state's affordable housing programs primarily through modification of the most important public/private partnership - the Low Income Housing Tax Credit Program. During the Interim of the 78th Session, The House Committee on Urban Affairs was charged with studying the implementation of S. B. 264 and found that TDHCA had not in fact properly implemented many of the reforms contained in S. B. 264.

Filed primarily to correct the shortcomings in implementation of S. B. 264, C.S.H.B. 1167 provides clarification to the agency to allow it to focus on providing affordable housing and partnering with housing sponsors. C.S.H.B. 1167 also focuses on the allocation processes and the computation of the regional allocation formula to allow for the department to address housing needs across the state without overreaching its authority.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the governing board of the Texas Department of Housing and Community Affairs in SECTIONS 2, 8, 18, 20, 42, 49, 51, 52, 57, and 73 of this bill.

ANALYSIS

Housing Policy

C.S.H.B. 1167 directs and focuses the department to provide for housing services and housing needs for Texans with modest income by providing necessary financing for housing while acknowledging the importance of preserving the existing character of established neighborhoods (2306.001, Government Code). The bill clarifies that there is a shortage of affordable, sanitary, and safe housing in all regions of the state and that this condition exacerbates the difficulties of the poor. The bill maximizes resources for affordable housing by minimizing administrative costs and simplifying the financing system. The measure also provides federalism provisions to limit overreaching policies that supercede federal and state requirements and statutes (SECTION 2, Sec 2306.002; SECTION 47, Sec. 2306.6701; SECTION 54, Sec. 2306.67053). C.S.H.B. 1167 enhances the self-sustaining nature of the housing trust fund by requiring the department to structure its award process to encourage loans instead of grants (SECTION 35, Sec. 2306.202-2306.203). The bill provides that financial feasibility be the highest scoring criterion for the tax credit program [SECTION 57, Sec. 2306.6710(c)]. The measure also provides that, if the department is not the first lien lender with respect to a multifamily rental housing development, or similar accounts are already required under an applicable federal program, the department may not impose on the owner of that development any department requirements relating to the preparation of a physical needs assessment or the creation, maintenance, or funding of a reserve account (SECTION 34, Sec. 186).

Regional Allocation Formula

C.S.H.B. 1167 directs the department to alleviate under funding in service regions 9, 13, and 11, by allocating an additional \$2 million, \$1 million, and \$750,000, respectively, for calendar years 2006 and 2007 [SECTION 18, Sec. 2306.111(d-4)]. The bill adds definition for "Historically underserved urban area" and allocates HOME funds, Housing Trust Funds, and tax credits to

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urban areas and historically underserved urban areas, in addition to rural areas, under the regional allocation formula (SECTION 21, Sec. 2306.1116). The measure requires the department, for purposes of formulating the availability of housing resources, to consider the dollar amount of multifamily tax exempt bonds, HOME funds used for multifamily housing development construction or rehabilitation, and financing provided by or through any governmental entity for construction or rehabilitation of multifamily housing developments that are restricted to individuals and families who earn 60 percent of area median income, excluding financing involved in the transfer of ownership of an existing development [SECTION 4, Sec. 2306.004; SECTION 18, 2306.111(d)]. The bill also adds to the Annual Low Income Housing Report a description of the amount of funds and tax credits allocated to urban and rural areas of each state service region in the preceding year for each federal or state housing program, as well as strategies for meeting the housing needs of rural and historically underserved urban areas [SECTION 13, Sec. 2306.0721(c)].

Underwriting

C.S.H.B. 1167 requires that the department, in considering the financial feasibility of a development, shall only consider the sources and uses of funds and the total financing planned for the development; any proceeds or receipts expected to be generated by reason of tax benefits; the percentage of the housing tax credit dollar amount used for development costs other than the cost of intermediaries; and the reasonableness of the developmental and operational costs of the development (SECTION 57, Sec. 2306.6710). The measure requires the department to implement a system of evaluating the financial aspects of housing tax credit developments that recognizes that those developments do not need, and are not subject to, the financial underwriting necessary for a mortgage loan transaction that is the same as when the department has a financial interest in the loan. In evaluating housing tax credit developments, the department shall ensure only that the low income housing tax credit dollars allocated to a development do not exceed the amount necessary for the financial feasibility of the development and its viability throughout the first 15 years of operation [SECTION 57, Sec. 2306.6710(hh)]. The bill requires that underwriting standards used by the department for loans made under its single family and multifamily bond programs be based on industry norms and standards (SECTION 27, Sec. 2306.148). The measure also requires that any certification of costs must be accompanied by an unqualified audit of the actual housing development costs prepared by a certified public accountant in accordance with accepted standards; clarifies that housing development costs means the total of all reasonable and necessary costs incurred; and also clarifies that a housing development cost includes a developer fee (SECTION 45, Sec. 2306.271).

Local Community Input

C.S.H.B. 1167 provides for a neighborhood voice in state housing policy by allowing for the consideration of at least one board member with experience as a member or leader of a neighborhood association (SECTION 6, Sec. 2306.027). The bill defines neighborhood associations as an organization of persons living near one another within the organization's defined boundaries and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. Neighborhood associations include homeowners' associations, tenants' associations, including a residents' council, or a property owners' association. Neighborhood associations does not include a broader based community organization; an organization composed of only board members of the organization; a chamber of commerce; a community development corporation; a school related organization; the Lions, Rotary, Kiwanis, and similar organizations; Habitat for Humanity; Boys and Girls Clubs; charities; public housing authorities; or any governmental entity [SECTION 3, Sec. 2306.004(23-a)]. The bill requires that written statements of support or opposition from neighborhood associations that encompass the same elementary school zone as the proposed development and that are on record with the department (or the municipality or county containing the development) be the second highest point award for scoring tax credit applications [SECTION 57, Sec. 2306.6710(e)].

Elected Official Input

C.S.H.B. 1167 provides that written statements of support or opposition from state elected official be the sixth highest scoring criterion in the scoring of tax credit applications. The bill

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provides that the letters be received 30 days before the board first meets to consider allocations; that a single letter of support from a state representative or state senator count as 10 points and that letters of support from both state offices count as 14 points; that a single letter of opposition from either official count as a 10-point deduction and that letters of opposition from both state offices count as a 25-point deduction; and if both state offices are contacted but no letters either in support or opposition are received, the application will receive seven total points [SECTION 57, Sec. 2306.6710(n)].

Rural Development

C.S.H.B. 1167 defines “Rural area” as an area that is outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area; or within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area; or in an area that is eligible for funding by the Rural Housing Service of the United States Department of Agriculture. The bill requires the department to set aside five percent of the HOME funds, reserved for the benefit of small cities and rural areas, for disabled persons living in those areas, rather than in urban areas. The measure requires the department to annually use \$10 million of the HOME Funds, reserved for the benefit of small cities and rural areas, for multifamily housing construction or rehabilitation in a cycle open to both for- and non-profit providers of affordable housing [SECTION 18, Sec. 2306.111(c-3)]. If it is determined that there is less than \$5 million in housing trust funds in a year to allocate, the bill allows the department to allocate the housing trust funds without dividing the funds between urban and rural, allowing that each region’s first award of funds go to the highest scoring rural application [SECTION 18, Sec. 2306.111(d-2)]. The bill establishes a five-percent rural set aside, within each region, in the tax credit program for developments that are financed through the Texas Rural Development Office of the United States Department of Agriculture and that do not exceed 48 units for new construction, or any size if rehabilitation is involved [SECTION 18, Sec. 2306.111(d-6)]. The bill requires that an application for housing tax credits from funds available for rural areas must be limited to the rehabilitation of a development of any size; or the development of a new construction development that contains not more than 76 units. The bill also requires that a new construction development that contains more than 76 units and is located in a rural area is eligible only for funds available for urban areas, including funds available for historically underserved urban areas, regardless of the development's location (SECTION 50, Sec. 2306.67035).

Appeals and Alternative Dispute Resolution

C.S.H.B. 1167 requires the board to adopt rules outlining a timely and meaningful formal appeals process, including the use of an alternative dispute resolution process [SECTION 8, Sec. 2306.0321(a)]. The bill also requires the department to implement timely alternative dispute resolution procedures. The measure requires that, for adverse decisions other than an allocation of tax credits, the procedures must be binding on the department (SECTION 16, Sec. 2306.082). The measure prohibits a member of the board from engaging in any communication regarding a project application, except for an application that has been included in an alternative dispute resolution process (SECTION 22, Sec. 2306.1113). The bill allows an applicant to request alternative dispute resolution in addition to making an appeal directly to the board; allows the department to contract with the State Office of Administrative Hearings to provide alternative dispute resolution but not binding arbitration; and requires that alternative dispute resolution run concurrently with an appeal to the board. If recommended by the alternative dispute resolution process, it allows the board to examine information other than the application; requires the board to consider the result of any alternative dispute resolution and any recommendations made to the board as a result; clarifies that the decision of the board is a final administrative decision subject to judicial review; and it requires the department to award the applicant an appropriate forward commitment of tax credits for the next application round if a decision of the board or department staff denying an application for tax credits is reversed on appeal (SECTION 61, Sec. 2306.6715).

Governing Board

C.S.H.B. 1167 provides for a neighborhood voice in state housing policy by allowing for the consideration of at least one board member with experience as a member or leader of a neighborhood association; prohibits from board consideration anyone who owns any interest

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regulated by or receiving money from the department; requires board members to publicly disclose any ownership interest or involvement in multifamily housing or tax credit developments in Texas or another state (SECTION 6, Sec. 2306.027). The measure allows for board members to receive both a department training program that includes training about the administration of the appeals and alternative dispute resolution processes under this chapter, and an industry training program (if the industry training program is available at no cost to the department); and stipulates that the industry training program must be presented by an organization that regularly conducts seminars or training in certain fields of interest (SECTION 6, Sec. 2306.028). The bill prohibits a member of the board from engaging in any communication regarding a project application, except for an application that has been included in an alternative dispute resolution process and prohibits the department from adopting rules that impose ex parte rules on, or otherwise restrict communications with, any person other than a board member (SECTION 22, Section 2306.1113).

Sunset

C.S.H.B. 1167 provides that unless continued in existence as provided by Chapter 325 (Texas Sunset Act), the department is abolished and this chapter expires September 1, 2009, rather than 2011 (SECTION 5, Sec. 2306.022).

Repealers

C.S.H.B. 1167 eliminates unnecessary reporting, department functions, reporting, or statutes that exceed federal laws, unfunded mandates, department committees that supercede department authority, laws that circumvent private property rights, hinder the rightful access to equity, or otherwise unnecessarily interfere with non-governmental providers of affordable housing by repealing definitions in Sections 2306.004(31)-(33) as conforming changes, the Fair Housing Sponsor Report in Sec. 2306.0724, internet fair housing sponsor and disability reports in Sections 2306.077(d) and (e), information regarding housing for persons with disabilities in Sec. 2306.078, the regional development coordinator in Sec. 2306.079, the project compliance database in Sec. 2306.081(c), the executive award and review advisory committee in Sec. 2306.1112, the 12-month sale notification requirement in Sec. 2306.185(f), the “department assistance” definition in Sec. 2306.186(a)(2) as a conforming change, the property repair by department provision in Sec. 2306.186(f), the property ownership program in Sec. 2306.251, the compliance certification process in Sections 2306.257(b)-(d), the research and information program in Sec. 2306.259, the regulation of retirement of capital investment or redemption of stock provisions in Sec. 2306.270, the termination of tenancy provision in Sec. 2306.313(c), the continued occupancy on payment of surcharge provision in Sec. 2306.314, the rural area definition in Sec. 2306.6702(a)(12) as a conforming change, the department determination of modification reasonableness in Sec. 2306.6712(e), the coordination with rural development agency provision in 2306.6723(c), the energy saving requirements and scoring criterions in Sections 2306.6725(b) and (d), the sale of certain low income housing tax credit property provision in Sec. 2306.6726, the department purchase of low income housing tax credit property section in Sec. 2306.6727, the department policy and procedures regarding recipients of certain federal housing assistance in Sections 2306.6728(b) and (c), the accessibility requirements in Sec. 2306.6730, the minority owned business provisions in Sec. 2306.6734, the owner-builder revolving loan fund in Sec. 2306.7581(a-1), the preservation provisions in Sections 2306.803(b)-(d), the residents’ preference priority in Sec. 2306.804(c), the preservation incentives in Sections 2306.805(c)-(e), the multifamily preservation provisions in Subchapter II, Chapter 2306, and the expired needs assessment provisions in Subchapter JJ, Chapter 2306.

EFFECTIVE DATE

Section 2.25 of this Act takes effect September 1, 2005 or immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution.

This Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

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C.S.H.B. 1167 adds language that clarifies the ability of the department to adopt or promulgate rules (SECTION 2, Sec. 2306.002; SECTION 42, Sec. 2306.257; SECTION 49, Sec. 2306.6703;

C.S.H.B. 1167 amends the definition for “neighborhood association” to include tenants’ associations and residents’ councils; amends the definition of “person with a disability” to conform to that language used by the Americans with Disability Act; amends the “rural area” definition to increase the population of a rural metropolitan area from 20,000 to 25,000 (SECTION 3, Sec. 2306.004).

The original bill requires the department to periodically monitor each project’s compliance, unless, as added by C.S.H.B. 1167, the department determines reasonable justification for a higher level of monitoring; and allowing that the cost of compliance monitoring for each project for 2006 may not exceed 25 dollars per monitored unit, except for affordable housing disposition properties; and monitoring each project’s construction phase through periodic review of the construction inspection reports submitted by the project architect [SECTION 15, Sec. 2306.081(b)].

C.S.H.B. 1167 clarifies that the alternative dispute resolution process shall be a binding process on the department, but not be binding arbitration; and also permits the department to contract with the State Office of Administrative Hearings to establish an alternative dispute resolution process (SECTION 16, Sec. 2306.082; SECTION 61, Sec. 2306.6715).

C.S.H.B. 1167 specifies, for purposes of notification and scoring of support letters, that “neighborhood associations” must be on record, by December 1 of the preceding year, with the department, municipality, or county and encompass the same elementary school attendance zone, or a portion of the same zone, as the development (SECTION 23, Sec. 2306.1114; SECTION 51, Sec. 2306.6704; SECTION 53, Sec. 2306.6705; SECTION 57, Sec. 2306.6710).

In addition to the differences listed above, C.S.H.B. 1167 repeals Section 2306.259, makes a corrective change by deleting change made in SECTION 2.10 of the original, and differs from the original bill in the following ways:

Amends 2306.004, Government Code, striking from the definition of a “Housing Sponsor” individuals and families whose income exceeds moderate income levels in areas where 90 percent of the mortgage revenue bond issue is for individuals and families of low or moderate income; amends definitions for “Historically underserved urban area” by assigning the term Section 2306.1116 and adding definitions for “Forgivable loan”.

Amends Sections 2306.032(b) and (d), Government Code, requiring that the department maintain both printed and electronic copies of the verbatim meeting transcripts and transcript tapes in their entirety and make them available to the public on request.

Amends Section 2306.1111, Government Code, establishing a uniform application and funding cycle for HOME funds, housing trust funds, and tax credits, C.S.H.B. 1167 excludes private activity bond allocations; requires that the application acceptance periods run concurrently, and requires that no applications requesting a grant of funds be considered during the first 120 days of an application and funding cycle.

Adds new Section 2306.1116, Government Code, identifying historically underserved urban areas; and allowing for the future identification of these areas to be adjusted to conform with the definition or identification of metropolitan statistical areas. The definition was included in another section in the original version of the bill.

Amends Section 2306.1114(a), Government Code, providing for notification by regular mail of the filing of an application with specific persons and organizations, adding that neighborhood associations must be on record with the department, or the political subdivision containing the proposed site of the development, on December 1 of the preceding year and providing that the neighborhood association encompasses the same elementary school attendance zone, or a portion of the same zone.

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Amends Section 2306.142(d), Government Code, designating rural areas, rather than rural counties, as the areas where the department will analyze certain factors affecting borrowers and establish a process for serving those areas.

Amends 2306.148, Government Code, requiring that the underwriting standards used by the department for loans made under its single family and multifamily bond programs shall be based on industry norms and standards, as per C.S.H.B. 1167.

Amends Sections 2306.186(b), (c), (d), (e), (h), (i), (j), and (l), Government Code, stipulating that the department must provide mortgage loan funds and be the first lien lender with respect to any multifamily development and the owner must receive a mortgage loan for the provisions of this section to apply; eliminating the 25 unit threshold; non-substantive changes to delete obsolete year reference; stipulating that deposits into a reserve account shall continue until any change in ownership, rather than an involuntary change; prohibits the department from imposing any reserve account requirements, unless the department is the first lien lender; stipulates that the department must contract with a third-party physical needs assessment to determine conformity with local health, safety, and building codes during each five-year period beginning after the 11th year that the department awards a mortgage loan that results in the department becoming the first lien lender; stipulating that the obligations of the owner under this section cease, as per C.S.H.B. 1167 in subparagraph (h), on the earliest of the dates under Subsection (c) and that the first lien lender shall maintain the reserve account; providing that, if the department has previously imposed a reserve requirement on a development that is already required to have a reserve under any other provision of law, the department shall prepare an amendment to the land use restriction agreement removing the requirement.

Amends Sections 2306.202 and 2306.203, Government Code, including for-profit organizations in the list of organizations to be assisted by the trust fund; restructures the trust fund to be self-sustaining by encouraging loans instead of grants; requiring the department to schedule one application period for loan applications that is open concurrently with the tax credit application period and one application for grant applications that is open only if there is available money not allocated in the loan application period; and opening trust fund assistance to all housing sponsors for the purpose of developing housing; requiring the board to distribute trust fund resources under a competitive application; requiring that the applications be ranked based on a descending priority order point system that evaluates how low and very low people are served, how non-governmental funding sources are used based on a calculation of 1.5 persons per bedroom, whether certain state elected officials support the application, whether the proposal is for a loan instead of a grant, and other criteria established by the department, not included in the substitute, but in the original bill were scoring criteria for cost-effectiveness based on a calculation of 1.5 persons per bedroom and leveraging of federal resources with points awarded to indicate a greater percentage of total housing cost being provided by federal funds; and requiring that developments funded by the trust fund remain affordable for the term of the loan or, if a grant has been awarded, for at least 30 years.

Amends Section 2306.205(f), Government Code, requiring the Texas State Affordable Housing Corporation to transfer the 501(c)(3) bond program fee amounts to the department so that it can discharge its duties under this subsection.

Amends Sections 2306.252(a), (b), and (c), Government Code, requiring that the department fund the housing resource center with funds received from private activity bond program fees collected by the Texas State Affordable Housing Corporation; limiting the housing resource center's duties to providing general educational material to the public; and including for-profit housing sponsors in the list of organizations that will be provided information.

SECTION 41. Amends Sections 2306.254(b) and (d), Government Code, allowing the department to encourage, rather than require, tenant services in any multifamily developments that are coordinated with similar state workforce development services and services that are provided by third parties at no cost to the residents; and eliminating the department reporting requirement.

SECTION 42. Amends Section 2306.257(a), Government Code, and adds Subsection (a-1), Government Code, C.S.H.B. 1167 clarifies that the department may provide assistance only to an
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applicant who certifies compliance with any applicable state and federal fair housing laws; and requires the board to adopt rules to enable the department to explicitly comply with state and federal fair housing laws reporting requirements.

Amends Section 2306.268, Government Code, C.S.H.B. 1167 makes conforming change.

Amends Section 2306.269, Government Code, making the tenant selection standards by the department permissive rather than mandatory and eliminating the department's role in the manager selection; clarifying that a development shall be prohibited by the department from excluding people from admission to the development solely because they participate in the Section 8 voucher program; and, in C.S.H.B. 1167, subsection (2) requires the department to prohibit a development from requiring people to have a monthly income of more than three times, rather than 2 ½ times, their share of the total monthly rent payable.

Amends Sections 2306.6702(a)(4), (5), (10), and (15), Government Code, and adds Subdivision (4-a), clarifying that the application round is not complete until all available housing tax credits are allocated; adding definition for area median gross household income; clarifying that an at-risk development has received housing assistance payment under project-based assistance authority under Section 8, for at least 10 percent of the development units, as per C.S.H.B. 1167; clarifying that an at-risk development is within two years of expiring affordability or has expired but is able to be reinstated; clarifying that the tax credit program's qualified allocation plan provide threshold and scoring criteria; eliminating underwriting criteria and preferential allocations that exceed federal requirements.

Amends Section 2306.6703, Government Code, adding a former or current member of the department's awards committee to the application ineligibility list, deleting proposed language in original bill about disclosure of interested persons as corrective change; reinstates and amends proposed deletion of subsection (3) in the original bill, clarifying that a new construction development located one linear mile or less from a development that serves the same type of household as the new proposal is ineligible from being considered; clarifying that a development located in a county that has more than twice the state average of units per capita is ineligible unless the applicant obtains approval from the appropriate governing body and provides a written statement of support at least 30 days, as per C.S.H.B. 1167, before the date the board first meets to consider allocations of tax credits; prohibiting an applicant who has a familial or financial relationship, rather than a business relationship as in the original bill, with a board member or employee of the department; excepting from the "one-linear mile" and "twice the state average" rules developments that are funded by Section 515; and allowing the department to promulgate rules to identify additional factors that make an application ineligible.

Amend Sections 2306.6704(b-1), (c), (d), and adding Subsection (e), Government Code, requiring in the pre-application process to notify neighborhood associations that are on record with the department, municipality, or county, and that encompass the same elementary school zone, or a portion of the same zone as the development, as per C.S.H.B. 1167; as per C.S.H.B. 1167, eliminating school district superintendent pre-app notification requirement; conforming change to reflect threshold criteria in Sec. 2306.67042; allowing permissiveness in electronic application submission; and requiring the department to specify a date, not later than February 1, for filing a pre-application.

Amends by adding Section 2306.67042, Government Code, establishing threshold criteria for the tax credit program; C.S.H.B. 1167 amends H.B. 1167 by requiring that an application must provide a current title policy or title commitment for the development; the substitute amends the original by requiring that an application must provide a financial statement by the applicant and any person that has at least 10 percent ownership interest in the development owner; to provide certification of compliance with the appropriate accessibility standards required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C, to the same extent required for developments receiving federal financial assistance and the appropriate accessibility requirements adopted by the Texas Department of Licensing and Regulation under its Texas Accessibility Standards; the substitute amends the original to provide certification of adherence to local building codes or, if no local building codes are in place, the most recent version of the International Building Code; the substitute adds a certification that the applicant has no final unresolved findings of state or federal fair housing

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law violations; the substitute stipulates that to establish the experience necessary to ensure project completion under Subsection (c)(4), the development owner, the owner's controlling person, or the developer must provide documentation satisfactory to the department verifying the completion of at least 100 residential units, or 36 residential units if the applicant is applying for an allocation of housing tax credits for a development located in a rural area, and the meaningful participation of the owner, controlling person, or developer in the development; C.S.H.B. 1167 amends the original to require the development, for all new construction units, to provide without charge to the tenant three communication networks, in addition to mini-blinds or window coverings for all windows. Except for developments receiving financing from the Texas Rural Development Office of the United States Department of Agriculture or development involving the rehabilitation of existing buildings, a dishwasher and disposal, a refrigerator, an oven and range, exhaust and vent fans in bathrooms and ceiling fans in living areas and bedrooms; C.S.H.B. 1167 amends the original to require that the department adopt rules detailing information to be included on a public notification sign and the type of proof required by the department that the sign has been installed or notice has been mailed; C.S.H.B. 1167 amends the original bill by requiring that an application must include a boundary survey of the proposed development site and of the property to be purchased. If property is to be purchased beyond the proposed site of the development, the survey must clearly distinguish between the boundaries of the larger site and the site of the development. The survey must also clearly delineate the floodplain boundary lines and all easements applicable to the proposed development site. The survey may be of any date; C.S.H.B. 1167 amends the original bill by requiring a description of the detailed cost breakdown prepared by an architect or engineer if proposed work costs include unusual or extraordinary items or exceed \$7,500 per unit; in subsection (o)(2), the substitute includes evidence of financing sufficient to fund the total development cost, rather than specifying both interim and permanent forms of financing; in subsection (o)(2)(B)(i), the substitute provides that the evidence of total financing in the form of a bona fide commitment or term sheet is addressed to entities that constitute the general partner, rather than the Applicant as the proposed in the original; in subsection (r)(1)(B), the substitute amends the original to require an ownership structure and previous experience chart that discloses any person that will serve as the developer of the development, any person that will guarantee any obligation of the development owner, and any person that has at least a 10 percent ownership interest in the development owner, the developer, or the person that will guarantee any obligation of the development owner; in subsection (v), the substitute requires a nonprofit applicant to control a majority of the development, materially participate in the development and operation of the development throughout the compliance period and otherwise meet the requirements of Section 42(h)(5), Internal Revenue Code of 1986 (26 U.S.C. Section 42(h)(5)), as described by Sec. 2306.6706 of the substitute; in subsection (x)(4), the substitute amends the original to require that an applicant affiliated with the seller of the development must provide documentation of the original acquisition or development cost and any other verifiable or justifiable costs of owning, improving, or holding the property that support the proposed acquisition price; in subsection (y)(1) and (2), the substitute requires an applicant applying for acquisition rehab credits to provide historic monthly operating statements for 12 consecutive months ending not more than four years before the date the information is provided, or the two most recent consecutive annual operating statements.

Amends Section 2306.6705, Government Code, prohibiting the department from superceding the general application requirements of this chapter; eliminating a description of an annuity proposal; restructuring the procedures regarding if an occupied development is proposed for rehabilitation; and requiring in the application process to notify neighborhood associations that, as per C.S.H.B. 1167, are on record with the department, municipality, or county, and that encompass the same elementary school zone, or a portion of the same zone as the development.

Amends Section 2306.6710, Government Code, consolidating and establishing scoring criteria for the tax credit program. C.S.H.B. 1167 amends H.B. 1167 to make conforming references in subsection (a) to the threshold section; in subsection (c), the substitute bill bases financial feasibility on a project underwriting pro forma from the permanent or construction lender, and also allows that, for developments that receive financing from the Texas Rural Development Office of the United States Department of Agriculture, the report entitled "Sources and Uses Comprehensive Evaluation for Multifamily Housing Loans" or any other evidence deemed acceptable by the department shall meet the requirements of the underwriting pro forma; in subsection (e), the substitute bill requires that neighborhood associations must be on record with

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the department, municipality, or county, by December 1 of the preceding year and encompass the same elementary school zone, or portion of the same zone, as the proposed site; C.S.H.B. 1167 amends H.B. 1167 to authorize the department, by rule, to specify specific development and unit amenities that qualify for points rather than having the statute schedule potential amenities qualifying for scoring points; in subsection (m), C.S.H.B. 1167 amends the original bill by requiring the applicant provide a commitment of funds 60 days prior to the tax credit board recommendations, rather than 30 days as in the original bill; in subsection (n), C.S.H.B. 1167 amends the original bill by stipulating that state elected official letters must be received by the department 30 days prior to the first meeting of the board regarding tax credits, the substitute bill also increases the points allowed for a letter of support from one state elected official from 7 to 10, and decreases the points allowed if no letters are received either in support or opposition from 10 to 7; in subsection (p), C.S.H.B. 1167 clarifies that the department shall award the application eight points if it indicates that an annual payment that is equal to at least 50 percent of the total ad valorem taxes due in a tax year on that development will be paid; in subsection (q)(4), C.S.H.B. 1167 deletes the reference to the date "November 15, 2003" from the original version, and the substitute also deletes the explanatory language found in the original that explains how these awards are categorized; in subsection (z)(3), right of first refusal includes sale to an individual tenant; in subsection (ee), C.S.H.B. 1167 requires the department to award one point to an application if the development experience of the development owner, the owner's controlling person, or the developer, exceeds by 20 residential units the minimum development experience required by Section 2306.67042(d); in addition to the differences listed above, the substitute deletes language in the original regarding cost of the development per square foot.

Amends Sections 2306.6711(b) and (f), Government Code, and adds Subsection (g), Government Code, clarifies that the \$2 million cap applies to any person who is involved in the application or as a related party; C.S.H.B. 1167 differs from the original bill, providing exception to the cap on developments financed with tax exempt bonds, providing additional exceptions to the cap for a person who provides equity or qualified commercial financing for one or more developments, a development consultant who does not own an interest in the development and whose fee does not exceed the lesser of 10 percent of the developer fee or \$150,000; allowing that credits may be allocated to more than one development in the same calendar year provided that the developments are new construction and will be more than one linear mile apart or, for communities contained in counties with more than 1 million population, they are placed in service in different taxable years.

Amends Sections 2306.6712(a)-(d), Government Code, adding that a proposed application modification subsequent to allocation by the board would have to adversely alter a development, in addition to materially alter, for there to be a formal written amendment to the application and for it to be evaluated; requiring that if the modification would not materially and adversely alter a development that the director shall approve the modification; requiring the board to approve an application amendment or to resolve the matter through alternative dispute resolution; adding to the list of material alterations a change in the income levels of the tenants served, and, in C.S.H.B. 1167, any modifications that would have affected the selection of the application; deleting from the list of material alterations a reduction of three percent or more in the square footage of the units or common areas and a modification of the residential density of a least five percent.

Amends Section 2306.6713(e), Government Code, C.S.H.B. 1167 differs from the original bill by prohibiting the director from refusing the transfer of a project that received HUB points to a development owner that is not a HUB, if the transfer occurs at least three years after the completion of the project.

Amends Sections 2306.6715(a), (c), (d), and (e), Government Code, and adding Subsections (d-1), (d-2), and (f), Government Code, making conforming changes; allowing an applicant to request alternative dispute resolution in addition to making an appeal directly to the board; as per C.S.H.B. 1167, the substitute also allows the department to contract with the State Office of Administrative Hearings to provide alternative dispute resolution but not binding arbitration; requiring that alternative dispute resolution run concurrently with an appeal to the board; if recommended by the alternative dispute resolution process, allowing the board to examine information other than the application; requiring the board to consider the result of any alternative dispute resolution and any recommendations made to the board as a result; clarifies

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that the decision of the board is a final administrative decision subject to judicial review; requires the department to award the applicant an appropriate forward commitment of tax credits for the next application round; In addition to the differences described above, C.S.H.B. 1167 differs from the original bill in that the substitute does not amend subsection (b).

Amends Section 2306.6719 (a), Government Code, and adding Subsection (c), Government Code, specifying that the department will monitor a development only if the development is not receiving federal assistance and is not already subject to monitoring by a federal agency; except, as called for in C.S.H.B. 1167, for affordable housing disposition properties, prohibiting the cost of compliance monitoring for the year 2006 to not exceed \$25 per monitored unit; allowing that, after the year 2006, the annual compliance fee may be increased to adjust for inflation.

Amends Section 2306.6722, Government Code, C.S.H.B. 1167 clarifies that tax credit developments must comply with development accessibility standards detailed in Section 504 to the same extent as required for developments receiving federal financial assistance, rather than comply with the standards set by the Fair Housing Amendments Act called for in the original bill.

Amends Section 2306.6724, Government Code, C.S.H.B. 1167 adjusts the tax credit timeline and requires specific actions if the governor rejects the qualified allocation plan.

Amends Section 2306.6729, Government Code, C.S.H.B. 1167 requires the department to implement by rule procedures that allow for the federal nonprofit set aside mandate to be satisfied if merit-based selection does not satisfy the federally mandated set aside.

Amends Section 2306.803, Government Code, making conforming changes.

Amends Section 2306.805(a), Government Code, making conforming changes.

Amends Section 1372.006(a), Government Code, making conforming changes.

Repealer section. C.S.H.B. 1167 amends the original bill by inserting the following repealers: 2306.004(31)-(33), 2306.081(c), 2306.185(f); 2306.186(a)(2), 2306.186(f), 2306.257(b)-(d), 2306.259, 2306.313(c), 2306.6702(a)(12), 2306.6712(e), 2306.6723(c), 2306.6725(b) and (d), 2306.6728(b) and (c), 2306.803(b)-(d), 2306.804(c), and 2306.805(c)-(e).

Implementation clause. C.S.H.B. 1167 stipulates that the changes made apply only to applications submitted after the effective date of the act.