

By: Talton, Wong, Edwards, Dawson, Bailey,
et al.

H.B. No. 1167

Substitute the following for H.B. No. 1167:

By: Menendez

C.S.H.B. No. 1167

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Department of Housing and Community Affairs.

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

SECTION 1. Section 2306.001, Government Code, is amended to read as follows:

Sec. 2306.001. PURPOSES. The purposes of the department are to:

(1) assist ~~[local governments]~~ in:

(A) providing essential housing ~~[public]~~ services for Texans of modest income ~~[their residents]~~; and

(B) overcoming financial, social, and environmental problems as they relate to community housing needs;

(2) assist Texans in achieving an improved quality of life through the development of better communities by providing the financing necessary for housing for ~~[provide for the housing needs of]~~ individuals and families of modest income while acknowledging the importance of preserving the existing character of established neighborhoods ~~[low, very low, and extremely low income and families of moderate income]~~;

(3) contribute to the preservation, development, and redevelopment of neighborhoods and communities, including assisting ~~[cooperation]~~ in the preservation of government-assisted housing ~~[occupied by individuals and families of very low and extremely low income]~~;

1 (4) assist the governor and the legislature in
2 coordinating federal and state housing programs [~~affecting local~~
3 ~~government~~];

4 (5) inform state officials and the public of the
5 housing needs of the state [~~local government~~];

6 (6) serve as the lead agency for:

7 (A) addressing at the state level the problem of
8 homelessness in this state;

9 (B) coordinating interagency efforts to address
10 homelessness; and

11 (C) addressing at the state level and
12 coordinating interagency efforts to address any problem associated
13 with homelessness [~~, including hunger~~]; and

14 (7) serve as a source of information to the public
15 regarding state [~~all~~] affordable housing resources available to
16 local communities [~~and community support services in the state~~].

17 SECTION 2. Section 2306.002, Government Code, is amended to
18 read as follows:

19 Sec. 2306.002. POLICY; RULES. (a) The legislature finds
20 that:

21 (1) every resident of this state should have a decent,
22 safe, and affordable living environment;

23 (2) government at all levels should be involved in
24 assisting individuals and families of low income in obtaining a
25 decent, safe, and affordable living environment; [~~and~~]

26 (3) the development and diversification of the
27 economy, the elimination of unemployment or underemployment, and

1 the development or expansion of commerce in this state should be
2 encouraged;

3 (4) there exists within all regions of this state a
4 shortage of sanitary and safe residential housing at sale or rental
5 prices that individuals and families of low income and families of
6 moderate income can afford;

7 (5) the shortage described by Subdivision (4) has
8 contributed to and will contribute to the creation and persistence
9 of substandard living conditions that are inimical to the health,
10 welfare, and prosperity of the communities of all regions of this
11 state and the residents of those communities; and

12 (6) the minimization of administrative costs and
13 requirements and the simplification of the financing system will
14 maximize the available resources for affordable housing.

15 (b) The highest priority of the department is to provide
16 assistance to enable individuals and families of low and very low
17 income to ~~[who are not assisted by private enterprise or other~~
18 ~~governmental programs so that they may]~~ obtain affordable housing
19 or other services and programs offered by the department.

20 (c) In accordance with its purposes and goals under this
21 chapter, the department may not approve, adopt, or otherwise
22 publish a rule that:

23 (1) establishes standards or parameters that in any
24 manner exceed or deviate from any applicable federal program
25 requirements with regard to state administration of a federal
26 housing program; or

27 (2) imposes, or has the effect of imposing, on local

1 governments or program applicants direct compliance requirements
2 or costs that are not expressly required by federal or state law.

3 (d) Subject to Subsection (c), the department may adopt
4 rules necessary to fulfill the purposes of the department.

5 SECTION 3. Section 2306.004, Government Code, is amended by
6 amending Subdivisions (4) and (14) and adding Subdivisions (6-a),
7 (12-a), (12-b), (12-c), (12-d), (23-a), (23-b), (28-a), (28-b), and
8 (35) to read as follows:

9 (4) "Department" means the Texas Department of Housing
10 and Community Affairs or any successor agency.

11 (6-a) "Economic submarket" means a group of borrowers
12 who have common home mortgage loan market eligibility
13 characteristics, including income level, credit history or credit
14 score, and employment characteristics, that are similar to Standard
15 and Poor's credit underwriting criteria.

16 (12-a) "Forgivable loan" means a loan that a housing
17 sponsor is not required to repay if certain conditions are met that
18 the housing sponsor and the lender agreed on at the time of loan
19 origination.

20 (12-b) "Geographic submarket" means a geographic
21 region in the state, including a county, census tract, or
22 municipality, that shares similar levels of access to home mortgage
23 credit from the private home mortgage lending industry, as
24 determined by the department based on home mortgage lending data
25 published by federal and state banking regulatory agencies.

26 (12-c) "Grant" means an award of financial assistance
27 that is in the form of money from the department to a housing

1 sponsor for a specific purpose and that is not required to be
2 repaid. For purposes of this chapter, a grant does not include a
3 forgivable loan or other loan or an allocation of low income housing
4 tax credits.

5 (12-d) "Historically underserved urban area" means an
6 urban area described by Section 2306.1116.

7 (14) "Housing sponsor" means[+
8 [(A)] an individual, [~~including an individual or~~
9 ~~family of low and very low income or family of moderate income,~~]
10 joint venture, partnership, limited partnership, trust, firm,
11 corporation, limited liability company, other form of business
12 organization, or cooperative that is approved by the department as
13 qualified to own, construct, acquire, rehabilitate, operate,
14 manage, or maintain a housing development, subject to the
15 regulatory powers of the department and other terms and conditions
16 in this chapter [~~, or~~

17 [~~(B) in an economically depressed or blighted~~
18 ~~area, or in a federally assisted new community located within a~~
19 ~~home-rule municipality, the term may include an individual or~~
20 ~~family whose income exceeds the moderate income level if at least 90~~
21 ~~percent of the total mortgage amount available under a mortgage~~
22 ~~revenue bond issue is designated for individuals and families of~~
23 ~~low income or families of moderate income].~~

24 (23-a) "Neighborhood association" means an
25 organization that is composed of persons living near one another
26 within the organization's defined boundaries for the neighborhood
27 and that has a primary purpose of working to maintain or improve the

1 general welfare of the neighborhood. A neighborhood association
2 includes a homeowners' association, a tenants' association,
3 including a residents' council, or a property owners' association.

4 A neighborhood association does not include:

5 (A) a broader based community organization;

6 (B) an organization composed of only board
7 members of the organization;

8 (C) a chamber of commerce;

9 (D) a community development corporation;

10 (E) a school-related organization;

11 (F) the Lions, Rotary, and Kiwanis Clubs and
12 similar civic organizations;

13 (G) Habitat for Humanity;

14 (H) Boys and Girls Clubs;

15 (I) charities;

16 (J) public housing authorities; or

17 (K) any governmental entity.

18 (23-b) "Person with a disability" means:

19 (A) a person who has a physical, mental, or
20 emotional impairment that:

21 (i) is expected to be of long, continued,
22 and indefinite duration;

23 (ii) substantially impedes the person's
24 ability to live independently; and

25 (iii) is of such a nature that the
26 disability could be improved by more suitable housing conditions;

27 (B) a person who has a developmental disability,

1 as defined by the Developmental Disabilities Assistance and Bill of
2 Rights Act of 2000 (42 U.S.C. Section 15001 et seq.); or

3 (C) a person with disabilities, as defined by 24
4 C.F.R. Section 5.403.

5 (28-a) "Rural area" means an area that is located:

6 (A) outside the boundaries of a primary
7 metropolitan statistical area or a metropolitan statistical area;

8 (B) within the boundaries of a primary
9 metropolitan statistical area or a metropolitan statistical area,
10 if the statistical area has a population of 25,000 or less and does
11 not share a boundary with an urban area; or

12 (C) in an area that is eligible for funding by the
13 Texas Rural Development Office of the United States Department of
14 Agriculture.

15 (28-b) "Rural development" means a development or
16 proposed development that is located in a rural area.

17 (35) "Urban area" means the area that is located
18 within the boundaries of a primary metropolitan statistical area or
19 a metropolitan statistical area other than an area described by
20 Subdivision (28-a)(B) or (C).

21 SECTION 4. Section 2306.008(b), Government Code, is amended
22 to read as follows:

23 (b) The department shall support the preservation of
24 affordable housing under this chapter [~~section~~] by:

25 (1) making low interest financing and grants available
26 to private for-profit and nonprofit buyers who seek to acquire,
27 preserve, and rehabilitate affordable housing; and

1 (2) prioritizing available funding and financing
2 resources for affordable housing preservation activities.

3 SECTION 5. Section 2306.022, Government Code, is amended to
4 read as follows:

5 Sec. 2306.022. APPLICATION OF SUNSET ACT. The Texas
6 Department of Housing and Community Affairs is subject to Chapter
7 325 (Texas Sunset Act). Unless continued in existence as provided
8 by that chapter, the department is abolished and this chapter
9 expires September 1, 2009 [~~2011~~].

10 SECTION 6. Sections 2306.027 and 2306.028, Government Code,
11 are amended to read as follows:

12 Sec. 2306.027. ELIGIBILITY. (a) The governor shall
13 appoint to the board public members who have a demonstrated
14 interest in issues related to housing and community support
15 services. A person appointed to the board must be a registered
16 voter in the state and may not hold another public office. The
17 governor shall endeavor to appoint to the board at least one person
18 with experience as a member or leader of a neighborhood
19 association.

20 (b) Appointments to the board shall be made without regard
21 to the race, color, disability, sex, religion, age, or national
22 origin of the appointees and shall be made in a manner that produces
23 representation on the board of the different geographical regions
24 of this state. The governor shall endeavor to appoint
25 [Appointments] to the board persons who [must broadly] reflect the
26 geographic, economic, cultural, and social diversity of the state,
27 including ethnic minorities, persons with disabilities, and women.

1 (c) A person may not be a member of the board if the person
2 or the person's spouse:

3 (1) is employed by or participates in the management
4 of a business entity or other organization regulated by or
5 receiving money from the department;

6 (2) owns or controls, directly or indirectly, any
7 [~~more than a 10 percent~~] interest in a business entity or other
8 organization regulated by or receiving money from the department;
9 or

10 (3) uses or receives any [~~a substantial~~] amount of
11 tangible goods, services, or money from the department other than
12 compensation or reimbursement authorized by law for board
13 membership, attendance, or expenses.

14 (d) Each board member shall publicly disclose, and
15 periodically update, any ownership or other interest or involvement
16 with a multifamily development or low income housing tax credit
17 development, regardless of whether the development is located in
18 this state or in another state.

19 Sec. 2306.028. TRAINING. (a) A person who is appointed to
20 and qualifies for office as a member of the board may not vote,
21 deliberate, or be counted as a member in attendance at a meeting of
22 the board until the person completes a department training program
23 and an industry training program, if one is available at no cost to
24 the department, that each comply [~~complies~~] with this section.

25 (b) The department training program must provide the person
26 with information regarding:

27 (1) the legislation that created the department and

1 the board;

2 (2) the programs operated by the department;

3 (3) the role and functions of the department and the
4 board, including the role and functions of the department and the
5 board with respect to the administration of the appeals and
6 alternative dispute resolution processes under this chapter;

7 (4) the rules of the department, with an emphasis on
8 the rules that relate to disciplinary and investigatory authority;

9 (5) the current budget for the department;

10 (6) the results of the most recent formal audit of the
11 department;

12 (7) the requirements of:

13 (A) the open meetings law, Chapter 551;

14 (B) the public information law, Chapter 552;

15 (C) the administrative procedure law, Chapter
16 2001; and

17 (D) other laws relating to public officials,
18 including conflict-of-interest laws;

19 (8) the requirements of:

20 (A) state and federal fair housing laws,
21 including Chapter 301, Property Code, Title VIII of the Civil
22 Rights Act of 1968 (42 U.S.C. Section 3601 et seq.), and the Fair
23 Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.);

24 (B) the Civil Rights Act of 1964 (42 U.S.C.
25 Section 2000a et seq.);

26 (C) the Americans with Disabilities Act of 1990
27 (42 U.S.C. Section 12101 et seq.); and

1 (D) the Rehabilitation Act of 1973 (29 U.S.C.
2 Section 701 et seq.); and

3 (9) any applicable ethics policies adopted by the
4 department or the Texas Ethics Commission.

5 (b-1) The industry training program must be presented by an
6 organization that regularly conducts seminars or training in the
7 field of banking, real estate, housing development, or housing
8 construction and must provide information regarding the single
9 family and multifamily bond programs and the federal housing
10 programs administered by the department. If the department is
11 unable to provide an industry training program to a specific person
12 at no cost to the department, the industry training program
13 requirement is deferred for that person only until a program is
14 available at no cost to the department.

15 (c) A person appointed to the board is entitled to
16 reimbursement, as provided by the General Appropriations Act, for
17 the travel expenses incurred in attending a [the] training program
18 regardless of whether the attendance at the program occurs before
19 or after the person qualifies for office.

20 SECTION 7. Sections 2306.032(b) and (d), Government Code,
21 are amended to read as follows:

22 (b) The board shall keep complete minutes of board meetings.
23 The accounts, minutes, and other records, including meeting
24 transcripts and transcript tapes, shall be maintained in their
25 entirety by the department. The board shall maintain printed and
26 electronic copies of the verbatim transcription of previous board
27 meetings and make those copies available to the public on request.

1 (d) The materials described by Subsection (c), if relevant
2 to an award decision, must be made available to the public as
3 required by Subsection (c) not later than the seventh day before the
4 date of the meeting. Any other materials described by Subsection
5 (c) must be made available to the public as required by Subsection
6 (c) not later than the third day before the date of the meeting. The
7 board may not consider at the meeting any material that is not made
8 available to the public by the date required by this subsection.

9 SECTION 8. Section 2306.0321(a), Government Code, is
10 amended to read as follows:

11 (a) The board shall adopt rules outlining a formal process
12 for appealing in a timely and meaningful manner board and
13 department decisions, including, in accordance with Section
14 2306.082, the use of an alternative dispute resolution process.

15 SECTION 9. Section 2306.036(b), Government Code, is amended
16 to read as follows:

17 (b) The [~~After the election of a governor who did not~~
18 ~~approve the director's employment under Subsection (a), that]~~
19 governor may remove the director and require the board to employ a
20 new director in accordance with Subsection (a). [~~The governor must~~
21 ~~act under this subsection before the 90th day after the date the~~
22 ~~governor takes office.~~]

23 SECTION 10. Section 2306.039(b), Government Code, is
24 amended to read as follows:

25 (b) Chapters 551 and 552 do [~~This section does~~] not apply to
26 the personal or business financial information, including social
27 security numbers, taxpayer identification numbers, or bank account

1 numbers, submitted by an individual or family for a loan, grant, or
2 other housing assistance under a program administered by the
3 department or the Texas State Affordable Housing Corporation or
4 from bonds issued by the department, except that the department and
5 the corporation are permitted to disclose information about any
6 applicant in a form that does not reveal the identity of the
7 individual or family for purposes of determining eligibility for
8 programs and in preparing reports required under this chapter.

9 SECTION 11. Section 2306.070, Government Code, is amended
10 to read as follows:

11 Sec. 2306.070. BUDGET. (a) In preparing the department's
12 legislative appropriations request, the department shall also
13 prepare:

14 (1) a report detailing the fees received, on a cash
15 basis, for each activity administered by the department during each
16 of the three preceding years;

17 (2) an operating budget for the housing finance
18 division; and

19 (3) an explanation of any projected increase or
20 decrease of three percent or more in fees estimated for the
21 operating budget as compared to the fees received in the most recent
22 budget year.

23 (b) The department shall submit the report, operating
24 budget, and explanation to the Legislative Budget Board, the Senate
25 Finance Committee, and the House Appropriations Committee.

26 SECTION 12. Section 2306.072(c), Government Code, is
27 amended to read as follows:

1 (c) The report must include:

2 (1) a complete operating and financial statement of
3 the department;

4 (2) a comprehensive statement of the activities of the
5 department during the preceding year to address the needs
6 identified in the state low income housing plan prepared as
7 required by Section 2306.0721 ~~[, including:~~

8 ~~[(A) a statistical and narrative analysis of the~~
9 ~~department's performance in addressing the housing needs of~~
10 ~~individuals and families of low and very low income;~~

11 ~~[(B) the ethnic and racial composition of~~
12 ~~individuals and families applying for and receiving assistance from~~
13 ~~each housing-related program operated by the department; and~~

14 ~~[(C) the department's progress in meeting the~~
15 ~~goals established in the previous housing plan;~~

16 ~~[(3) an explanation of the efforts made by the~~
17 ~~department to ensure the participation of individuals of low income~~
18 ~~and their community-based institutions in department programs that~~
19 ~~affect them;~~

20 ~~[(4) a statement of the evidence that the department~~
21 ~~has made an affirmative effort to ensure the involvement of~~
22 ~~individuals of low income and their community-based institutions in~~
23 ~~the allocation of funds and the planning process;~~

24 ~~[(5) a statistical analysis, delineated according to~~
25 ~~each ethnic and racial group served by the department, that~~
26 ~~indicates the progress made by the department in implementing the~~
27 ~~state low income housing plan in each of the uniform state service~~

1 ~~regions;~~

2 ~~[(6) an analysis, based on information provided by the~~
3 ~~fair housing sponsor reports required under Section 2306.0724 and~~
4 ~~other available data, of fair housing opportunities in each housing~~
5 ~~development that receives financial assistance from the department~~
6 ~~that includes the following information for each housing~~
7 ~~development that contains 20 or more living units:~~

8 ~~[(A) the street address and municipality or~~
9 ~~county in which the property is located;~~

10 ~~[(B) the telephone number of the property~~
11 ~~management or leasing agent;~~

12 ~~[(C) the total number of units, reported by~~
13 ~~bedroom size;~~

14 ~~[(D) the total number of units, reported by~~
15 ~~bedroom size, designed for individuals who are physically~~
16 ~~challenged or who have special needs and the number of these~~
17 ~~individuals served annually;~~

18 ~~[(E) the rent for each type of rental unit,~~
19 ~~reported by bedroom size;~~

20 ~~[(F) the race or ethnic makeup of each project;~~

21 ~~[(G) the number of units occupied by individuals~~
22 ~~receiving government-supported housing assistance and the type of~~
23 ~~assistance received;~~

24 ~~[(H) the number of units occupied by individuals~~
25 ~~and families of extremely low income, very low income, low income,~~
26 ~~moderate income, and other levels of income;~~

27 ~~[(I) a statement as to whether the department has~~

1 ~~been notified of a violation of the fair housing law that has been~~
2 ~~filed with the United States Department of Housing and Urban~~
3 ~~Development, the Commission on Human Rights, or the United States~~
4 ~~Department of Justice; and~~

5 ~~[(J) a statement as to whether the development~~
6 ~~has any instances of material noncompliance with bond indentures or~~
7 ~~deed restrictions discovered through the normal monitoring~~
8 ~~activities and procedures that include meeting occupancy~~
9 ~~requirements or rent restrictions imposed by deed restriction or~~
10 ~~financing agreements]; and~~

11 (3) ~~[(7)]~~ a report on the geographic distribution of
12 low income housing tax credits, the amount of unused low income
13 housing tax credits, and the amount of low income housing tax
14 credits received from the federal pool of unused funds from other
15 states~~;~~ and

16 ~~[(8) a statistical analysis, based on information~~
17 ~~provided by the fair housing sponsor reports required by Section~~
18 ~~2306.0724 and other available data, of average rents reported by~~
19 ~~county].~~

20 SECTION 13. Section 2306.0721(c), Government Code, is
21 amended to read as follows:

22 (c) The plan must include:

23 (1) an estimate and analysis of the housing needs of
24 the following populations in each uniform state service region:

25 (A) individuals and families of moderate, low,
26 very low, and extremely low income;

27 (B) individuals with special needs; and

1 (C) homeless individuals;

2 (2) a proposal to use all available housing resources
3 to address the housing needs of the populations described by
4 Subdivision (1) by establishing funding levels for all
5 housing-related programs;

6 (3) an estimate of the number of federally assisted
7 housing units available for individuals and families of low and
8 very low income and individuals with special needs in each uniform
9 state service region;

10 (4) a description of state programs that govern the
11 use of all available housing resources;

12 (5) a resource allocation plan that targets all
13 available housing resources to individuals and families of low and
14 very low income and individuals with special needs in each uniform
15 state service region;

16 (6) a description of the department's efforts to
17 monitor and analyze the unused or underused federal resources of
18 other state agencies for housing-related services and services for
19 homeless individuals and the department's recommendations to
20 ensure the full use by the state of all available federal resources
21 for those services in each uniform state service region;

22 (7) strategies to provide housing for individuals and
23 families with special needs in each uniform state service region;

24 (8) a description of the amount of funds and low income
25 housing tax credits allocated to the urban and rural areas of each
26 uniform state service region in the preceding year for each federal
27 or state housing or community service program [~~department's efforts~~

1 ~~to encourage in each uniform state service region the construction~~
2 ~~of housing units that incorporate energy efficient construction and~~
3 ~~appliances];~~

4 (9) an estimate and analysis of the housing supply in
5 each uniform state service region;

6 (10) an inventory of all publicly and, where possible,
7 privately funded housing resources, including public housing
8 authorities, housing finance corporations, community housing
9 development organizations, and community action agencies;

10 (11) strategies for meeting the [rural] housing needs
11 of rural and historically underserved urban areas;

12 (12) a biennial action plan for colonias that:

13 (A) addresses current policy goals for colonia
14 programs, strategies to meet the policy goals, and the projected
15 outcomes with respect to the policy goals; and

16 (B) includes information on the demand for
17 contract-for-deed conversions, services from self-help centers,
18 consumer education, and other colonia resident services in counties
19 some part of which is within 150 miles of the international border
20 of this state;

21 (13) a summary of public comments received at a
22 hearing under this chapter or from another source that concern the
23 demand for colonia resident services described by Subdivision (12);

24 (14) the formula for allocating housing resources
25 described by Section 2306.111 and the allocation targets
26 established under the formula; and

27 (15) [~~14~~] any other housing-related information

1 that the state is required to include in the one-year action plan of
2 the consolidated plan submitted annually to the United States
3 Department of Housing and Urban Development.

4 SECTION 14. Section 2306.0722, Government Code, is amended
5 to read as follows:

6 Sec. 2306.0722. PREPARATION OF PLAN AND REPORT. (a) Before
7 preparing the annual low income housing report under Section
8 2306.072 and the state low income housing plan under Section
9 2306.0721, the department shall meet with [~~regional planning~~
10 ~~commissions created under Chapter 391, Local Government Code,~~]
11 representatives of groups with an interest in low income housing,
12 nonprofit housing organizations, managers, owners, and developers
13 of affordable housing, local government officials, residents of low
14 income housing, and members of the Colonia Resident Advisory
15 Committee. The department shall obtain the comments and
16 suggestions of the representatives, officials, residents, and
17 members about the prioritization and allocation of the department's
18 resources in regard to housing.

19 (b) In preparing the annual report under Section 2306.072
20 and the state low income housing plan under Section 2306.0721, the
21 director shall:

22 (1) coordinate local, state, and federal housing
23 resources, including tax exempt housing bond financing and low
24 income housing tax credits;

25 (2) set priorities for the available housing resources
26 to assist [~~help~~] the neediest individuals consistent with the
27 requirements of this chapter;

1 (3) evaluate the success of publicly financed
2 [~~supported~~] housing programs;

3 (4) survey and identify the unmet housing needs of
4 individuals the department is required to assist;

5 (5) ensure that housing programs benefit an individual
6 without regard to the individual's race, ethnicity, sex, or
7 national origin;

8 (6) develop housing opportunities for individuals and
9 families of low and very low income and individuals with special
10 housing needs;

11 (7) develop housing programs through an open, fair,
12 and public process;

13 (8) set priorities for assistance in a manner that is
14 appropriate and consistent with the housing needs of the
15 populations described by Section 2306.0721(c)(1);

16 (9) incorporate recommendations that are consistent
17 with the consolidated plan submitted annually by the state to the
18 United States Department of Housing and Urban Development;

19 (10) identify the organizations and individuals
20 consulted by the department in preparing the annual report and
21 state low income housing plan and summarize and incorporate
22 comments and suggestions provided under Subsection (a) as the board
23 determines to be appropriate;

24 (11) develop a plan to respond to changes in federal
25 funding and programs for the provision of affordable housing;

26 (12) use the following standardized categories to
27 describe the income of program applicants and beneficiaries:

1 (A) 0 to 30 percent of area median income
2 adjusted for family size;

3 (B) more than 30 to 60 percent of area median
4 income adjusted for family size;

5 (C) more than 60 to 80 percent of area median
6 income adjusted for family size;

7 (D) more than 80 to 115 percent of area median
8 income adjusted for family size; or

9 (E) more than 115 percent of area median income
10 adjusted for family size;

11 (13) use the most recent census data combined with
12 existing data from local housing and community service providers in
13 the state, including public housing authorities, housing finance
14 corporations, community housing development organizations, and
15 community action agencies; and

16 (14) provide the needs assessment information
17 compiled for the report and plan to the Texas State Affordable
18 Housing Corporation.

19 SECTION 15. Sections 2306.081(a) and (b), Government Code,
20 are amended to read as follows:

21 (a) The department, through the division with
22 responsibility for compliance matters, shall periodically monitor
23 each project for compliance with all applicable requirements [~~the~~
24 ~~entire construction phase associated with any project~~] under this
25 chapter. The monitoring level for each project must be based on the
26 amount of financial risk directly related to the applicable
27 lienhold interest of the department in [~~associated with~~] the

1 project or the minimum level of any federally required compliance
2 review, unless the department determines based on good cause that
3 there is a reasonable justification for a higher level of
4 monitoring for the project. Except for the affordable housing
5 disposition properties monitored under the memorandum of
6 understanding between the department and the Federal Deposit
7 Insurance Corporation, the cost of compliance monitoring for each
8 project for 2006 may not exceed \$25 per monitored unit. For years
9 after 2006, the annual compliance fee may be increased to more than
10 \$25 per monitored unit only as necessary to adjust for inflation as
11 determined by the consumer price index published by the United
12 States Department of Labor.

13 (b) Unless the department determines based on good cause
14 that there is a reasonable justification for a higher level of
15 monitoring for the project, during [~~After completion of~~] a
16 project's construction phase, the department shall monitor the
17 construction [~~periodically review the performance~~] of the project
18 only through the periodic review of the construction inspection
19 reports submitted by the project architect. The department shall
20 accept the certificate of substantial completion from the project
21 architect as confirmation of the project's [~~to confirm the accuracy~~
22 ~~of the department's initial~~] compliance [~~evaluation~~] during the
23 construction phase.

24 SECTION 16. Section 2306.082, Government Code, is amended
25 to read as follows:

26 Sec. 2306.082. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE
27 RESOLUTION. (a) The department shall [~~develop and~~] implement [~~a~~

1 ~~policy to encourage the use of]:~~

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

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

8 (b) The department's procedures relating to alternative
9 dispute resolution must conform~~[, to the extent possible,]~~ to any
10 model guidelines issued by the State Office of Administrative
11 Hearings for the use of alternative dispute resolution by state
12 agencies. The department's procedures must require that any
13 adverse decision, other than a decision relating to an allocation
14 of low income housing tax credits under Subchapter DD, be binding on
15 the department.

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

17 (1) coordinate the implementation of the procedures
18 ~~[policy adopted]~~ under Subsection (a);

19 (2) serve as a resource for any training needed to
20 implement those ~~[the]~~ procedures ~~[for negotiated rulemaking or~~
21 ~~alternative dispute resolution]~~; and

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

24 SECTION 17. Section 2306.093, Government Code, is amended
25 to read as follows:

26 Sec. 2306.093. HOUSING ASSISTANCE GOAL. In administering
27 the programs under this subchapter, the department ~~[By action of~~

1 ~~the board the community affairs division]~~ shall have a goal to apply
2 a minimum of 25 percent of the community affairs division's total
3 housing-related funds toward housing assistance for individuals
4 and families of very low income.

5 SECTION 18. Section 2306.111, Government Code, is amended
6 by amending Subsections (b), (d), (e), and (f) and adding
7 Subsections (c-3) and (d-2)-(d-7) to read as follows:

8 (b) The department [~~housing finance division~~] shall adopt a
9 goal to apply an aggregate minimum of 25 percent of the housing
10 finance division's total housing funds toward housing assistance
11 for individuals and families of extremely low and very low income if
12 it is possible to obtain from other governmental sources the rental
13 assistance operating subsidies that are necessary to meet that
14 goal.

15 (c-3) The department by rule shall set aside five percent of
16 the funds available under Subsection (c) for the benefit of persons
17 with a disability who live in non-participating rural areas that do
18 not qualify to receive funds under the Cranston-Gonzalez National
19 Affordable Housing Act (42 U.S.C. Section 12701 et seq.) directly
20 from the United States Department of Housing and Urban Development.
21 Subject to Subsection (c-2), the department shall annually use \$10
22 million of the funds available under Subsection (c) for multifamily
23 housing development construction or rehabilitation in an
24 application cycle that is open to all applicants eligible under
25 Subsection (c-1). If the department does not receive a sufficient
26 number of financially feasible applications for housing for persons
27 with a disability or for multifamily housing development

1 construction or rehabilitation during the first 120 days of the
2 application cycle, the funds shall be made available for other
3 purposes authorized under the Cranston-Gonzalez National
4 Affordable Housing Act (42 U.S.C. Section 12701 et seq.).

5 (d) The department shall allocate housing funds provided to
6 the state under the Cranston-Gonzalez National Affordable Housing
7 Act (42 U.S.C. Section 12701 et seq.), housing trust funds
8 administered by the department under Sections 2306.201-2306.206,
9 and commitments issued under the federal low income housing tax
10 credit program administered by the department under Subchapter DD
11 to all urban areas, historically underserved urban [~~urban/exurban~~]
12 areas, and rural areas of each uniform state service region based on
13 a formula developed by the department that is based on the need for
14 housing assistance and the availability of housing resources in
15 those urban areas, historically underserved urban [~~urban/exurban~~]
16 areas, if applicable, and rural areas, provided that the
17 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. For
21 purposes of the formula, in determining the availability of housing
22 resources with respect to the department's multifamily housing
23 development construction or rehabilitation programs, the
24 department shall consider the dollar amount of multifamily tax
25 exempt bonds, HOME funds used for multifamily housing development
26 construction or rehabilitation, and financing provided by or
27 through any governmental entity for construction or rehabilitation

1 of multifamily housing developments that are restricted to
2 individuals and families who earn 60 percent or less of the area
3 median income as adjusted for family size. The department may not
4 consider financing involved in the transfer of ownership of an
5 existing development. If the department determines under the
6 formula that an insufficient number of eligible applications for
7 assistance out of funds or credits allocable under this subsection
8 are submitted to the department from a particular uniform state
9 service region, the department shall use the unused funds or
10 credits allocated to that region for all urban areas, historically
11 underserved urban [~~urban/exurban~~] areas, if applicable, and rural
12 areas in other uniform state service regions based on identified
13 need and financial feasibility.

14 (d-2) Notwithstanding Subsection (d), if the department
15 determines that there is less than \$5 million in housing trust funds
16 available in a calendar year to allocate according to Sections
17 2306.201-2306.206, the department may allocate the housing trust
18 funds among the uniform state service regions without dividing the
19 funds between urban and rural areas. For each uniform state service
20 region, the department must make the first award of funds under this
21 subsection to the applicant with the highest scoring rural
22 application.

23 (d-3) In administering the federal low income housing tax
24 credit program under Subchapter DD, the department shall further
25 subdivide the urban allocation in any uniform state service region
26 containing a historically underserved urban area based on the ratio
27 in population between the total number of historically underserved

1 urban areas within an urban area and the population of the urban
2 area as a whole.

3 (d-4) Before the application of the regional allocation
4 formula for calendar years 2006 and 2007, the department shall
5 allocate an additional \$2 million per year to uniform state service
6 region nine, an additional \$1 million per year to uniform state
7 service region 13, and an additional \$750,000 per year to uniform
8 state service region 11 to alleviate the underfunding for those
9 uniform state service regions in prior years.

10 (d-5) The department may use forward commitments of housing
11 tax credits in 2005 or 2006 to satisfy the provisions of Subsection
12 (d-4).

13 (d-6) In allocating federal low income housing tax credit
14 commitments under Subchapter DD to developments within a uniform
15 state service region, the department shall allocate five percent of
16 the total amount of housing tax credits for developments in that
17 region to developments in that region that are financed through the
18 Texas Rural Development Office of the United States Department of
19 Agriculture and that:

20 (1) do not exceed 48 units if the development requires
21 new construction; or

22 (2) are any size if rehabilitation is involved.

23 (d-7) Any funds allocated to developments that satisfy the
24 requirements of Subsections (d-3)-(d-6) and that involve
25 rehabilitation must come from the funds set aside for at-risk
26 developments under Section 2306.6714.

27 (e) The department shall include in its annual low income

1 housing plan under Section 2306.0721:

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

4 (2) the allocation targets established under the
5 formula for the urban areas, historically underserved urban
6 [urban/exurban] areas, if applicable, and rural areas of each
7 uniform 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 areas, historically underserved
11 urban [urban/exurban] areas, if applicable, and rural areas of each
12 uniform state service region in the preceding year for each federal
13 and state program affected by the requirements of Subsection (d).

14 SECTION 19. Section 2306.111(c), Government Code, as
15 amended by Chapters 1367 and 1448, Acts of the 77th Legislature,
16 Regular Session, 2001, is reenacted and amended to read as follows:

17 (c) Except as provided by Subsection (c-3), in [In]
18 administering federal housing funds provided to the state under the
19 Cranston-Gonzalez National Affordable Housing Act (42 U.S.C.
20 Section 12701 et seq.), the department shall expend 100 [~~at least~~
21 ~~95~~] percent of these funds for:

22 (1) the benefit of non-participating small cities and
23 rural areas that do not qualify to receive funds under the
24 Cranston-Gonzalez National Affordable Housing Act directly from
25 the United States Department of Housing and Urban Development; or

26 (2) the preservation of existing affordable housing
27 that receives financing from the United States Department of

1 Agriculture. [~~All funds not set aside under this subsection shall~~
2 ~~be used for the benefit of persons with disabilities who live in~~
3 ~~areas other than small cities and rural areas.~~]

4 SECTION 20. Section 2306.1111, Government Code, is amended
5 by amending Subsection (a) and adding Subsections (a-1) and (a-2)
6 to read as follows:

7 (a) Notwithstanding any other state law and to the extent
8 consistent with federal law, the department shall establish a
9 uniform application and funding cycle for all single-family and
10 multifamily housing programs administered by the department under
11 this chapter, excluding any program described by Chapter 1372 and
12 including a uniform application and funding cycle for housing
13 sponsors of multifamily housing developments applying for:

14 (1) housing funds provided to the state under the
15 Cranston-Gonzalez National Affordable Housing Act (42 U.S.C.
16 Section 12701 et seq.);

17 (2) housing trust funds administered by the department
18 under Sections 2306.201-2306.206; and

19 (3) commitments issued under the federal low income
20 housing tax credit program administered by the department under
21 Subchapter DD.

22 (a-1) The application acceptance periods for the programs
23 described by Subsections (a)(1)-(3) must run concurrently.

24 (a-2) If the department does not receive during the uniform
25 application and funding cycle under Subsection (a) a sufficient
26 number of financially feasible applications for housing funds
27 provided to the state under the Cranston-Gonzalez National

1 Affordable Housing Act (42 U.S.C. Section 12701 et seq.) or housing
2 trust funds administered by the department under Sections
3 2306.201-2306.206, the department may consider additional
4 applications. During the first 120 days of an application and
5 funding cycle for housing funds provided to the state under the
6 Cranston-Gonzalez National Affordable Housing Act (42 U.S.C.
7 Section 12701 et seq.) or housing trust funds administered by the
8 department under Sections 2306.201-2306.206, the department may
9 not consider applications requesting a grant of funds.

10 SECTION 21. Subchapter F, Chapter 2306, Government Code, is
11 amended by adding Section 2306.1116 to read as follows:

12 Sec. 2306.1116. HISTORICALLY UNDERSERVED URBAN AREAS. (a)
13 A historically underserved urban area is a community that:

14 (1) in uniform state service region three:

15 (A) is located in Collin, Dallas, Denton, Ellis,
16 Hood, Hunt, Kaufman, Johnson, Parker, Rockwall, or Tarrant County;

17 (B) is not located within the municipal
18 boundaries of Arlington, Dallas, or Fort Worth; and

19 (C) does not meet the definition of a rural area;

20 (2) in uniform state service region six:

21 (A) is located in Chambers, Fort Bend, Harris,
22 Liberty, Montgomery, or Waller County;

23 (B) is not located within the municipal
24 boundaries of Houston; and

25 (C) does not meet the definition of a rural area;

26 (3) in uniform state service region seven:

27 (A) is located in Bastrop, Caldwell, Hays,

1 Travis, or Williamson County;

2 (B) is not located within the municipal
3 boundaries of Austin; and

4 (C) does not meet the definition of a rural area;
5 or

6 (4) in uniform state service region nine:

7 (A) is located in Atascosa, Bexar, Comal,
8 Guadalupe, or Wilson County;

9 (B) is not located within the municipal
10 boundaries of San Antonio; and

11 (C) does not meet the definition of a rural area.

12 (b) The identification of the counties described by
13 Subsection (a) shall be periodically adjusted as necessary to
14 conform with the definition or identification of metropolitan
15 statistical areas for uniform state service regions three, six,
16 seven, and nine.

17 SECTION 22. Section 2306.1113, Government Code, is amended
18 by amending Subsection (a) and adding Subsection (c) to read as
19 follows:

20 (a) During the period beginning on the date a project
21 application is filed and ending on the date the board makes a final
22 decision with respect to any approval of that application, a member
23 of the board may not engage in any communication regarding a project
24 application, other than an application that has been included in an
25 alternative dispute resolution process under Section 2306.082,
26 [communicate] with the following persons:

27 (1) the applicant or a related party, as defined by

1 state law, including board rules, and federal law; and

2 (2) any person who is:

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

5 (i) a general partner or contractor; and

6 (ii) a principal or affiliate of a general
7 partner or contractor; or

8 (B) employed as a lobbyist by the applicant or a
9 related party.

10 (c) The department may not adopt rules that:

11 (1) impose the prohibition described by Subsection (a)
12 on any person other than a board member; or

13 (2) otherwise restrict communications with any person
14 in the department, except as described by this section.

15 SECTION 23. Section 2306.1114(a), Government Code, is
16 amended to read as follows:

17 (a) Not later than the 14th day after the date an
18 application or a proposed application for housing funds described
19 by Section 2306.111 has been filed, the department shall provide by
20 regular mail written notice of the filing of the application or
21 proposed application to the following persons:

22 (1) the United States representative who represents
23 the community containing the development described in the
24 application;

25 (2) members of the legislature who represent the
26 community containing the development described in the application;

27 (3) the presiding officer of the governing body of the

1 political subdivision containing the development described in the
2 application;

3 (4) any member of the governing body of a political
4 subdivision who represents the area containing the development
5 described in the application;

6 (5) the superintendent and the presiding officer of
7 the board of trustees of the school district containing the
8 development described in the application; and

9 (6) any neighborhood associations that, on December 1
10 of the year immediately preceding the year of the relevant
11 application deadline, are ~~[organizations]~~ on record with the
12 department or the political subdivision containing the proposed
13 site of the development described in the application, if the ~~[state~~
14 ~~or county in which the development described in the application is~~
15 ~~to be located and whose]~~ boundaries of the neighborhood association
16 encompass the same elementary school attendance zone, or a portion
17 of the same zone, as ~~[contain]~~ the proposed development site.

18 SECTION 24. Section 2306.127, Government Code, is amended
19 to read as follows:

20 Sec. 2306.127. PRIORITY FOR CERTAIN COMMUNITIES. In a
21 manner consistent with the regional allocation formula described
22 under Section 2306.111(d) for programs other than the low income
23 housing tax credit program administered under Subchapter DD, the
24 department shall give priority through its housing program scoring
25 criteria to communities that are located wholly or partly in:

26 (1) a federally designated urban enterprise
27 community;

1 (2) an urban enhanced enterprise community; or

2 (3) an economically distressed area or colonia.

3 SECTION 25. Section 2306.142(d), Government Code, is
4 amended to read as follows:

5 (d) The department or its designee shall analyze the
6 potential market demand, loan availability, and private sector home
7 mortgage lending rates available to extremely low, very low, low,
8 and moderate income borrowers in [~~the~~] rural areas [~~counties of the~~
9 ~~state~~], in census tracts in which the median family income is less
10 than 80 percent of the median family income for the county in which
11 the census tract is located, and in the region of the state adjacent
12 to the international border of the state. The department or its
13 designee shall establish a process for serving those rural areas
14 [~~counties~~], census tracts, and regions through the single-family
15 mortgage revenue bond program in a manner proportionate to the
16 credit needs of those areas as determined through the department's
17 market study.

18 SECTION 26. Section 2306.147(a), Government Code, is
19 amended to read as follows:

20 (a) The board shall have the specific duty and power to
21 establish a schedule of fees and penalties relating to the
22 operation of the housing finance division and authorized by this
23 chapter, including application, processing, loan commitment,
24 origination, servicing, and administrative fees. The total amount
25 of fees imposed in connection with the low income housing tax credit
26 program administered by the department under Subchapter DD may not
27 exceed the department's total costs in administering the program.

1 SECTION 27. Section 2306.148, Government Code, is amended
2 to read as follows:

3 Sec. 2306.148. UNDERWRITING STANDARDS. The board shall
4 have the specific duty and power to adopt underwriting standards
5 based on industry norms and standards for loans made or financed by
6 the housing finance division under its single family and
7 multifamily bond programs.

8 SECTION 28. Section 2306.150, Government Code, is amended
9 to read as follows:

10 Sec. 2306.150. PROPERTY STANDARDS. The board shall have
11 the specific duty and power to adopt minimum property standards for
12 housing developments financed or acquired with bond proceeds under
13 this chapter.

14 SECTION 29. Section 2306.171, Government Code, is amended
15 to read as follows:

16 Sec. 2306.171. GENERAL DUTIES OF DEPARTMENT RELATING TO
17 PURPOSES OF HOUSING FINANCE DIVISION. The department shall:

18 (1) develop policies and programs designed to increase
19 the number of individuals and families of [~~extremely low~~] very
20 low[~~7~~] and low income and families of moderate income who [~~that~~]
21 participate in the housing finance division's programs;

22 (2) work with municipalities, counties, public
23 agencies, housing sponsors, and nonprofit and for profit
24 corporations to provide:

25 (A) information on division programs; and

26 (B) technical assistance to municipalities,
27 counties, and nonprofit corporations;

1 (3) encourage private for profit and nonprofit
2 corporations and state organizations to match the division's funds
3 to assist in providing affordable housing to individuals and
4 families of low and very low income and families of moderate income;

5 (4) develop policies and procedures to increase the
6 number of individuals and families of extremely low income who
7 benefit from the housing finance division's programs by attempting
8 to match the financial assistance available through the division
9 with any rental assistance operating subsidies that may be
10 available from other governmental sources [~~provide matching funds~~
11 ~~to municipalities, counties, public agencies, housing sponsors,~~
12 ~~and nonprofit developers who qualify under the division's~~
13 ~~programs~~]; and

14 (5) administer the state's allocation of federal funds
15 provided under the rental rehabilitation grant program authorized
16 by Section 17, Title I, of the United States Housing Act of 1937 (42
17 U.S.C. Section 1437o).

18 SECTION 30. Section 2306.174, Government Code, is amended
19 to read as follows:

20 Sec. 2306.174. ACQUISITION AND DISPOSITION OF PROPERTY.
21 The department may:

22 (1) acquire, own, rent, lease, accept, hold, or
23 dispose of any real, personal, or mixed property, or any interest in
24 property, including a right or easement, in performing its duties
25 and exercising its powers under this chapter, by purchase,
26 exchange, gift, assignment, transfer, foreclosure, sale, lease, or
27 otherwise;

1 (2) hold, manage, operate, or improve real, personal,
2 or mixed property, except that:

3 (A) the department is restricted in acquiring
4 property [~~under Section 2306.251~~] unless it is required to
5 foreclose on a delinquent loan and elects to acquire the property at
6 foreclosure;

7 (B) the department shall make a diligent effort
8 for a period not to exceed six months to sell a housing development
9 acquired through foreclosure to a purchaser who will be required to
10 pay ad valorem taxes on the housing development or, if such a
11 purchaser cannot be found, to another purchaser; and

12 (C) the department shall sell a housing
13 development acquired through foreclosure not later than the second
14 [~~third~~] anniversary of the date of acquisition unless the board
15 adopts a resolution stating that a purchaser cannot be found after
16 diligent search by the housing finance division, in which case the
17 department shall continue to try to find a purchaser and shall sell
18 the housing development when a purchaser is found; and

19 (3) lease or rent land or a dwelling, house,
20 accommodation, building, structure, or facility from a private
21 party to carry out the housing finance division's purposes.

22 SECTION 31. Section 2306.183, Government Code, is amended
23 to read as follows:

24 Sec. 2306.183. NEEDS OF QUALIFYING INDIVIDUALS AND FAMILIES
25 IN RURAL AREAS, HISTORICALLY UNDERSERVED URBAN AREAS, AND SMALL
26 MUNICIPALITIES. The department may adopt a target strategy to
27 ensure that the credit and housing needs of qualifying individuals

1 and families who reside in rural areas, historically underserved
2 urban areas, and small municipalities are equitably served by the
3 housing finance division.

4 SECTION 32. Sections 2306.185(a)-(e), Government Code, are
5 amended to read as follows:

6 (a) The department shall adopt policies and procedures to
7 ensure that, for a multifamily rental housing development funded
8 through loans, grants, or tax credits under this chapter, the owner
9 of the development:

10 (1) maintains rents equal to or below the maximum
11 allowable amount for the specific housing program [~~keeps the rents~~
12 ~~affordable for low income tenants for the longest period that is~~
13 ~~economically feasible~~]; and

14 (2) provides regular maintenance to keep the
15 development sanitary, decent, and safe and otherwise complies, if
16 applicable, with the requirements of Section 2306.186.

17 (b) In implementing Subsection (a)(1) [~~and in developing~~
18 ~~underwriting standards and application scoring criteria for the~~
19 ~~award of loans, grants, or tax credits to multifamily~~
20 ~~developments~~], the department shall ensure that the economic
21 benefits of [~~longer affordability terms and~~] below market rate
22 rents are accurately assessed and considered.

23 (c) The department shall require that a recipient of funding
24 maintain [~~maintains~~] the affordability of the multifamily housing
25 development for the targeted income levels for the greater of:

26 (1) the minimum affordability period under the
27 respective federal or state program through which the financing is

1 provided; or

2 (2) [~~households of extremely low, very low, low, and~~
3 ~~moderate incomes for the greater of a 30-year period from the date~~
4 ~~the recipient takes legal possession of the housing or]~~ the
5 remaining term of any [~~the~~] existing [~~federal~~] government
6 assistance. [~~In addition, the agreement between the department and~~
7 ~~the recipient shall require the renewal of rental subsidies if~~
8 ~~available and if the subsidies are sufficient to maintain the~~
9 ~~economic viability of the multifamily development.]~~

10 (d) The development restrictions provided by Subsection (a)
11 and Section 2306.269 are enforceable by the department [~~, by tenants~~
12 ~~of the development, or by private parties]~~ against the initial
13 owner or any subsequent owner. The department shall require a land
14 use restriction agreement providing for enforcement of the
15 restrictions by the department [~~, a tenant, or a private party]~~ that
16 includes the right of the prevailing party to recover reasonable
17 attorney's fees [~~if the party seeking enforcement of the~~
18 ~~restriction is successful].~~

19 (e) Subsections (c) and (d) and Section 2306.269 apply only
20 to multifamily rental housing developments to which the department
21 is providing one or more of the following forms of assistance:

22 (1) a loan [~~or grant~~] in an amount greater than 33
23 percent of the market value of the development on the date the
24 recipient completed the construction of the development;

25 (2) a loan guarantee for a loan in an amount greater
26 than 33 percent of the market value of the development on the date
27 the recipient took legal title to the development; [~~or~~]

1 (3) a low income housing tax credit that provides more
2 than 33 percent of the total development costs of the development;
3 or

4 (4) a grant.

5 SECTION 33. Sections 2306.186(a)(1) and (4), Government
6 Code, are amended to read as follows:

7 (1) "Bank [~~trustee~~]" means a bank authorized to do
8 business in this state[~~, with the power to act as trustee~~].

9 (4) "Reserve account" means an individual account:

10 (A) created to fund any necessary repairs for a
11 multifamily rental housing development; and

12 (B) maintained by a first lien lender or bank
13 [~~trustee~~].

14 SECTION 34. Sections 2306.186(b), (c), (d), (e), (h), (i),
15 (j), and (l), Government Code, are amended to read as follows:

16 (b) If the department has provided mortgage loan funds and
17 is the first lien lender with respect to the multifamily rental
18 housing development, each owner who receives a mortgage loan from
19 the department [assistance] for a multifamily rental housing
20 development [that contains 25 or more rental units] shall deposit
21 annually into a reserve account:

22 (1) [~~for the year 2004: (A)~~] not less than \$150 per
23 unit per year for units one to five years old; and

24 (2) [(B)] not less than \$200 per unit per year for
25 units six or more years old[~~, and~~

26 [~~(2) for each year following the year 2004, the~~
27 ~~amounts per unit per year as described by Subdivision (1)]].~~

1 (c) A land use restriction agreement or restrictive
2 covenant between the owner and the department must require the
3 owner to begin making annual deposits to the reserve account on the
4 date that occupancy of the multifamily rental housing development
5 stabilizes or the date that permanent financing for the development
6 is completely in place, whichever occurs later, and shall continue
7 making deposits until the earliest of the following dates:

8 (1) the date of any [~~involuntary~~] change in ownership
9 of the development;

10 (2) the date on which the owner suffers a total
11 casualty loss with respect to the development or the date on which
12 the development becomes functionally obsolete, if the development
13 cannot be or is not restored;

14 (3) the date on which the development is demolished;

15 (4) the date on which the development ceases to be used
16 as multifamily rental property; or

17 (5) the end of the affordability period specified by
18 the land use restriction agreement or restrictive covenant.

19 (d) If the department is not the first lien lender with
20 respect to a multifamily rental housing development, the department
21 may not impose on the owner of that development any department
22 requirements relating to the preparation of a physical needs
23 assessment or the creation, maintenance, or funding of a reserve
24 account. [~~With respect to multifamily rental developments, if the~~
25 ~~establishment of a reserve fund for repairs has not been required by~~
26 ~~the first lien lender, the development owner shall set aside the~~
27 ~~repair reserve amount as a reserve for capital improvements. The~~

1 ~~reserve must be established for each unit in the development,~~
2 ~~regardless of the amount of rent charged for the unit.]~~

3 (e) Beginning with the 11th year after the year in which the
4 department awards a mortgage loan [~~awarding of any financial~~
5 ~~assistance~~] for the development that results in [~~by~~] the department
6 becoming the first lien lender with respect to the development, the
7 owner of a multifamily rental housing development shall contract
8 for a third-party physical needs assessment to determine the
9 conformity of the development to local health, safety, and building
10 codes [~~at appropriate intervals that are consistent with lender~~
11 ~~requirements with respect to the development~~]. The [~~If the first~~
12 ~~lien lender does not require a third-party physical needs~~
13 ~~assessment or if the department is the first lien lender, the~~] owner
14 shall contract with a third party to conduct a physical needs
15 assessment at least once during each five-year period beginning
16 with the 11th year after the year in which the department awards a
17 mortgage loan for the development that results in the department
18 becoming the first lien lender with respect to the development
19 [~~awarding of any financial assistance for the development by the~~
20 ~~department~~]. The owner of the development shall submit to the
21 department copies of the most recent third-party physical needs
22 assessment conducted on the development, any response by the owner
23 to the assessment, any repairs made in response to the assessment,
24 and information on any necessary changes to the required reserve
25 based on the assessment.

26 (h) The duties of the owner of a multifamily rental housing
27 development under this section cease on the earliest of the dates

1 described by Subsection (c) [~~date of a voluntary change in~~
2 ~~ownership of the development~~], but the subsequent owner of the
3 development is subject to the deposit, inspection, and notification
4 requirements of Subsections (b), (c), (d), and (e).

5 (i) The first lien lender shall maintain the reserve
6 account. [~~In the event there is no longer a first lien lender, then~~
7 ~~Subsections (b) and (d) no longer apply.~~]

8 (j) The department shall adopt rules that:

9 (1) establish requirements and standards regarding:

10 (A) for first lien lenders and banks [~~bank~~
11 ~~trustees~~]:

12 (i) maintenance of reserve accounts and
13 reasonable costs of that maintenance;

14 (ii) asset management;

15 (iii) transfer of money in reserve accounts
16 to the department to fund necessary repairs; and

17 (iv) oversight of reserve accounts and the
18 provision of financial data and other information to the
19 department; and

20 (B) for owners, inspections of the multifamily
21 rental housing developments and identification of necessary
22 repairs, including requirements and standards regarding
23 construction, rehabilitation, and occupancy that may enable
24 quicker identification of those repairs;

25 (2) identify circumstances in which money in the
26 reserve accounts may:

27 (A) be used for expenses other than necessary

1 repairs, including property taxes or insurance; and

2 (B) fall below mandatory deposit levels without
3 resulting in department action;

4 (3) define the scope of department oversight of
5 reserve accounts and the repair process;

6 (4) provide the consequences of any failure to make a
7 required deposit, including a definition of good cause, if any, for
8 a failure to make a required deposit;

9 (5) specify or create processes and standards to be
10 used by the department to obtain repairs for developments;

11 (6) define for purposes of Subsection (c) the date on
12 which occupancy of a development is considered to have stabilized
13 and the date on which permanent financing is considered to be
14 completely in place; and

15 (7) provide for appointment of a bank [~~trustee~~] as
16 necessary under this section.

17 (1) The provisions of this [~~This~~] section requiring reserve
18 accounts or physical needs assessments do [~~does~~] not apply to a
19 development for which an owner is required to maintain a reserve
20 account under any other provision of federal or state law. If the
21 department has previously imposed under this section a requirement
22 relating to a reserve account or a physical needs assessment on a
23 development that is required to maintain a reserve account under
24 any other provision of federal or state law, the department shall
25 prepare an amendment to the land use restriction agreement or
26 restrictive covenant removing the requirement.

27 SECTION 35. Sections 2306.202 and 2306.203, Government

1 Code, are amended to read as follows:

2 Sec. 2306.202. USE OF HOUSING TRUST FUND. (a) The
3 department, through the housing finance division, shall use the
4 housing trust fund to provide loans, grants, or other comparable
5 forms of assistance to local units of government, public housing
6 authorities, for-profit organizations, nonprofit organizations,
7 and income-eligible individuals, families, and households to
8 finance, acquire, rehabilitate, and develop decent, safe, and
9 sanitary housing. To enhance the self-sustaining nature of the
10 housing trust fund, the department shall structure its award
11 process to encourage applications for loans instead of grants by
12 scheduling two application periods as follows:

13 (1) a loan application period that is open
14 concurrently with the low income housing tax credit application
15 filing period provided by Subchapter DD; and

16 (2) a grant application period that is open only if
17 there is available money not already allocated for loans in the
18 application period described by Subdivision (1). [~~In each biennium~~
19 ~~the first \$2.6 million available through the housing trust fund for~~
20 ~~loans, grants, or other comparable forms of assistance shall be set~~
21 ~~aside and made available exclusively for local units of government,~~
22 ~~public housing authorities, and nonprofit organizations. Any~~
23 ~~additional funds may also be made available to for-profit~~
24 ~~organizations so long as at least 45 percent of available funds in~~
25 ~~excess of the first \$2.6 million shall be made available to~~
26 ~~nonprofit organizations for the purpose of acquiring,~~
27 ~~rehabilitating, and developing decent, safe, and sanitary housing.~~

1 ~~The remaining portion shall be competed for by nonprofit~~
2 ~~organizations, for-profit organizations, and other eligible~~
3 ~~entities. Notwithstanding any other section of this chapter, but~~
4 ~~subject to the limitations in Section 2306.251(c), the department~~
5 ~~may also use the fund to acquire property to endow the fund.]~~

6 (b) Use of the fund is limited to providing:

7 (1) assistance for individuals and families of low and
8 very low income;

9 (2) ~~[technical]~~ assistance to housing sponsors for the
10 purpose of ~~[and capacity building to nonprofit organizations~~
11 ~~engaged in]~~ developing housing for individuals and families of low
12 and very low income; and

13 (3) security for repayment of revenue bonds issued to
14 finance housing for individuals and families of low and very low
15 income.

16 Sec. 2306.203. RULES REGARDING ADMINISTRATION OF HOUSING
17 TRUST FUND. The board shall adopt rules to administer the housing
18 trust fund, including rules providing:

19 (1) that the division give priority to programs that
20 maximize federal resources;

21 (2) for a process to set priorities for use of the
22 fund, including the distribution of fund resources under a
23 competitive application ~~[request for a proposal]~~ process developed
24 and approved by the board;

25 (3) that the applications ~~[criteria used to rank~~
26 ~~proposals]~~ be ranked based on a point system using only the
27 following criteria, in descending order of priority ~~[will include~~

1 the]:

2 (A) the extent to which individuals and families
3 of low and very low income are served by the development [~~leveraging~~
4 ~~of federal resources~~];

5 (B) the leveraging of non-governmental funding
6 sources, with points awarded in proportion to how much
7 non-governmental money is used per person served, based on a
8 calculation of 1.5 persons per bedroom [~~cost-effectiveness of a~~
9 ~~proposed development~~]; [and]

10 (C) support for the development from the state
11 representative and state senator for the district in which the
12 development is to be located;

13 (D) whether the proposal is for a loan of housing
14 trust funds instead of a grant; and

15 (E) other criteria established by the department
16 that are not inconsistent with the priorities under this
17 subdivision [~~extent to which individuals and families of very low~~
18 ~~income are served by the development~~];

19 (4) that funds may not be made available to a
20 development that permanently and involuntarily displaces
21 individuals and families of low income;

22 (5) that the board attempt to allocate funds to
23 achieve a broad geographical distribution with:

24 (A) special emphasis on equitably serving rural
25 and nonmetropolitan areas; and

26 (B) consideration of the number and percentage of
27 income-qualified families in different geographical areas; and

1 (6) that multifamily housing developed or
2 rehabilitated through the fund remain affordable to
3 income-qualified households for the term of the loan or, if a grant
4 has been awarded, for at least 30 [~~20~~] years.

5 SECTION 36. Section 2306.205(f), Government Code, is
6 amended to read as follows:

7 (f) In addition to the money transferred into the housing
8 trust fund under this section, and subject to Subsection (e), the
9 department shall transfer into the fund the amount of any
10 origination fee, asset oversight fee, and servicing fee [~~the~~
11 ~~department or~~] the Texas State Affordable Housing Corporation
12 receives in relation to the administration of its 501(c)(3) bond
13 program established pursuant to Section 2306.358 that exceeds the
14 amount needed by [~~the department or~~] the Texas State Affordable
15 Housing Corporation to pay its operating and overhead costs and
16 fund reserves, including an insurance reserve or credit enhancement
17 reserve established by the board of the corporation in
18 administering the program. The corporation shall transfer to the
19 department the fee amounts described by this subsection to enable
20 the department to discharge its duties under this subsection.

21 SECTION 37. Section 2306.227, Government Code, is amended
22 to read as follows:

23 Sec. 2306.227. PREPAYMENT OF MORTGAGE LOANS. A mortgage
24 loan made under this chapter may be prepaid at any time before [~~to~~]
25 maturity [~~after the period of years and under the terms and~~
26 ~~conditions determined by the board~~].

27 SECTION 38. Section 2306.229, Government Code, is amended

1 by adding Subsection (c) to read as follows:

2 (c) For each loan made for the development of multifamily
3 housing with funds provided to the state under the
4 Cranston-Gonzalez National Affordable Housing Act (42 U.S.C.
5 Section 12701 et seq.), the department shall obtain a mortgagee's
6 title policy in the amount of the loan. The department may not
7 designate a specific title insurance company to provide the
8 mortgagee title policy or require the borrower to provide the
9 policy from a specific title insurance company. The borrower shall
10 select the title insurance company to close the loan and to provide
11 the mortgagee title policy.

12 SECTION 39. Sections 2306.252(a), (b), and (c), Government
13 Code, are amended to read as follows:

14 (a) The board shall establish a housing resource center in
15 the housing finance division. The department shall fund the center
16 with money available under Section 1372.006(a).

17 (b) The housing resource [~~department, through the~~]
18 center[~~7~~] shall:

19 (1) provide educational material prepared in plain
20 language to the public [~~housing advocates, housing sponsors,~~
21 ~~borrowers, and tenants~~]; and

22 (2) [~~provide technical assistance to nonprofit~~
23 ~~housing sponsors,~~

24 [~~3~~] assist in the development of housing policy,
25 including the annual state low income housing plan and report and
26 the consolidated plan[~~7 and~~

27 [~~4~~] ~~provide, in cooperation with the state energy~~

1 ~~conservation office, the Texas Commission on Environmental~~
2 ~~Quality, and other governmental entities, information on the use of~~
3 ~~sustainable and energy efficient housing construction products and~~
4 ~~assist local governments and nonprofits in identifying information~~
5 ~~on sustainable and energy efficient housing construction and energy~~
6 ~~efficient resources and techniques].~~

7 (c) The housing resource center is intended to assist
8 individuals, local organizations, and local governments in
9 providing for the housing needs of individuals and families in
10 their communities by providing information available to the center
11 to housing contractors, for-profit and nonprofit housing sponsors,
12 community-based organizations, and local governments on:

- 13 (1) local housing needs;
14 (2) housing programs;
15 (3) available funding sources; and
16 (4) programs that affect the creation, improvement, or
17 preservation of housing affordable to individuals and families of
18 low and very low income.

19 SECTION 40. Section 2306.253(d), Government Code, is
20 amended to read as follows:

21 (d) To [~~In order to~~] implement this section, the department
22 may use money available to the department for housing purposes that
23 the department is not prohibited from spending on the homebuyer
24 education program, including:

- 25 (1) any [~~the amount of administrative or service~~] fees
26 the department charges persons to attend a homebuyer education
27 program [~~receives from the issuance or refunding of bonds that~~

1 ~~exceeds the amount the department needs to pay its overhead costs in~~
2 ~~administering its bond programs]; and~~

3 (2) money the department receives from other entities
4 by gift or grant under a contract.

5 SECTION 41. Sections 2306.254(b) and (d), Government Code,
6 are amended to read as follows:

7 (b) The department may encourage, but may not require,
8 ~~[shall structure the requirements for]~~ the provision of tenant
9 services in any multifamily housing development ~~[so that tenant~~
10 ~~services provided through housing programs are coordinated with~~
11 ~~similar services provided through state workforce development and~~
12 ~~welfare programs]~~. The department shall encourage ~~[emphasize]~~
13 tenant services that are coordinated with similar services provided
14 through state workforce development and welfare programs and that
15 are provided by third parties at no cost to the residents or that
16 are eligible for ~~[additional]~~ federal matching funds through
17 workforce development or welfare-related programs.

18 (d) The coordinator shall meet in Austin at least quarterly
19 with representatives of the Texas Workforce Commission, the Texas
20 Department of Human Services, the Department of Protective and
21 Regulatory Services, and the Legislative Budget Board to:

22 (1) update coordination of tenant services with
23 workforce development and welfare-related programs; and

24 (2) discuss funding sources for tenant services
25 programs ~~[, and~~

26 ~~[(3) report on the status of tenant services programs,~~
27 ~~including reporting on the number of clients and types of services~~

1 offered].

2 SECTION 42. Section 2306.257, Government Code, is amended
3 by amending Subsection (a) and adding Subsection (a-1) to read as
4 follows:

5 (a) The department may provide assistance through a housing
6 program under this chapter only to an applicant who certifies the
7 applicant's compliance with any applicable state and federal fair
8 housing laws[-

9 [~~(1) state and federal fair housing laws, including~~
10 ~~Chapter 301, Property Code, Title VIII of the Civil Rights Act of~~
11 ~~1968 (42 U.S.C. Section 3601 et seq.), and the Fair Housing~~
12 ~~Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.);~~

13 [~~(2) the Civil Rights Act of 1964 (42 U.S.C. Section~~
14 ~~2000a et seq.);~~

15 [~~(3) the Americans with Disabilities Act of 1990 (42~~
16 ~~U.S.C. Section 12101 et seq.); and~~

17 [~~(4) the Rehabilitation Act of 1973 (29 U.S.C. Section~~
18 ~~701 et seq.)].~~

19 (a-1) The board shall adopt rules requiring the department
20 to obtain annually from housing program participants the
21 information necessary to enable the department to comply with state
22 and federal reporting requirements related to the laws described by
23 Subsection (a). Each item of information requested from the
24 participant by the department must include a citation to the
25 statutory authority authorizing the request of the information.

26 SECTION 43. Section 2306.268, Government Code, is amended
27 to read as follows:

1 Sec. 2306.268. RENTS AND CHARGES. The department shall
2 approve and may change from time to time a schedule of rents and
3 charges for a housing development operated by the department [~~under~~
4 ~~Section 2306.251~~].

5 SECTION 44. Section 2306.269, Government Code, is amended
6 to read as follows:

7 Sec. 2306.269. TENANT [~~AND MANAGER~~] SELECTION. (a) The
8 department may [~~shall~~] set standards for tenant [~~and management~~]
9 selection by a housing sponsor.

10 (b) The department shall prohibit a multifamily rental
11 housing development funded or administered by the department,
12 including a development supported with a housing tax credit
13 allocation under Subchapter DD, from:

14 (1) excluding an individual or family from admission
15 to the development solely because the individual or family
16 participates in the housing choice voucher program under Section 8,
17 United States Housing Act of 1937 (42 U.S.C. Section 1437f); and

18 (2) using a financial or minimum income standard for
19 an individual or family participating in the voucher program
20 described by Subdivision (1) that requires the individual or family
21 to have a monthly income of more than three [~~2-1/2~~] times the
22 individual's or family's share of the total monthly rent payable to
23 the owner of the development.

24 SECTION 45. Sections 2306.271(b) and (d), Government Code,
25 are amended to read as follows:

26 (b) The housing finance division shall require a housing
27 sponsor to certify the actual housing development costs on

1 completion of the housing development. Any certification of costs
2 must be accompanied by an unqualified audit of the actual housing
3 development costs prepared by a certified public accountant in
4 accordance with generally accepted accounting principles and
5 generally accepted auditing standards~~[, subject to audit and~~
6 ~~determination by the department].~~

7 (d) In this section, "housing development costs" means the
8 total of all reasonable and necessary costs incurred in financing,
9 creating, or purchasing a housing development, including a
10 single-family dwelling~~[, approved by the department as reasonable~~
11 ~~and necessary]~~. The costs may include:

12 (1) the value of land and buildings on the land owned
13 by the sponsor or the cost of acquiring land and buildings on the
14 land, including payments for options, deposits, or contracts to
15 purchase properties on the proposed housing site;

16 (2) costs of site preparation, demolition, and
17 development;

18 (3) expenses relating to the issuance of bonds;

19 (4) fees paid or payable in connection with the
20 planning, execution, and financing of the housing development,
21 including fees to:

22 (A) architects;

23 (B) engineers;

24 (C) attorneys;

25 (D) accountants; or

26 (E) the housing finance division on the
27 department's behalf;

1 (5) costs of necessary studies, surveys, plans,
2 permits, insurance, interest, financing, tax and assessment costs,
3 and other operating and carrying costs during construction;

4 (6) costs of construction, rehabilitation,
5 reconstruction, fixtures, furnishings, equipment, machinery, and
6 apparatus related to the real property;

7 (7) costs of land improvements, including landscaping
8 and off-site improvements, whether or not the costs have been paid
9 in cash or in a form other than cash;

10 (8) necessary expenses for the initial occupancy of
11 the housing development;

12 (9) a reasonable profit and a risk fee for developer
13 services in addition to job overhead to the general contractor or
14 limited profit housing sponsor;

15 (10) an allowance [~~established by the department~~] for
16 working capital and contingency reserves and reserves for
17 anticipated operating deficits during the first two years of
18 occupancy; and

19 (11) the cost of other items, including tenant
20 relocation if tenant relocation costs are not otherwise provided
21 for, [~~that the department determines are reasonable and necessary~~
22 ~~for the development of the housing development,~~] less net rents and
23 other net revenues received from the operation of the real and
24 personal property on the development site during construction.

25 SECTION 46. Sections 2306.313(a) and (b), Government Code,
26 are amended to read as follows:

27 (a) The department or [~~with the department's approval,~~]

1 the housing sponsor of a housing development may terminate the
2 tenancy or interest of an individual or family whose gross income
3 exceeds the income level allowed for admission if retaining the
4 individual or family as occupants would violate the income
5 limitations for the applicable affordable housing program [~~by more~~
6 ~~than 25 percent for six months or more~~].

7 (b) A tenancy or interest of an individual or family in a
8 housing development may not be terminated except on reasonable
9 notice [~~and opportunity to obtain suitable alternate housing under~~
10 ~~the department's rules~~].

11 SECTION 47. Section 2306.6701, Government Code, is amended
12 to read as follows:

13 Sec. 2306.6701. PURPOSE. (a) The department shall
14 administer the low income housing tax credit program to:

15 (1) encourage the development and preservation of
16 appropriate types of rental housing for households that have
17 difficulty finding suitable, affordable rental housing in the
18 private marketplace;

19 (2) maximize the number of suitable, affordable
20 residential rental units added to the state's housing supply;

21 (3) maintain [~~prevent losses for any reason to~~] the
22 state's supply of suitable, affordable residential rental units by
23 enabling the rehabilitation of rental housing or by providing other
24 preventive financial support under this subchapter; [~~and~~]

25 (4) provide for and encourage the participation of
26 for-profit organizations in the acquisition, development, and
27 operation of affordable housing developments; and

1 (5) provide for and encourage the participation of
2 nonprofit organizations in the acquisition, development, and
3 operation of affordable housing developments [~~in urban and rural~~
4 ~~communities~~].

5 (b) The department may not approve, adopt, or otherwise
6 publish a rule that:

7 (1) establishes standards or parameters that in any
8 manner exceed or deviate from the regulatory requirements of
9 Section 42, Internal Revenue Code of 1986; or

10 (2) imposes, or has the effect of imposing, on local
11 governments or on applicants direct compliance requirements or
12 costs that are not expressly required by state or federal law.

13 SECTION 48. Section 2306.6702(a), Government Code, is
14 amended by amending Subdivisions (4), (5), (10), and (15) and
15 adding Subdivision (4-a) to read as follows:

16 (4) "Application round" means the period beginning on
17 the date the department begins accepting applications and
18 continuing until all available housing tax credits are allocated[~~7~~
19 ~~but not extending past the last day of the calendar year~~].

20 (4-a) "Area median gross household income" means the
21 area median gross household income as determined for all purposes
22 in accordance with the requirements of Section 42, Internal Revenue
23 Code of 1986.

24 (5) "At-risk development" means a development that:

25 (A) has received the benefit of a subsidy in the
26 form of a below-market interest rate loan, interest rate reduction,
27 rental subsidy, Section 8 housing assistance payment for at least

1 10 percent of the units in the development, rental supplement
2 payment, or rental assistance payment~~[, or equity incentive]~~ under
3 the following federal laws, as applicable:

4 (i) Sections 221(d)(3) and (5), National
5 Housing Act (12 U.S.C. Section 17151);

6 (ii) Section 236, National Housing Act (12
7 U.S.C. Section 1715z-1);

8 (iii) Section 202, Housing Act of 1959 (12
9 U.S.C. Section 1701q);

10 (iv) Section 101, Housing and Urban
11 Development Act of 1965 (12 U.S.C. Section 1701s);

12 ~~(v) [the Section 8 Additional Assistance
13 Program for housing developments with HUD-Insured and HUD-Held
14 Mortgages administered by the United States Department of Housing
15 and Urban Development,~~

16 ~~[(vi) the Section 8 Housing Assistance
17 Program for the Disposition of HUD-Owned Projects administered by
18 the United States Department of Housing and Urban Development,~~

19 ~~[(vii)]~~ Sections 514, 515, and 516, Housing
20 Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); ~~[or]~~

21 (vi) ~~[(viii)]~~ Section 42, Internal Revenue
22 Code of 1986 (26 U.S.C. Section 42); or

23 (vii) project-based assistance authority
24 under Section 8, United States Housing Act of 1937 (42 U.S.C.
25 Section 1437f et seq.); and

26 (B) is subject to the following conditions:

27 (i) the stipulation to maintain

1 affordability in the contract granting the subsidy is within two
2 years of [nearing] expiration or has expired but has the ability to
3 be reinstated; or

4 (ii) the federally insured mortgage on the
5 development is eligible for prepayment or is nearing the end of its
6 term.

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

9 (A) provides the threshold and~~[,]~~ scoring~~[, and~~
10 ~~underwriting]~~ criteria based on housing priorities of the
11 department that are ~~[appropriate to local conditions,~~

12 ~~[(B)]~~ consistent with this chapter ~~[Section~~
13 ~~2306.6710(e), gives preference in housing tax credit allocations to~~
14 ~~developments that, as compared to the other developments,~~

15 ~~[(i) when practicable and feasible based on~~
16 ~~documented, committed, and available third-party funding sources,~~
17 ~~serve the lowest income tenants per housing tax credit, and~~

18 ~~[(ii) produce for the longest economically~~
19 ~~feasible period the greatest number of high quality units committed~~
20 ~~to remaining affordable to any tenants who are income-eligible~~
21 ~~under the low income housing tax credit program]; and~~

22 (B) ~~[(C)]~~ provides a procedure for the
23 department, the department's agent, or another private contractor
24 of the department to use in monitoring compliance with the
25 qualified allocation plan and this subchapter.

26 (15) "Threshold criteria" means the criteria used to
27 determine whether the development satisfies the minimum level of

1 acceptability for consideration established by Section 2306.67042
2 [~~in the department's qualified allocation plan~~].

3 SECTION 49. Section 2306.6703, Government Code, as amended
4 by Chapters 330 and 1106, Acts of the 78th Legislature, Regular
5 Session, 2003, is reenacted and amended to read as follows:

6 Sec. 2306.6703. INELIGIBILITY FOR CONSIDERATION. (a) An
7 application is ineligible for consideration under the low income
8 housing tax credit program if:

9 (1) at the time of application or at any time during
10 the two-year period preceding the date the application round
11 begins, the applicant or a related party is or has been:

12 (A) a member of the board; or

13 (B) the director, a deputy director, the director
14 of housing programs, the director of compliance, the director of
15 underwriting, [~~or~~] the low income housing tax credit program
16 manager employed by the department, or a member of the department
17 committee that selects applications for approval;

18 (2) the applicant proposes to replace in less than 15
19 years any private activity bond financing of the development
20 described by the application, unless:

21 (A) the applicant proposes to maintain for a
22 period of 30 years or more 100 percent of the development units
23 supported by housing tax credits as rent-restricted and exclusively
24 for occupancy by individuals and families earning not more than 50
25 percent of the area median income, adjusted for family size; and

26 (B) at least one-third of all the units in the
27 development are public housing units or Section 8 project-based

1 units; ~~[or]~~

2 (3) the applicant proposes to develop ~~[construct]~~ a
3 new construction development that is located one linear mile or
4 less from a development that:

5 (A) serves the same type of household as the new
6 development ~~[, regardless of whether the developments serve~~
7 ~~families, elderly individuals, or another type of household];~~

8 (B) has received an allocation of housing tax
9 credits for new construction at any time during the three-year
10 period preceding the date the application round begins; and

11 (C) has not been withdrawn or terminated from the
12 low income housing tax credit program; ~~[or]~~

13 (4) the development is located in a municipality or,
14 if located outside a municipality, a county that has more than twice
15 the state average of units per capita supported by housing tax
16 credits or private activity bonds, unless the applicant:

17 (A) obtains ~~[has obtained prior]~~ approval of the
18 development from the governing body of the appropriate municipality
19 or county containing the development; and

20 (B) provides, not later than the 30th day before
21 the date the board first meets to consider applications for an
22 allocation of housing tax credits, ~~[has included in the~~
23 ~~application]~~ a written statement of support from that governing
24 body referencing this section and authorizing an allocation of
25 housing tax credits for the development; or

26 (5) the applicant or an affiliate of the applicant has
27 a familial or financial relationship with a board member or an

1 employee of the department.

2 (b) Subsections [~~Subsection~~] (a)(3) and (4) do [~~does~~] not
3 apply to a development:

4 (1) that is using:

5 (A) federal HOPE VI funds received through the
6 United States Department of Housing and Urban Development;

7 (B) locally approved funds received from a public
8 improvement district or a tax increment financing district;

9 (C) funds provided to the state under the
10 Cranston-Gonzalez National Affordable Housing Act (42 U.S.C.
11 Section 12701 et seq.); [~~or~~]

12 (D) funds provided to the state and participating
13 jurisdictions under the Housing and Community Development Act of
14 1974 (42 U.S.C. Section 5301 et seq.); or

15 (E) funds provided under Section 515, Housing Act
16 of 1949 (42 U.S.C. Section 1485);

17 (2) that is located in a county with a population of
18 less than one million;

19 [~~(2) that is located outside of a metropolitan~~
20 ~~statistical area,~~] or

21 (3) that a local government where the project is to be
22 located has by vote specifically allowed the development
23 [~~construction~~] of a new construction development located within one
24 linear mile or less from a development under Subsection (a).

25 (c) The department by rule may identify additional factors
26 that make an application ineligible for consideration, including
27 additional actions or relationships of a housing sponsor,

1 developer, or other person in the development process or of any
2 person that has at least a 10 percent interest in or is otherwise in
3 control of the housing sponsor, developer, or other person in the
4 process.

5 SECTION 50. Subchapter DD, Chapter 2306, Government Code,
6 is amended by adding Section 2306.67035 to read as follows:

7 Sec. 2306.67035. SPECIAL REQUIREMENTS FOR RURAL AND
8 HISTORICALLY UNDERSERVED URBAN AREAS. (a) An application for
9 housing tax credits from funds available for rural areas must be
10 limited to:

11 (1) the rehabilitation of a development of any size;
12 or

13 (2) the development of a new construction development
14 that contains not more than 76 units.

15 (b) A new construction development that contains more than
16 76 units and is located in a rural area is eligible only for funds
17 available for urban areas, including funds available for
18 historically underserved urban areas, regardless of the
19 development's location.

20 SECTION 51. Section 2306.6704, Government Code, is amended
21 by amending Subsections (b-1), (c), and (d) and adding Subsection
22 (e) to read as follows:

23 (b-1) The preapplication process must require the applicant
24 to provide the department with evidence that the applicant has
25 notified the following entities with respect to the filing of the
26 application:

27 (1) any neighborhood associations that, on December 1

1 of the year immediately preceding the year of the application
2 deadline, are ~~[organizations]~~ on record with the department or the
3 municipality or county containing the proposed development site, if
4 the ~~[state or county in which the development is to be located and~~
5 ~~whose]~~ boundaries of the neighborhood association encompass the
6 same elementary school attendance zone, or a portion of the same
7 zone, as ~~[contain]~~ the proposed development site;

8 (2) ~~[the superintendent and the presiding officer of~~
9 ~~the board of trustees of the school district containing the~~
10 ~~development,~~

11 ~~[(3)]~~ the presiding officer of the governing body of
12 any municipality containing the development and all elected members
13 of that body;

14 (3) ~~[(4)]~~ the presiding officer of the governing body
15 of the county containing the development and all elected members of
16 that body; and

17 (4) ~~[(5)]~~ the state senator and state representative
18 of the district containing the development.

19 (c) The department shall reject and return to the applicant
20 any application assessed by the department under this section that
21 fails to satisfy the threshold criteria specified by Section
22 2306.67042 ~~[required by the board in the qualified allocation~~
23 ~~plan].~~

24 (d) If feasible under Section 2306.67041, an application
25 under this section may ~~[must]~~ be submitted electronically.

26 (e) The department shall specify the date for filing an
27 application under this section. The last date for submitting an

1 application under this section may not be earlier than February 1.

2 SECTION 52. Subchapter DD, Chapter 2306, Government Code,
3 is amended by adding Section 2306.67042 to read as follows:

4 Sec. 2306.67042. THRESHOLD CRITERIA. (a) To be eligible
5 for scoring under Section 2306.6710, an application for an
6 allocation of housing tax credits must satisfy only the threshold
7 criteria provided by this chapter.

8 (b) The application developed by the department must be
9 completed and submitted in a timely manner.

10 (c) The application must include:

11 (1) information regarding the location of the proposed
12 development, including a legal description of the proposed site and
13 county or, if applicable, municipal lot maps of the proposed site
14 and a current title policy or title commitment for the development;

15 (2) documentation of all of the public notifications
16 required by this subchapter;

17 (3) a financial statement provided by the applicant
18 and any person that has at least a 10 percent ownership interest in
19 the development owner, the developer, or the entity that will
20 guarantee any obligation of the development owner;

21 (4) information demonstrating that the applicant has
22 the experience and the financial capacity to ensure project
23 completion;

24 (5) documentation that confirms the applicant's
25 eligibility for all set-asides under which the applicant is seeking
26 funding;

27 (6) a certification that the development will:

1 (A) adhere to the requirements of the Property
2 Code relating to residential tenancies, including the requirements
3 relating to security devices;

4 (B) comply with the appropriate accessibility
5 standards required under Section 504, Rehabilitation Act of 1973
6 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8,
7 Subpart C, to the same extent required for developments receiving
8 federal financial assistance and the appropriate accessibility
9 requirements adopted by the Texas Department of Licensing and
10 Regulation under its Texas Accessibility Standards; and

11 (C) adhere to local building codes or, if no
12 local building codes are in place, the most recent version of the
13 International Building Code;

14 (7) a certification that the applicant has no final
15 unresolved findings of state or federal fair housing law
16 violations; and

17 (8) a certification of the basic amenities that will
18 be made available for the benefit of all tenants, such as:

19 (A) full perimeter fencing;

20 (B) a designated playground and equipment;

21 (C) a community laundry room or laundry hook-ups
22 in units;

23 (D) a furnished community room;

24 (E) recreation facilities; or

25 (F) at least one public telephone available to
26 tenants 24 hours a day.

27 (d) To establish the experience necessary to ensure project

1 completion under Subsection (c)(4), the development owner, the
2 owner's controlling person, or the developer must provide
3 documentation satisfactory to the department verifying the
4 completion of at least 100 residential units, or 36 residential
5 units if the applicant is applying for an allocation of housing tax
6 credits for a development located in a rural area, and the
7 meaningful participation of the owner, controlling person, or
8 developer in the development.

9 (e) The development must provide the following amenities in
10 each unit without charge to the tenant:

11 (1) for all new construction units, three
12 communication networks as follows:

13 (A) one network for telephone service installed
14 using CAT5e or better wiring;

15 (B) a second network for data installed using
16 CAT5e or better wiring; and

17 (C) a third network for television service
18 installed using coaxial cable;

19 (2) mini-blinds or window coverings for all windows;

20 (3) except for developments receiving financing from
21 the Texas Rural Development Office of the United States Department
22 of Agriculture or development involving the rehabilitation of
23 existing buildings, a dishwasher and disposal;

24 (4) a refrigerator;

25 (5) an oven and range;

26 (6) exhaust and vent fans in bathrooms; and

27 (7) ceiling fans in living areas and bedrooms.

1 (f) If fees in addition to rent are charged for an amenity
2 reserved for an individual tenant's use, the amenity may not be
3 included in the application.

4 (g) A development with more than 36 units must provide at
5 least four of the amenities listed under Subsection (c)(8). A
6 development with not more than 36 units or a development that
7 receives funding under Section 515, Housing Act of 1949 (42 U.S.C.
8 Section 1485), must provide at least two of the amenities listed
9 under Subsection (c)(8).

10 (h) The developer must:

11 (1) install a public notification sign at the proposed
12 development site before the date the application is submitted; or

13 (2) through regular mail provide a notice that
14 contains the information required to be included on a public
15 notification sign to:

16 (A) all addresses for which zoning notification
17 would be required by the municipality; or

18 (B) for developments located in communities that
19 do not have zoning, communities that do not require zoning
20 notification, or communities located outside of a municipality, all
21 addresses located within 1,000 feet of any part of the proposed
22 development site.

23 (i) The department shall adopt rules detailing:

24 (1) the information required to be included on a
25 public notification sign; and

26 (2) the type of proof required by the department that
27 the sign has been installed or notice has been mailed.

1 (j) The application must include the architectural drawings
2 identified by Subsection (k) or (l), as applicable. Full-size
3 design or construction documents are not required, but the drawings
4 must have an accurate and legible scale and show the dimensions of
5 the development.

6 (k) An application for a development involving new
7 construction or the rehabilitation of existing buildings with units
8 not configured in the unit pattern proposed in the application must
9 provide:

10 (1) a site plan;

11 (2) floor plans for each type of residential building
12 and each type of common area building; and

13 (3) floor plans and elevations for each type of
14 residential building and each type of common area building that
15 clearly depict the height of each floor.

16 (l) An application for a development involving the
17 rehabilitation of existing buildings for which the unit
18 configurations are not being altered must provide:

19 (1) a site plan; and

20 (2) floor plans for each type of residential building
21 and each type of common area building.

22 (m) To satisfy the requirements of Subsections (k) and (l),
23 an application must include a boundary survey of the proposed
24 development site and of the property to be purchased. If property
25 is to be purchased beyond the proposed site of the development, the
26 survey must clearly distinguish between the boundaries of the
27 larger site and the site of the development. The survey must also

1 clearly delineate the floodplain boundary lines and all easements
2 applicable to the proposed development site. The survey may be of
3 any date.

4 (n) The application must include a description of the
5 development's development costs and corresponding credit request
6 and syndication information, including, as applicable:

7 (1) the information required by Section 2306.6705;

8 (2) a copy of a census map clearly showing that the
9 development is located within a qualified census tract as
10 determined by the secretary of housing and urban development;

11 (3) a schedule of any off-site costs; and

12 (4) if proposed site work costs include unusual or
13 extraordinary items or exceed \$7,500 per unit, a detailed cost
14 breakdown prepared by an architect or engineer.

15 (o) The application must include evidence of readiness to
16 proceed, including the following:

17 (1) evidence of site control in the name of the
18 development owner; and

19 (2) evidence of financing sufficient to fund the
20 proposed total housing development cost less money requested from
21 the department and any other sources documented in the application,
22 including, as applicable:

23 (A) bona fide financing in place as evidenced by
24 a valid and binding loan agreement and a deed of trust in the name of
25 the development owner that:

26 (i) identifies the mortgagor as the
27 applicant or, if the applicant is a partnership, identifies the

1 mortgagor as the entities that constitute the general partner; or

2 (ii) expressly allows the transfer to the
3 development owner;

4 (B) a bona fide commitment or term sheet for the
5 interim and permanent loans issued by a lending institution or
6 mortgage company that is actively and regularly engaged in the
7 business of lending money that:

8 (i) is addressed to the development owner
9 or, if the owner is a partnership, to the entities that constitute
10 the general partner; and

11 (ii) has been executed by the lender; or

12 (C) any federal, state, or local gap financing,
13 whether of soft or hard debt.

14 (p) The evidence provided under Subsection (o)(2) must
15 include, at a minimum, evidence from the lending agency that an
16 application for funding has been made and a term sheet that clearly
17 describes the amount and terms of the funding and the date by which
18 the funding determination will be made and any commitment issued.
19 Evidence of an application for funding from another department
20 program is not required.

21 (q) The term of a loan under Subsection (o)(2) must be for a
22 minimum of 15 years with at least a 30-year amortization. The
23 commitment for financing must state an expiration date and all the
24 terms and conditions applicable to the financing, including the
25 mechanism for determining the interest rate, if applicable, the
26 anticipated interest rate, and any required guarantors. A
27 commitment may be conditional on the completion of specified due

1 diligence by the lender and on the allocation of housing tax
2 credits.

3 (r) The application must include a description of the
4 development's proposed ownership structure and the applicant's
5 previous experience as follows:

6 (1) a chart that clearly:

7 (A) illustrates the complete organizational
8 structure of the development owner, providing the names and
9 ownership percentages of all persons having an ownership interest
10 in the development owner; and

11 (B) discloses:

12 (i) any person that will serve as the
13 developer of the development;

14 (ii) any person that will guarantee any
15 obligation of the development owner; and

16 (iii) any person that has at least a 10
17 percent ownership interest in the development owner, the developer,
18 or the person that will guarantee any obligation of the development
19 owner; and

20 (2) evidence that each entity shown on the
21 organizational chart under Subdivision (1) has provided a copy of
22 the completed and executed previous participation and background
23 certification form to the department.

24 (s) The application must include a description of the
25 development's projected income and operating expenses as follows:

26 (1) a 15-year pro forma estimate of operating income
27 and expenses and supporting documentation used to generate

1 projections;

2 (2) if rental assistance, an operating subsidy, or an
3 interest rate reduction payment is proposed for the development, a
4 description of the source and type of assistance, the number of
5 units receiving the assistance, and the term and expiration date of
6 the contract or other agreement; and

7 (3) documentation of the source of the utility
8 allowance estimate used in completing the rent schedule.

9 (t) An application for a housing tax credit allocation from
10 the nonprofit set-aside must include the documents described by
11 Section 2306.6706. An application involving a nonprofit general
12 partner must include the documents described by that section
13 regardless of whether the application seeks a housing tax credit
14 allocation from the nonprofit set-aside.

15 (u) An applicant applying under the nonprofit set-aside
16 must provide the following information with respect to the
17 nonprofit organization:

18 (1) a copy of the page from the articles of
19 incorporation or bylaws indicating that one of the exempt purposes
20 of the nonprofit organization is to provide low income housing;

21 (2) a copy of the page from the articles of
22 incorporation or bylaws indicating that the nonprofit organization
23 prohibits a member of its board of directors, other than a chief
24 staff member serving concurrently as a member of the board, from
25 receiving material compensation for service on the board; and

26 (3) a copy of the nonprofit organization's most recent
27 audited financial statement.

1 (v) To be eligible for a housing tax credit allocation from
2 the nonprofit set-aside, an applicant must meet the requirements of
3 Section 2306.6706(b).

4 (w) Subsection (u)(2) does not prohibit an attorney from
5 serving as a board member while receiving compensation for legal
6 service, provided that the attorney is not compensated merely for
7 board membership.

8 (x) An applicant affiliated with the seller of the
9 development must provide the following documentation:

10 (1) an appraisal of the property that is not more than
11 12 months old on the date the appraisal is submitted to the
12 department;

13 (2) a valuation report from the county tax appraisal
14 district;

15 (3) clear identification of the seller and details of
16 any relationship between the seller and the applicant; and

17 (4) documentation of the original acquisition or
18 development cost and any other verifiable or justifiable costs of
19 owning, improving, or holding the property that support the
20 proposed acquisition price.

21 (y) An applicant applying for housing tax credits in
22 connection with the acquisition of an existing housing development
23 must provide, in addition to the documentation required under
24 Subsection (x), information to establish that the development is
25 eligible for an allocation of those credits. For an occupied
26 development undergoing rehabilitation, an applicant must provide,
27 if available:

1 (1) historic monthly operating statements for 12
2 consecutive months ending not more than four years before the date
3 the information is provided; or

4 (2) the two most recent consecutive annual operating
5 statements.

6 (z) The appraisal under Subsection (x)(1) must be submitted
7 not later than the 30th day after the date the application is
8 submitted to the department. The appraisal must separately state
9 the as-is, preacquisition, or transfer value of the property and
10 the improvements where applicable.

11 (aa) The following documents must be submitted not later
12 than the 30th day after the date the application is submitted to the
13 department:

14 (1) except as provided by Subsection (bb), a Phase I
15 Environmental Site Assessment on the subject property, dated not
16 more than 12 months before the date the application is submitted to
17 the department; and

18 (2) except as provided by Subsection (cc), a
19 comprehensive market analysis prepared at the applicant's expense
20 by a disinterested qualified market analyst in accordance with
21 Section 2306.67055.

22 (bb) If a Phase I Environmental Site Assessment on the
23 development is dated more than 12 months before the date the
24 application is submitted to the department, the applicant must
25 supply the department with an updated letter or updated report
26 dated at least three months before the date the application is
27 submitted from the organization that prepared the initial

1 assessment confirming that the site has been reinspected and
2 reaffirming the conclusions of the initial report or identifying
3 the changes since the initial report. Developments that receive
4 any funding from the United States Department of Agriculture or the
5 United States Department of Housing and Urban Development are not
6 required to submit a Phase I Environmental Site Assessment.

7 (cc) A market analysis is not required for applications that
8 involve the rehabilitation of an existing property that receives
9 funding from the United States Department of Agriculture.

10 SECTION 53. Section 2306.6705, Government Code, is amended
11 to read as follows:

12 Sec. 2306.6705. GENERAL APPLICATION REQUIREMENTS. The
13 department may not require that an application contain information
14 in addition to that required by this chapter. An application must
15 contain [~~at a minimum~~] the following written, detailed information
16 in a form prescribed by the board:

17 (1) a description of:

18 (A) the financing plan for the development,
19 including any nontraditional financing arrangements;

20 (B) the use of funds with respect to the
21 development;

22 (C) the funding sources for the development,
23 including:

24 (i) construction, permanent, and bridge
25 loans; and

26 (ii) rents, operating subsidies, and
27 replacement reserves; and

1 (D) the commitment status of the funding sources
2 for the development;

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

6 (3) from a syndicator or a financial consultant of the
7 applicant, an estimate of the amount of equity dollars expected to
8 be raised for the development in conjunction with the amount of
9 housing tax credits requested for allocation to the applicant,
10 including:

11 (A) pay-in schedules; and

12 (B) syndicator consulting fees and other
13 syndication costs;

14 (4) if rental assistance or[~~7~~] an operating subsidy[~~7~~
15 ~~or an annuity~~] is proposed for the development, any related
16 contract or other agreement securing those funds and an
17 identification of:

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

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

20 (C) the term and expiration date of the contract
21 or other agreement;

22 (5) if the development is located within the
23 boundaries of a political subdivision with a zoning ordinance,
24 evidence in the form of a letter from the chief executive officer of
25 the political subdivision or from another local official with
26 jurisdiction over zoning matters that states that:

27 (A) the development is permitted under the

1 provisions of the ordinance that apply to the location of the
2 development; or

3 (B) the applicant is in the process of seeking
4 the appropriate zoning and has signed and provided to the political
5 subdivision a release agreeing to hold the political subdivision
6 and all other parties harmless in the event that the appropriate
7 zoning is denied;

8 (6) if an occupied development is proposed for
9 rehabilitation, ~~and~~

10 [~~(A) an explanation of the process used to notify~~
11 ~~and consult with the tenants in preparing the application;~~

12 [~~(B)~~] a relocation plan outlining:

13 (A) how the rehabilitation process will affect
14 any existing tenants [~~(i) relocation requirements~~]; and

15 (B) [~~(ii)~~] a budget for any permanent or
16 temporary relocation of tenants, with an identified funding source;
17 [~~and~~

18 [~~(C) if applicable, evidence that the relocation~~
19 ~~plan has been submitted to the appropriate local agency;~~]

20 (7) a certification of the applicant's compliance with
21 appropriate state and federal laws, as required by other state law
22 or by the board; and

23 (8) [~~any other information required by the board in~~
24 ~~the qualified allocation plan;~~ and

25 [~~(9)~~] evidence that the applicant has notified the
26 following entities with respect to the filing of the application:

27 (A) any neighborhood associations that, on

1 December 1 of the year immediately preceding the year of the
2 application deadline, are [~~organizations~~] on record with the
3 department or the municipality or county containing the proposed
4 development site, if the [~~state or county in which the development~~
5 ~~is to be located and whose~~] boundaries of the neighborhood
6 association encompass the same elementary school attendance zone,
7 or a portion of the same zone, as [~~contain~~] the proposed development
8 site;

9 (B) the superintendent and the presiding officer
10 of the board of trustees of the school district containing the
11 development;

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

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

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

20 SECTION 54. Subchapter DD, Chapter 2306, Government Code,
21 is amended by adding Section 2306.67053 to read as follows:

22 Sec. 2306.67053. LIMITATION ON REQUIREMENTS UNDER THIS
23 SUBCHAPTER. In setting requirements under this subchapter, the
24 board and the department may not adopt rules or otherwise mandate
25 the unit mix or bedroom arrangement of any development not reserved
26 exclusively for occupancy by elderly individuals.

27 SECTION 55. Section 2306.6706(b), Government Code, is

1 amended to read as follows:

2 (b) To be eligible for a housing tax credit allocation from
3 the nonprofit set-aside, a nonprofit organization must:

4 (1) control a majority of the development;

5 (2) materially participate in the development and
6 operation of the development throughout the compliance period [~~if~~
7 ~~the organization's application is filed on behalf of a limited~~
8 ~~partnership, be the managing general partner~~]; and

9 (3) otherwise meet the requirements of Section
10 42(h)(5), Internal Revenue Code of 1986 (26 U.S.C. Section
11 42(h)(5)).

12 SECTION 56. Section 2306.6709(b), Government Code, is
13 amended to read as follows:

14 (b) The application log must contain at least the following
15 information:

16 (1) the names of the applicant and related parties;

17 (2) the physical location of the development,
18 including the relevant region of the state;

19 (3) the amount of housing tax credits requested by
20 [~~for allocation by the department to~~] the applicant;

21 (4) any set-aside category under which the application
22 is filed;

23 (5) in strict compliance with Section 2306.6710 of
24 this chapter and Section 42(m)(1)(B), Internal Revenue Code of
25 1986, the score of the application in each scoring category
26 contained in [~~adopted by the department under~~] the qualified
27 allocation plan;

1 (6) any decision made by the department or board
2 regarding the application, including the [~~department's decision~~
3 ~~regarding whether to underwrite the application and the~~] board's
4 decision regarding whether to allocate housing tax credits to the
5 development;

6 (7) the names of persons making the decisions
7 described by Subdivision (6), including the names of department
8 staff scoring [~~and underwriting~~] the application, to be recorded
9 next to the description of the applicable decision;

10 (8) the amount of housing tax credits allocated to the
11 development; and

12 (9) a dated record and summary of any contact between
13 the department staff, the board, and the applicant or any related
14 parties.

15 SECTION 57. Section 2306.6710, Government Code, is amended
16 to read as follows:

17 Sec. 2306.6710. EVALUATION [~~AND UNDERWRITING~~] OF
18 APPLICATIONS. (a) In evaluating an application, the department
19 shall determine whether the application satisfies the threshold
20 criteria required by Section 2306.67042 [~~the board in the qualified~~
21 ~~allocation plan~~]. The department shall reject and return to the
22 applicant any application that fails to satisfy those [~~the~~]
23 threshold criteria.

24 (b) If an application satisfies the threshold criteria, the
25 department shall score and rank the application using the [~~a~~] point
26 system described by this section [~~that~~].

27 [~~(1) prioritizes in descending order criteria~~]

1 regarding:

2 ~~[(A) financial feasibility of the development~~
3 ~~based on the supporting financial data required in the application~~
4 ~~that will include a project underwriting pro forma from the~~
5 ~~permanent or construction lender;~~

6 ~~[(B) quantifiable community participation with~~
7 ~~respect to the development, evaluated on the basis of written~~
8 ~~statements from any neighborhood organizations on record with the~~
9 ~~state or county in which the development is to be located and whose~~
10 ~~boundaries contain the proposed development site;~~

11 ~~[(C) the income levels of tenants of the~~
12 ~~development;~~

13 ~~[(D) the size and quality of the units;~~

14 ~~[(E) the commitment of development funding by~~
15 ~~local political subdivisions;~~

16 ~~[(F) the level of community support for the~~
17 ~~application, evaluated on the basis of written statements from~~
18 ~~state elected officials;~~

19 ~~[(G) the rent levels of the units;~~

20 ~~[(H) the cost of the development by square foot;~~

21 and

22 ~~[(I) the services to be provided to tenants of~~
23 ~~the development, and~~

24 ~~[(2) uses criteria imposing penalties on applicants or~~
25 ~~affiliates who have requested extensions of department deadlines~~
26 ~~relating to developments supported by housing tax credit~~
27 ~~allocations made in the application round preceding the current~~

1 ~~round or a developer or principal of the applicant that has been~~
2 ~~removed by the lender, equity provider, or limited partners for its~~
3 ~~failure to perform its obligations under the loan documents or~~
4 ~~limited partnership agreement].~~

5 (c) The department shall award 50 points if the development
6 is determined to be financially feasible based on a project
7 underwriting pro forma from the permanent or construction lender
8 that discloses reasonably expected sources and uses of funds during
9 the development process and planned operating income and expenses
10 during the initial 15 years of operation as a development [~~publish~~
11 ~~in the qualified allocation plan details of the scoring system used~~
12 ~~by the department to score applications~~]. For a development that
13 receives financing from the Texas Rural Development Office of the
14 United States Department of Agriculture, the report entitled
15 "Sources and Uses Comprehensive Evaluation for Multifamily Housing
16 Loans" or any other evidence or similar report considered
17 acceptable by the department meets the requirements of the
18 underwriting pro forma.

19 (d) If the deferral of 50 percent or more of the developer's
20 fee for an urban development, or 60 percent or more for a rural
21 development, is required to make the development financially
22 feasible under Subsection (c), the department shall deduct 10
23 points.

24 (e) The department shall award points based on written
25 statements of support or opposition from neighborhood associations
26 that, on December 1 of the year immediately preceding the year of
27 the application deadline, are on record with the department or the

1 municipality or county containing the proposed development site, if
2 the boundaries of the neighborhood association encompass the same
3 elementary school attendance zone, or a portion of the same zone, as
4 the proposed development site. If there are no neighborhood
5 associations on record with the department, if no letters either in
6 support or opposition are received, or if the application involves
7 the rehabilitation of an at-risk development, the department shall
8 award the application 40 points. If 80 percent or more of the
9 letters from neighborhood associations support the development,
10 the department shall award the application 40 points. If at least
11 50 percent but less than 80 percent of the letters from neighborhood
12 associations support the development, the department shall award
13 the application 30 points. If a majority of the letters from
14 neighborhood associations oppose the development, the department
15 shall award zero points.

16 (f) An application may receive points under either
17 Subsection (g) or (i), but not under both subsections.

18 (g) The department shall award 30 points if:

19 (1) the development is located outside of a qualified
20 census tract;

21 (2) there is a documented, committed, and available
22 third-party funding source to provide project-based rental
23 assistance to at least 50 percent of the tenants; and

24 (3) the applicant confirms, in the manner prescribed
25 by department rule, that 50 percent or more of the total units in
26 the development will be restricted to being rented to households
27 with incomes equal to or below 30 percent of the greater of local

1 area median income, as adjusted for household size, or the
2 statewide median income, as adjusted for household size.

3 (h) The documented, committed, and available third-party
4 funding source under Subsection (g) may only be:

5 (1) project-based Section 8 assistance;

6 (2) a United States Department of Agriculture
7 five-year rental assistance contract;

8 (3) a United States Department of Housing and Urban
9 Development contract for project-based Section 8 operating
10 assistance; or

11 (4) a similar federal or state project-based rental
12 assistance program, with a term of at least five years.

13 (i) For an application to qualify for points under this
14 subsection, the rents for the rent-restricted units in the
15 development must not be higher than the allowable housing tax
16 credit rents at the rent-restricted area median gross household
17 income level. For Section 8 residents, or other rental assistance
18 tenants, the tenant-paid rent plus the utility allowance must be
19 compared to the rent limit to determine compliance. The
20 development owner on making selections must set aside units at the
21 rent-restricted levels of area median gross household income and
22 must maintain the percentage of those units continuously over the
23 compliance and extended-use period as specified in a land use
24 restriction agreement. Applications may qualify for points under
25 only one of the categories listed in this subsection. The
26 department shall award points as follows:

27 (1) 25 points, if 10 percent or more of the total

1 number of the rent-restricted units at or below 60 percent of the
2 area median gross household income are designated for tenants at or
3 below 30 percent of the area median gross household income;

4 (2) 20 points, if 40 percent or more of the total
5 number of the rent-restricted units at or below 60 percent of the
6 area median gross household income are designated for tenants at or
7 below 50 percent of the area median gross household income;

8 (3) 17 points, if 35 percent or more of the total
9 number of the rent-restricted units at or below 60 percent of the
10 area median gross household income are designated for tenants at or
11 below 50 percent of the area median gross household income;

12 (4) 14 points, if 30 percent or more of the total
13 number of the rent-restricted units at or below 60 percent of the
14 area median gross household income are designated for tenants at or
15 below 50 percent of the area median gross household income;

16 (5) 11 points, if 25 percent or more of the total
17 number of the rent-restricted units at or below 60 percent of the
18 area median gross household income are designated for tenants at or
19 below 50 percent of the area median gross household income;

20 (6) eight points, if 20 percent or more of the total
21 number of the rent-restricted units at or below 60 percent of the
22 area median gross household income are designated for tenants at or
23 below 50 percent of the area median gross household income;

24 (7) five points, if 15 percent or more of the total
25 number of the rent-restricted units at or below 60 percent of the
26 area median gross household income are designated for tenants at or
27 below 50 percent of the area median gross household income; or

1 (8) two points, if 10 percent or more of the total
2 number of the rent-restricted units at or below 60 percent of the
3 area median gross household income are designated for tenants at or
4 below 50 percent of the area median gross household income.

5 (j) Only an application for a development that meets the
6 requirements of Subsection (k) may receive points under Subsection
7 (l), except that an application involving the rehabilitation of
8 existing buildings or an application for a development receiving
9 funding from the United States Department of Agriculture is not
10 required to meet the requirements of Subsection (k) to receive
11 points under Subsection (l).

12 (k) The square feet of all of the units in the development,
13 for each type of unit, must be at minimum:

14 (1) 500 square feet for efficiency units;

15 (2) 550 square feet for one-bedroom units reserved
16 exclusively for occupancy by elderly individuals and 650 square
17 feet for all other one-bedroom units;

18 (3) 750 square feet for two-bedroom units reserved
19 exclusively for occupancy by elderly individuals and 900 square
20 feet for all other two-bedroom units;

21 (4) 1,000 square feet for three-bedroom units; or

22 (5) 1,200 square feet for four-bedroom units.

23 (l) The department by rule shall develop a list from which
24 the applicant may indicate to the department specific unit and
25 development amenity and quality features to be offered with respect
26 to the development and for which the department may award points to
27 the application. The total points awarded for unit and development

1 amenity and quality features may not exceed 25 points. The
2 department by rule shall award double the point value for unit and
3 development amenity and quality features with respect to
4 applications involving rehabilitation of existing buildings or
5 proposing single-room occupancy developments.

6 (m) If the development has received a commitment for 10
7 percent or more of the total development cost from a political
8 subdivision that is not a related party of the applicant, the
9 department shall award the application 20 points. A commitment of
10 financing described by this subsection may include financing
11 through federal community development block grant or loan funds,
12 HOME funds, funds from a local housing trust, local affordable
13 housing funds, or other quantifiable contributions by the political
14 subdivision. For rural developments, HOME and housing trust funds
15 allocated by the department qualify the application for points
16 under this subsection. The applicant must submit with the
17 application a copy of the commitment of funds or a copy of the
18 application filed with the funding entity and a letter from the
19 funding entity indicating that the application was received. The
20 applicant must provide a commitment of funds not later than the 60th
21 day before the date of the board recommendation of housing tax
22 credit allocations to receive points under this subsection.

23 (n) The department shall award points based on written
24 statements of support or opposition from state elected officials
25 representing constituents in areas that include the location of the
26 development. The department shall score letters from state
27 representatives or state senators received by the department not

1 later than the 30th day before the date the board first meets to
2 consider applications for an allocation of housing tax credits.
3 The department shall award an amount of points not to exceed 14
4 points as follows:

5 (1) a letter of support from a state representative or
6 a state senator, 10 points for a single letter of support or 14
7 points for two letters of support;

8 (2) a letter of opposition from either a state
9 representative or a state senator, 10 total points deducted;

10 (3) a letter of opposition from both a state
11 representative and a state senator, 25 total points deducted; or

12 (4) if both the state representative and the state
13 senator are contacted but no letters either in support or
14 opposition are received, seven total points.

15 (o) Excluding any units reserved for a manager, if the units
16 in the development are restricted so that the rent plus the
17 allowance for utilities is equal to or below the maximum housing tax
18 credit rent, the department shall award the application points as
19 follows:

20 (1) if more than 95 percent of the units are
21 restricted, 12 points;

22 (2) if more than 90 percent but not more than 95
23 percent of the units in the development are restricted, 10 points;

24 (3) if more than 85 percent but not more than 90
25 percent of the units in the development are restricted, nine
26 points;

27 (4) if more than 80 percent but not more than 85

1 percent of the units in the development are restricted, eight
2 points; and

3 (5) if 80 percent or less of the units in the
4 development are restricted, seven points.

5 (p) If the applicant will pay ad valorem taxes on the
6 development for a minimum of 15 years by making an annual payment
7 that is equal to at least 50 percent of the total ad valorem taxes
8 due in a tax year on that development, the department shall award
9 the application eight points.

10 (q) The department shall award the application a total of
11 five points under this subsection if the development is located
12 within one of the following geographical areas:

13 (1) a geographical area that is:

14 (A) an economically distressed area, as defined
15 by Section 17.921, Water Code;

16 (B) a colonia, as defined by Section 2306.581; or

17 (C) a difficult development area, as
18 specifically designated by the secretary of housing and urban
19 development;

20 (2) a designated state or federal empowerment or
21 enterprise zone, urban enterprise community, or urban enhanced
22 enterprise community;

23 (3) a municipality-sponsored area or zone where a
24 municipality or county has, through a local government initiative,
25 specifically encouraged or channeled growth, neighborhood
26 preservation, or redevelopment;

27 (4) a county that has received an award, or that

1 contains a municipality that has received an award, within the past
2 three years, from the Texas Department of Agriculture's rural
3 municipal finance program, Texas capital fund real estate
4 development program, or Texas capital fund infrastructure
5 development program; or

6 (5) a qualified census tract, as defined by Section
7 42, Internal Revenue Code of 1986, the development of which
8 contributes to a concerted community revitalization plan.

9 (r) The department shall award an application five points
10 if the development is located in a census tract in which there are
11 no other existing developments supported by housing tax credits.

12 (s) The department shall award points to an application for
13 a development that provides supportive services to tenants as
14 follows:

15 (1) if the applicant coordinates tenant services with
16 services provided through state workforce development and welfare
17 programs as evidenced by execution of a Tenant Supportive Services
18 Certification, one point; and

19 (2) if the applicant certifies that the development
20 will provide special supportive services appropriate for the
21 proposed tenants at no cost to the tenants either on-site or
22 off-site with transportation provided by the development, one
23 point.

24 (t) Service options under Subsection (s) include:

25 (1) child care;

26 (2) counseling services;

27 (3) GED preparation;

- (4) English as a second language classes;
- (5) credit counseling;
- (6) financial planning assistance or courses;
- (7) scholastic tutoring;
- (8) social events and activities;
- (9) a senior meal program;
- (10) a home-delivered meal program; or
- (11) any other program described under Title IV-A,

Social Security Act (42 U.S.C. Section 601 et seq.), that:

(A) enables children to be cared for in their homes or the homes of relatives;

(B) ends the dependence of needy families on government benefits by promoting job preparation;

(C) prevents or reduces the incidence of out-of-wedlock pregnancies; or

(D) encourages the formation and maintenance of two-parent families.

(u) The department shall award two points to an application that involves the preservation of existing low income housing.

(v) The department shall award two points to an application for a development funded by federal HOPE VI funding or by public housing authority capital grant funds.

(w) The department shall award one point to an application for a development in which 100 percent of the units will be reserved for occupancy by elderly individuals or homeless persons.

(x) The department shall award one point to an application in which the applicant commits to notifying the local public

1 housing authority or the nearest agency that administers Section 8
2 certificates or vouchers for the area in which the development is
3 located that the applicant will consider as tenants for the
4 development individuals and households on the public housing
5 authority's waiting list for occupancy.

6 (y) The department shall award two points to an application
7 for a development in which 50 percent or more of the total units in
8 the development will have two or more bedrooms.

9 (z) The department shall award one point to an application
10 if, for the minimum purchase price provided by, and in accordance
11 with the requirements of, Section 42(i)(7), Internal Revenue Code
12 of 1986, the development owner agrees to provide a right of first
13 refusal to purchase the development on or after the date of
14 termination of the compliance period to:

15 (1) a qualified nonprofit organization;

16 (2) for a single family building, an individual
17 tenant; or

18 (3) for a multifamily housing development, a tenant
19 cooperative, a resident management corporation in the development,
20 or another association of tenants in the development.

21 (aa) The department shall award one point if the applicant
22 agrees to extend the affordable housing period beyond the minimum
23 required by Section 42, Internal Revenue Code of 1986, for an
24 additional five-year period.

25 (bb) The department shall award points to an application for
26 a mixed-income development comprised of both market rate units and
27 qualified housing tax credit units as follows:

1 (1) for a development in which not more than 85 percent
2 of the units are housing tax credit units, three points;

3 (2) for a development in which more than 85 percent but
4 not more than 90 percent of the units are housing tax credit units,
5 two points; or

6 (3) for a development in which more than 90 percent but
7 not more than 95 percent of the units are housing tax credit units,
8 one point.

9 (cc) The department shall award four points to an
10 application for a development that consists of not more than 36
11 units and is not part of, or contiguous to, a larger development.

12 (dd) The department shall award one point to an application
13 if the applicant or a representative of the applicant has attended a
14 fair housing seminar at least 5-1/5 hours in duration within the
15 preceding three years.

16 (ee) The department shall award one point to an application
17 if the development experience of the development owner, the owner's
18 controlling person, or the developer exceeds by 20 residential
19 units the minimum development experience required by Section
20 2306.67042(d).

21 (ff) The department shall award four points to an
22 application if the applicant submitted an application during the
23 preapplication process in conformity with department rules. An
24 application that involves funding from the Texas Rural Development
25 Office of the United States Department of Agriculture that also
26 involves the rehabilitation of an affordable housing development is
27 eligible for points under this subsection regardless of whether the

1 applicant submitted an application during the preapplication
2 process.

3 (gg) If two or more applications receive the same score
4 under this section and are eligible for an allocation of housing tax
5 credits, the department shall give preference to the development
6 that requests the least amount of housing tax credits per net
7 rentable area.

8 (hh) The department shall implement a system of evaluating
9 the financial aspects of housing tax credit developments that
10 recognizes that those developments do not need, and are not subject
11 to, the financial underwriting necessary for a mortgage loan
12 transaction when the department has a financial interest in the
13 loan. In evaluating housing tax credit developments, the
14 department shall ensure only that the low income housing tax credit
15 dollars allocated to a development do not exceed the amount
16 necessary for the financial feasibility of the development and its
17 viability throughout the first 15 years of operation.

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

1 board to establish an applications waiting list under Section
2 2306.6711, the department shall evaluate [~~underwrite~~] as many
3 additional applications as the board considers necessary to ensure
4 that all available housing tax credits are allocated within the
5 period required by law. The department shall evaluate [~~underwrite~~]
6 an application to determine the financial feasibility of the
7 development and an appropriate level of housing tax credits.

8 (jj) In determining the financial feasibility of a
9 development, the department shall consider only:

10 (1) the sources and uses of funds and the total
11 financing planned for the development;

12 (2) any proceeds or receipts expected to be generated
13 by reason of tax benefits;

14 (3) the percentage of the housing tax credit dollar
15 amount used for development costs other than the cost of
16 intermediaries; and

17 (4) the reasonableness of the developmental and
18 operational costs of the development.

19 (kk) In determining an appropriate level of housing tax
20 credits, the department shall evaluate the cost of the development
21 based on acceptable cost parameters as adjusted for inflation and
22 as established by historical final cost certifications of all
23 previous housing tax credit allocations for:

24 (1) the county in which the development is to be
25 located;

26 (2) if certifications are unavailable under
27 Subdivision (1), the metropolitan statistical area in which the

1 development is to be located; or

2 (3) if certifications are unavailable under
3 Subdivisions (1) and (2), the uniform state service region in which
4 the development is to be located.

5 ~~[(c) In scoring applications for purposes of housing tax
6 credit allocations, the department shall award, consistent with
7 Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42),
8 preference points to a development that will:~~

9 ~~[(1) when practicable and feasible based on
10 documented, committed, and available third-party funding sources,
11 serve the lowest income tenants per housing tax credit, if the
12 development is to be located outside a qualified census tract; and~~

13 ~~[(2) produce for the longest economically feasible
14 period the greatest number of high quality units committed to
15 remaining affordable to any tenants who are income-eligible under
16 the low income housing tax credit program.~~

17 ~~[(f) In evaluating the level of community support for an
18 application under Subsection (b)(1)(F), the department shall
19 award:~~

20 ~~[(1) positive points for positive written statements
21 received;~~

22 ~~[(2) negative points for negative written statements
23 received; and~~

24 ~~[(3) zero points for neutral statements received.~~

25 ~~[(g) In awarding points under Subsection (f), the
26 department shall give equal weight to each written statement
27 received.]~~

1 SECTION 58. Section 2306.6711, Government Code, is amended
2 by amending Subsections (b) and (f) and adding Subsection (g) to
3 read as follows:

4 (b) Not later than the deadline specified in the qualified
5 allocation plan, the board shall issue commitments for available
6 housing tax credits based on the application evaluation process
7 provided by Section 2306.6710. The board may not allocate to an
8 applicant housing tax credits in any unnecessary amount, as
9 determined by the department [~~department's underwriting policy~~]
10 and by federal law, and in any event may not allocate to any one
11 person [~~the applicant~~] housing tax credits in an amount greater
12 than \$2 million in a single application round, except as provided by
13 this subsection. The \$2 million limitation applies to a person
14 regardless of whether the person is involved in the development in
15 the capacity of the applicant or in the capacity of a related party.
16 A development financed with tax-exempt bonds is not subject to the
17 \$2 million limitation, and the development does not count towards
18 the total limit on housing tax credits per person. The \$2 million
19 limitation does not apply to:

20 (1) an entity that raises or provides equity for one or
21 more developments, solely with respect to its actions in raising or
22 providing equity for those developments;

23 (2) the provision by an entity of qualified commercial
24 financing as that term is defined under Section 49(a)(1)(D)(ii),
25 Internal Revenue Code of 1986; or

26 (3) a development consultant with respect to the
27 provision of consulting services, provided the development

1 consultant is not a related party to the applicant and otherwise
2 does not own an interest in the development and the consultant fee
3 received for those services does not exceed 10 percent of the fee to
4 be paid to the developer, or \$150,000, whichever is less.

5 (f) The board may allocate housing tax credits to more than
6 one development in a single community, as defined by department
7 rule, in the same calendar year ~~[only]~~ if the developments:

8 (1) are new construction and are or will be located
9 more than one linear mile apart; or

10 (2) are placed in service in different taxable years.

11 (g) Subsection (f)(2) [This subsection] applies only to
12 communities contained within counties with populations exceeding
13 one million.

14 SECTION 59. Sections 2306.6712(a)-(d), Government Code,
15 are amended to read as follows:

16 (a) If a proposed modification would materially and
17 adversely alter a development approved for an allocation of a
18 housing tax credit, the department shall require the applicant to
19 file a formal, written amendment to the application on a form
20 prescribed by the department.

21 (b) If the director determines that a proposed modification
22 may materially and adversely alter a development, the [The]
23 director shall require the department staff assigned to evaluate
24 [underwrite] applications as described by Section 2306.6710(ii) to
25 review [evaluate] the amendment and provide an analysis and written
26 recommendation to the board. The appropriate monitor under Section
27 2306.6719 shall also provide to the board an analysis and written

1 recommendation regarding the amendment. If the director determines
2 that a modification would not materially and adversely alter a
3 development, the director shall approve the modification without
4 board action.

5 (c) The board must vote on whether to approve an [~~the~~]
6 amendment proposing a modification that the director determines may
7 materially and adversely alter a development or whether to require
8 resolution of the matter through an alternative dispute resolution
9 process under Section 2306.082. The board by vote may reject an
10 amendment and, if appropriate, rescind the allocation of housing
11 tax credits and reallocate the credits to other applicants on the
12 waiting list required by Section 2306.6711 if the board determines
13 that the modification proposed in the amendment:

14 (1) would materially alter the development in a
15 negative manner; or

16 (2) would have adversely affected the selection of the
17 application in the application round.

18 (d) Material alteration of a development includes:

19 (1) a significant modification of the site plan;
20 (2) a modification of the number of units or bedroom
21 mix of units;

22 (3) a substantive modification of the scope of tenant
23 services;

24 (4) a change in the income levels of the tenants to be
25 served by the development [~~a reduction of three percent or more in~~
26 ~~the square footage of the units or common areas];~~

27 (5) any modification in the attributes of the

1 development that would have affected the selection of the
2 application in the application round [~~a significant modification of~~
3 ~~the architectural design of the development~~]; and

4 (6) [~~a modification of the residential density of the~~
5 ~~development of at least five percent; and~~

6 [~~7~~] any other modification considered significant
7 by the board.

8 SECTION 60. Section 2306.6713(e), Government Code, is
9 amended to read as follows:

10 (e) The director may not refuse the transfer of a project
11 that received points in an application round for being developed by
12 a historically underutilized business to a development owner that
13 is not a historically underutilized business if the transfer occurs
14 at least three years after completion of the project [~~development~~
15 ~~owner shall certify to the director that the tenants in the~~
16 ~~development have been notified in writing of the transfer before~~
17 ~~the 30th day preceding the date of submission of the transfer~~
18 ~~request to the department~~].

19 SECTION 61. Section 2306.6715, Government Code, is amended
20 by amending Subsections (a), (c), (d), and (e) and adding
21 Subsections (d-1), (d-2), and (f) to read as follows:

22 (a) In a form prescribed by the department in the qualified
23 allocation plan, an applicant may appeal the following decisions
24 made by the department in the application evaluation process
25 provided by Section 2306.6710:

26 (1) an evaluation [~~a determination~~] regarding the
27 application's satisfaction of threshold [~~and underwriting~~]

1 criteria under Section 2306.67042 or scoring criteria under Section
2 2306.6710;

3 (2) the scoring of the application; and

4 (3) a recommendation as to the amount of housing tax
5 credits to be allocated to the application.

6 (c) An applicant must file a written appeal authorized by
7 this section with the department not later than the 10th [~~seventh~~]
8 day after the date the department publishes the results of the
9 application evaluation process provided by Section 2306.6710. In
10 the appeal, the applicant must specifically identify the
11 applicant's grounds for appeal, based on the original application
12 and additional documentation filed with the original application.

13 (d) The director shall respond in writing to the appeal not
14 later than the 14th day after the date of receipt of the appeal. If
15 the applicant is not satisfied with the director's response to the
16 appeal, the applicant may request alternative dispute resolution in
17 addition to making an appeal directly in writing to the board.

18 (d-1) An [~~, provided that an~~] appeal filed with the board
19 under Subsection (d) [~~this subsection~~] must be received by the
20 board before:

21 (1) the seventh day preceding the date of the board
22 meeting at which the relevant allocation decision is expected to be
23 made; or

24 (2) the third day preceding the date of the board
25 meeting described by Subdivision (1), if the director does not
26 respond to the appeal before the date described by Subdivision (1).

27 (d-2) The department may contract with the State Office of

1 Administrative Hearings to provide alternative dispute resolution
2 services, excluding binding arbitration. Alternative dispute
3 resolution must run concurrently with an appeal to the board.

4 (e) Board review of an appeal under Subsection (d) is based
5 on the original application and additional documentation filed with
6 the original application. The board may not review any information
7 not contained in or filed with the original application, unless
8 doing so is recommended as a result of the alternative dispute
9 resolution process. In making its decision regarding the appeal,
10 the board shall consider the result of any alternative dispute
11 resolution requested under Subsection (d) and any recommendations
12 made to the board as a result of that process. The decision of the
13 board regarding the appeal is a final administrative decision
14 subject to judicial review.

15 (f) If a decision of the board or department staff denying
16 an application for low income housing tax credits is reversed on
17 appeal, the department shall award the applicant an appropriate
18 forward commitment of tax credits for the next application round
19 that begins after the date of the reversal.

20 SECTION 62. Section 2306.6716(a), Government Code, is
21 amended to read as follows:

22 (a) A fee charged by the department for filing an
23 application or for receiving an allocation or a commitment of
24 housing tax credits may not be excessive and must reflect the
25 department's actual costs in processing the application, providing
26 copies of documents to persons connected with the application
27 process, and making appropriate information available to the public

1 through the department's website. The department shall treat the
2 total amount of all allocation or commitment fees as being earned
3 and available for use in the year in which the fees were received.

4 SECTION 63. Sections 2306.6717(a), (b), and (d), Government
5 Code, are amended to read as follows:

6 (a) Subject to Section 2306.67041, the department shall
7 make the following items available on the department's website:

8 (1) as soon as practicable, any proposed application
9 submitted through the preapplication process established by this
10 subchapter;

11 (2) before the 30th day preceding the date of the
12 relevant board allocation decision, except as provided by
13 Subdivision (3), the entire application, including all supporting
14 documents and exhibits, the application log, a scoring sheet
15 providing details of the application score, and any other document
16 relating to the processing of the application;

17 (3) not later than the third working day after the date
18 of the relevant determination, the results of each stage of the
19 application process, including the results of the application
20 scoring and evaluation [~~underwriting~~] phases and the allocation
21 phase;

22 (4) before the 15th day preceding the date of board
23 action on the amendment, notice of an amendment under Section
24 2306.6712 and the recommendation of the director and monitor
25 regarding the amendment; and

26 (5) an appeal filed with the department or board under
27 Section 2306.6715 or 2306.6721 and any other document relating to

1 the processing of the appeal.

2 (b) The department shall make available on the department's
3 website information regarding the low income housing tax credit
4 program, including notice regarding public hearings, meetings, the
5 opening and closing dates for applications, submitted
6 applications, and applications approved for evaluation
7 [~~underwriting~~] and recommended to the board, and shall provide that
8 information to:

9 (1) locally affected community groups;

10 (2) local and state elected officials;

11 (3) local housing departments;

12 (4) any appropriate newspapers of general or limited
13 circulation that serve the community in which the development is to
14 be located;

15 (5) nonprofit and for-profit organizations;

16 (6) on-site property managers of occupied
17 developments that are the subject of applications for posting in
18 prominent locations in those developments; and

19 (7) any other interested persons and community groups
20 that request the information.

21 (d) Notwithstanding any other provision of this section,
22 the department shall [~~may~~] treat the financial statements of any
23 applicant as confidential and may [~~elect~~] not [~~to~~] disclose those
24 statements to the public.

25 SECTION 64. Section 2306.6718(a), Government Code, is
26 amended to read as follows:

27 (a) The department, not the applicant, shall provide

1 written notice of the filing of an application to the following
2 elected officials:

3 (1) members of the legislature who represent the
4 community containing the development described in the application;
5 and

6 (2) the chief executive officer of the political
7 subdivision containing the development described in the
8 application.

9 SECTION 65. Section 2306.6719, Government Code, is amended
10 by amending Subsection (a) and adding Subsection (c) to read as
11 follows:

12 (a) For a development that is not receiving federal
13 assistance such that a federal agency will be monitoring the
14 construction or rehabilitation of the development and will provide
15 the department with copies of its construction inspection or
16 operational inspection reports, the [~~The~~] department may contract
17 with an independent third party to monitor the [~~a~~] development
18 during its construction or rehabilitation and during its operation
19 for compliance with:

20 (1) any conditions imposed by the department in
21 connection with the allocation of housing tax credits to the
22 development; and

23 (2) appropriate state and federal laws, as required by
24 other state law or by the board.

25 (c) Except for the affordable housing disposition
26 properties monitored under the memorandum of understanding between
27 the department and the Federal Deposit Insurance Corporation, the

1 cost of compliance monitoring for each development for 2006 may not
2 exceed \$25 per monitored unit. For years after 2006, the annual
3 compliance fee may be increased to more than \$25 per monitored unit
4 only as necessary to adjust for inflation as determined by the
5 consumer price index published by the United States Department of
6 Labor.

7 SECTION 66. Section 2306.6720, Government Code, is amended
8 to read as follows:

9 Sec. 2306.6720. ENFORCEABILITY OF APPLICANT
10 REPRESENTATIONS. Each representation made by an applicant to
11 secure a housing tax credit allocation is enforceable by the
12 department [~~and the tenants of the development supported with the~~
13 ~~allocation~~].

14 SECTION 67. Section 2306.6721, Government Code, is amended
15 by amending Subsection (d) and adding Subsection (e) to read as
16 follows:

17 (d) A person debarred by the department from participation
18 in the program is not eligible to participate in the program for a
19 minimum of five years from the date of disbarment.

20 (e) A person debarred by the department from participation
21 in the program may appeal the person's debarment:

22 (1) through the alternative dispute resolution
23 process under Section 2306.082; or

24 (2) directly to the board.

25 SECTION 68. Section 2306.6722, Government Code, is amended
26 to read as follows:

27 Sec. 2306.6722. DEVELOPMENT ACCESSIBILITY. Any

1 development supported with a housing tax credit allocation shall
2 comply with the accessibility standards that are detailed
3 ~~[required]~~ under Section 504, Rehabilitation Act of 1973 (29 U.S.C.
4 Section 794), and specified under 24 C.F.R. Part 8, Subpart C, to
5 the same extent required for developments receiving federal
6 financial assistance.

7 SECTION 69. Section 2306.6723(a), Government Code, is
8 amended to read as follows:

9 (a) The department shall jointly administer with the rural
10 development agency the allocations ~~[any set-aside]~~ for rural areas
11 to:

12 (1) ensure the maximum use and optimum geographic
13 distribution of housing tax credits in rural areas; and

14 (2) provide for information sharing, efficient
15 procedures, and fulfillment of development compliance requirements
16 in rural areas.

17 SECTION 70. Section 2306.6724, Government Code, is amended
18 by amending Subsections (a)-(d) and adding Subsection (c-1) to read
19 as follows:

20 (a) Not later than September 1 ~~[September 30]~~ of each year,
21 the department shall prepare and submit to the board for adoption
22 the qualified allocation plan required by federal law for use by the
23 department in setting criteria and priorities for the allocation of
24 tax credits under the low income housing tax credit program.

25 (b) The board shall adopt and submit to the governor the
26 qualified allocation plan not later than October 1 ~~[November 15]~~.

27 (c) The governor shall approve, reject, or modify and

1 approve the qualified allocation plan not later than November
2 ~~[December]~~ 1.

3 (c-1) If the governor rejects the qualified allocation plan
4 submitted under Subsection (b), the board immediately shall adopt
5 and submit to the governor a modified qualified allocation plan.
6 The governor shall approve or modify and approve the modified
7 qualified allocation plan not later than November 15.

8 (d) An applicant for a low income housing tax credit to be
9 issued a commitment during the initial allocation cycle in a
10 calendar year must submit an application to the department not
11 later than March 15 ~~[1]~~.

12 SECTION 71. Sections 2306.6725(a) and (c), Government Code,
13 are amended to read as follows:

14 (a) In allocating low income housing tax credits, the
15 department shall score each application using a point system that
16 is consistent with Section 42, Internal Revenue Code of 1986, and
17 Section 2306.6710 of this chapter ~~[based on criteria adopted by the~~
18 ~~department that are consistent with the department's housing goals,~~
19 ~~including criteria addressing the ability of the proposed project~~
20 ~~to:~~

21 ~~[(1) provide quality social support services to~~
22 ~~residents,~~

23 ~~[(2) demonstrate community and neighborhood support~~
24 ~~as defined by the qualified allocation plan,~~

25 ~~[(3) consistent with sound underwriting practices and~~
26 ~~when economically feasible, serve individuals and families of~~
27 ~~extremely low income by leveraging private and state and federal~~

1 ~~resources, including federal HOPE VI grants received through the~~
2 ~~United States Department of Housing and Urban Development,~~
3 ~~[(4) serve traditionally underserved areas,~~
4 ~~[(5) remain affordable to qualified tenants for an~~
5 ~~extended, economically feasible period, and~~
6 ~~[(6) comply with the accessibility standards that are~~
7 ~~required under Section 504, Rehabilitation Act of 1973 (29 U.S.C.~~
8 ~~Section 794), and specified under 24 C.F.R. Part 8, Subpart C].~~

9 (c) On awarding tax credit allocations, the board shall
10 document the reasons for each project's selection, including an
11 explanation of:

12 (1) all discretionary factors used in making its
13 determination; and

14 (2) the reasons for any decision that conflicts with
15 the recommendations of department staff under Section 2306.6731 or
16 the scoring criteria under Section 2306.6710.

17 SECTION 72. Section 2306.6728(a), Government Code, is
18 amended to read as follows:

19 (a) The department by rule shall adopt a policy regarding
20 the admittance to low income housing tax credit properties of
21 income-eligible individuals and families receiving assistance
22 under Section 8, United States Housing Act of 1937 (42 U.S.C.
23 Section 1437f). The policy must provide for admittance to the
24 property for any individual or family whose Section 8 assistance is
25 sufficient to allow the individual or family to make the required
26 rental payment and who meets any other general criteria applicable
27 to all tenants.

1 SECTION 73. Section 2306.6729, Government Code, is amended
2 by adding Subsection (c) to read as follows:

3 (c) The department by rule shall implement a procedure to
4 integrate the allocation of housing tax credits to nonprofit
5 applicants with the allocation of housing tax credits to all other
6 eligible applicants. If merit-based selection of applicants does
7 not result in a sufficient allocation of housing tax credits to
8 nonprofit applicants to satisfy any federally mandated set-aside,
9 the department may select the next highest scoring nonprofit
10 applicant in place of a for-profit applicant to satisfy the
11 federally mandated set-aside.

12 SECTION 74. Section 2306.6731(a), Government Code, is
13 amended to read as follows:

14 (a) Department staff shall provide written, documented
15 recommendations to the board concerning [~~the financial or~~
16 ~~programmatic viability of~~] each application for a low income
17 housing tax credit before the board makes a decision relating to the
18 allocation of tax credits. The board may not make without good
19 cause an allocation decision that conflicts with the
20 recommendations of department staff.

21 SECTION 75. Section 2306.6733, Government Code, is amended
22 by amending Subsection (a) and adding Subsection (a-1) to read as
23 follows:

24 (a) A former board member or a former director, deputy
25 director, director of housing programs, director of compliance,
26 director of underwriting, member of any department committee
27 involved in the selection of developments for an allocation of

1 housing tax credits, or low income housing tax credit program
2 manager employed by the department may not:

3 (1) for compensation, represent an applicant for an
4 allocation of low income housing tax credits or a related party
5 before the second anniversary of the date that the board member's,
6 director's, committee member's, or manager's service in office or
7 employment with the department ceases;

8 (2) represent any applicant or related party or
9 receive compensation for services rendered on behalf of any
10 applicant or related party regarding the consideration of a housing
11 tax credit application in which the former board member, director,
12 committee member, or manager participated during the period of
13 service in office or employment with the department, either through
14 personal involvement or because the matter was within the scope of
15 the board member's, director's, committee member's, or manager's
16 official responsibility; or

17 (3) for compensation, communicate directly with a
18 member of the legislative branch to influence legislation on behalf
19 of an applicant or related party before the second anniversary of
20 the date that the board member's, director's, committee member's, or
21 manager's service in office or employment with the department
22 ceases.

23 (a-1) If the administration of the low income housing tax
24 credit program is transferred to any other department or agency,
25 the prohibition under Subsection (a) applies to any person that
26 would have been prohibited from participating in a low income
27 housing tax credit application as if the housing tax credit program

1 had remained under the administration of the department.

2 SECTION 76. Subchapter DD, Chapter 2306, Government Code,
3 is amended by adding Section 2306.6735 to read as follows:

4 Sec. 2306.6735. RELATIONSHIP TO FEDERAL LAW. (a) This
5 subchapter is enacted to implement the low income housing tax
6 credit program established by Section 42, Internal Revenue Code of
7 1986.

8 (b) To the extent that any provision of this subchapter is
9 held to be inconsistent with federal law, the provision shall be
10 given effect in accordance with its terms to the greatest extent
11 possible and consistent with the federal law, and the inconsistency
12 of that provision has no effect on the remaining provisions of this
13 subchapter.

14 (c) If a federal law or regulation is changed without
15 providing for temporary waivers to allow compliance with state law
16 and, as a result of this change, there is insufficient time to
17 comply with a provision required by this subchapter, the department
18 may act so as to comply with federal law subject to the requirements
19 of Subsection (e).

20 (d) If a federal law or court order conflicts with this
21 subchapter, the federal law or court order prevails over this
22 subchapter.

23 (e) If the department determines that a provision of this
24 subchapter is inconsistent with Section 42, Internal Revenue Code
25 of 1986, or any federal regulations promulgated in compliance with
26 that section, the department shall notify the governor, the
27 lieutenant governor, the speaker of the house of representatives,

1 the presiding officer of the house and senate with oversight of the
2 department, and the attorney general. If the attorney general
3 concurs with the department determination that a provision of this
4 subchapter is inconsistent with federal law, the department shall
5 be authorized to implement the federal law.

6 SECTION 77. The heading to Section 2306.803, Government
7 Code, is amended to read as follows:

8 Sec. 2306.803. IDENTIFICATION OF CERTAIN AT-RISK
9 MULTIFAMILY HOUSING [~~IDENTIFICATION, PRIORITIZATION, AND~~
10 ~~PRESERVATION~~].

11 SECTION 78. Sections 2306.804(a) and (b), Government Code,
12 are amended to read as follows:

13 (a) To the extent possible, the department shall use
14 available resources for the preservation and rehabilitation of the
15 multifamily housing developments identified [~~and listed~~] under
16 Section 2306.803.

17 (b) To the extent consistent with Section 2306.6710
18 [~~possible~~], the department shall allocate low income housing tax
19 credits to applications involving the preservation of developments
20 assigned a Class A priority under Section 2306.803 and in both urban
21 and rural areas [~~communities~~] in approximate proportion to the
22 housing needs of each uniform state service region.

23 SECTION 79. Section 2306.805(a), Government Code, is
24 amended to read as follows:

25 (a) The department shall establish and administer a housing
26 preservation incentives program to provide incentives through loan
27 guarantees, loans, and grants to political subdivisions, housing

1 finance corporations, public housing authorities, for-profit
2 organizations, and nonprofit organizations for the acquisition and
3 rehabilitation of multifamily housing developments with ~~[assigned]~~
4 a Class A or Class B priority under this subchapter ~~[Section~~
5 ~~2306.803]~~.

6 SECTION 80. Section 1372.006(a), Government Code, is
7 amended to read as follows:

8 (a) An application for a reservation under Subchapter B or a
9 carryforward designation under Subchapter C must be accompanied by
10 a nonrefundable fee in the amount of \$500, except that for issuers
11 of qualified residential rental project bonds the application must
12 be accompanied by a nonrefundable fee of \$5,000, of which the board
13 shall retain \$1,000 to offset the costs of the private activity bond
14 allocation program and the administration of that program and of
15 which the board shall transfer \$4,000 through an interagency
16 agreement to the Texas Department of Housing and Community Affairs
17 to fund the housing resource center ~~[for use in the affordable~~
18 ~~housing research and information program]~~ as provided by Section
19 2306.252 ~~[2306.259]~~.

20 SECTION 81. The following provisions of the Government Code
21 are repealed:

22 (1) Sections 2306.004(31)-(33), 2306.0724,
23 2306.077(d) and (e), 2306.078, 2306.079, 2306.081(c), 2306.1112,
24 2306.185(f), 2306.186(a)(2), 2306.186(f), 2306.251,
25 2306.257(b)-(d), 2306.259, 2306.270, 2306.313(c), 2306.314,
26 2306.6702(a)(12), 2306.6712(e), 2306.6723(c), 2306.6725(b) and
27 (d), 2306.6726, 2306.6727, 2306.6728(b) and (c), 2306.6730,

1 2306.6734, 2306.7581(a-1), 2306.803(b)-(d), 2306.804(c), and
2 2306.805(c)-(e);

3 (2) Subchapter II, Chapter 2306; and

4 (3) Subchapter JJ, Chapter 2306.

5 SECTION 82. The changes in law made by this Act relating to
6 the evaluation of applications for financial assistance
7 administered by the Texas Department of Housing and Community
8 Affairs apply only to an application submitted on or after the
9 effective date of this Act. An application submitted before the
10 effective date of this Act is governed by the law in effect when the
11 application was submitted, and the former law is continued in
12 effect for that purpose.

13 SECTION 83. This Act takes effect September 1, 2005, except
14 that Section 70 of this Act takes effect immediately if this Act
15 receives a vote of two-thirds of all members elected to each house,
16 as provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect,
18 Section 70 takes effect September 1, 2005.