

By: Madla

S.B. No. 1341

A BILL TO BE ENTITLED

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AN ACT

relating to the functions of the Texas Department of Housing and
Community Affairs.

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

SECTION 1. Section 2306.032, Government Code, is amended by
amending Subsections (c) and (d) and adding Subsection (d-1) to
read as follows:

(c) All materials in the possession of the department that
are relevant to an award decision [~~a matter~~] proposed for
discussion at a board meeting must be posted on the department's
website, made available in hard-copy format at the department,
filed with the secretary of state for publication by reference in
the Texas Register, and disseminated by any other means required by
this chapter or by Chapter 551.

(d) Except as provided by Subsection (d-1), the [~~The~~]
materials described by Subsection (c) must be made available to the
public as required by Subsection (c) not later than the seventh day
before the date of the meeting. The board may not consider at the
meeting any material relating to an award decision that is not made
available to the public by the date required by this subsection.

(d-1) If as the result of a reasonably unforeseen situation
related to an award decision the department is unable to meet the
requirements of Subsection (d), any additional materials described
by Subsection (c) that are associated with the situation must be

1 made available at least 72 hours before the meeting.

2 SECTION 2. Subsection (a), Section 2306.033, Government
3 Code, is amended to read as follows:

4 (a) It is a ground for removal from the board that a member:

5 (1) does not have at the time of taking office the
6 qualifications required by Section 2306.027;

7 (2) does not maintain during service on the board the
8 qualifications required by Section 2306.027;

9 (3) is ineligible for membership under Section
10 2306.027(c), 2306.034, or 2306.035;

11 (4) cannot, because of illness or disability,
12 discharge the member's duties for a substantial part of the member's
13 term;

14 (5) is absent from more than half of the regularly
15 scheduled board meetings that the member is eligible to attend
16 during a calendar year without an excuse approved by a majority vote
17 of the board; ~~[or]~~

18 (6) engages in misconduct or unethical ~~[or criminal]~~
19 behavior; or

20 (7) is indicted for a criminal offense, punishable as
21 a felony, related to the member's official duties or otherwise
22 engages in criminal behavior.

23 SECTION 3. Section 2306.039, Government Code, is amended by
24 amending Subsection (a) and adding Subsection (c) to read as
25 follows:

26 (a) Except as provided by Subsections ~~[Subsection]~~ (b) and
27 (c), the department and the Texas State Affordable Housing

1 Corporation are subject to Chapters 551 and 552.

2 (c) The board may meet in executive session with the
3 department's internal auditor, fraud prevention coordinator, or
4 ethics advisor to discuss issues related to fraud, waste, or abuse.

5 SECTION 4. Subsections (a), (b), (d), (d-1), (e), (f), and
6 (g), Section 2306.111, Government Code, are amended to read as
7 follows:

8 (a) The department [~~through the housing finance division,~~]
9 shall administer all federal housing funds provided to the state
10 under the Cranston-Gonzalez National Affordable Housing Act (42
11 U.S.C. Section 12704 et seq.) or any other affordable housing
12 program.

13 (b) The department [~~housing finance division~~] shall adopt a
14 goal to apply an aggregate minimum of 25 percent of the department's
15 [~~division's~~] total housing funds toward housing assistance for
16 individuals and families of extremely low and very low income.

17 (d) The department shall allocate housing funds provided to
18 the state under the Cranston-Gonzalez National Affordable Housing
19 Act (42 U.S.C. Section 12701 et seq.) [~~housing trust funds~~
20 ~~administered by the department under Sections 2306.201- 2306.206,~~]
21 and commitments issued under the federal low income housing tax
22 credit program administered by the department under Subchapter DD
23 to [~~all urban/exurban areas and rural areas of~~] each uniform state
24 service region based on a formula developed by the department.
25 Commitments issued under the federal low income housing tax credit
26 program must be allocated among all urban/exurban areas and rural
27 areas of each uniform state service region. The formula developed

1 by the department to determine the appropriate allocation of funds
2 or credits must be [~~that is~~] based on the need for housing
3 assistance and the availability of housing resources in each
4 uniform state service region and, for credits, in the [~~those~~]
5 urban/exurban areas and rural areas of those regions, provided that
6 the allocations are consistent with applicable federal and state
7 requirements and limitations. The department shall use the
8 information contained in its annual state low income housing plan
9 and shall use other appropriate data to develop the formula. If the
10 department determines under the formula that an insufficient number
11 of eligible applications for assistance out of funds or credits
12 allocable under this subsection are submitted to the department
13 from a particular uniform state service region, the department
14 shall use the unused funds or credits allocated to that region for
15 the [~~all urban/exurban areas and rural areas in~~] other uniform
16 state service regions based on identified need and financial
17 feasibility.

18 (d-1) Funds or credits are not required to be allocated
19 according to the regional allocation formula under Subsection (d)
20 if:

21 (1) the funds or credits are reserved for
22 contract-for-deed conversions or for set-asides mandated by state
23 or federal law; and

24 (2) each contract-for-deed allocation or set-aside
25 allocation equals not more than 15 [~~10~~] percent of the total
26 allocation of funds or credits for the applicable program.

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/exurban areas and rural areas of]~~ each
6 uniform state service region and, for credits, for the
7 urban/exurban areas and rural areas of those regions.

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

16 (g) For all urban/exurban areas and rural areas of each
17 uniform state service region, the department shall establish
18 ~~[funding]~~ priorities by which to award tax credits to ensure that:

19 (1) funds are awarded to project applicants who are
20 best able to meet recognized needs for affordable housing, as
21 determined by department rule;

22 (2) when practicable and when authorized under Section
23 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), the least
24 restrictive funding sources are used to serve the lowest income
25 residents; and

26 (3) funds are awarded based on a project applicant's
27 ability, when consistent with Section 42, Internal Revenue Code of

1 1986 (26 U.S.C. Section 42), practicable, and economically
2 feasible, to:

3 (A) provide the greatest number of quality
4 residential units;

5 (B) serve persons with the lowest percent area
6 median family income;

7 (C) extend the duration of the project to serve a
8 continuing public need;

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

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

13 SECTION 5. Subsection (c), Section 2306.111, Government
14 Code, as amended by Chapters 1367 and 1448, Acts of the 77th
15 Legislature, Regular Session, 2001, is reenacted and amended to
16 read as follows:

17 (c) In administering federal housing funds provided to the
18 state under the Cranston-Gonzalez National Affordable Housing Act
19 (42 U.S.C. Section 12701 et seq.), the department shall expend at
20 least 95 percent of these funds for the benefit of
21 non-participating areas that do not qualify to receive funds under
22 the Cranston-Gonzalez National Affordable Housing Act directly
23 from the United States Department of Housing and Urban Development.
24 All funds not set aside under this subsection shall be used for the
25 benefit of persons with disabilities who live in areas other than
26 non-participating areas. Funds not set aside under this subsection
27 may be used for integrated housing in which at least a portion of

1 the funded units serve persons with disabilities.

2 SECTION 6. Subsection (a), Section 2306.1114, Government
3 Code, is amended to read as follows:

4 (a) Not later than the 14th day after the date an
5 application or a proposed application for multifamily housing
6 development funds described by Section 2306.111 has been filed, the
7 department shall provide written notice of the filing of the
8 application or proposed application to the following persons:

9 (1) the United States representative who represents
10 the community containing the development described in the
11 application;

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

14 (3) the presiding officer of the governing body of the
15 county and any municipality [~~political subdivision~~] containing the
16 development described in the application;

17 (4) any member of the governing body described by
18 Subdivision (3) [~~of a political subdivision~~] who represents the
19 area containing the development described in the application;

20 (5) the superintendent and the presiding officer of
21 the board of trustees of the school district containing the
22 development described in the application; and

23 (6) any neighborhood organizations on record with the
24 state or municipality [~~county~~] in which the development described
25 in the application is to be located and whose boundaries contain the
26 proposed development site.

27 SECTION 7. Subsection (a), Section 2306.185, Government

1 Code, is amended to read as follows:

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

6 (1) keeps the rents affordable for low income tenants
7 for the longest period that is economically feasible; and

8 (2) provides regular maintenance to keep the
9 development sanitary, decent, and safe [~~and otherwise complies with~~
10 ~~the requirements of Section 2306.186~~].

11 SECTION 8. Subsection (a), Section 2306.186, Government
12 Code, is amended by adding Subdivision (5) to read as follows:

13 (5) "Multifamily rental housing development" means a
14 rental housing development that contains 25 or more rental units.

15 SECTION 9. Subsections (b) and (1), Section 2306.186,
16 Government Code, are amended to read as follows:

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

21 (1) for the year 2004:

22 (A) not less than \$150 per unit per year for units
23 one to five years old; and

24 (B) not less than \$200 per unit per year for units
25 six or more years old; and

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

1 (1) Neither the physical needs assessment requirements nor
2 the reserve account requirements of this [~~This~~] section [~~does not~~]
3 apply to a development for which an owner is required to maintain a
4 reserve account under any other provision of federal or state law.

5 SECTION 10. Section 2306.256, Government Code, is
6 transferred from Subchapter K, Chapter 2306, Government Code, to
7 Subchapter HH, Chapter 2306, Government Code, and redesignated as
8 Section 2306.8015 to read as follows:

9 Sec. 2306.8015 [~~2306.256~~]. AFFORDABLE HOUSING
10 PRESERVATION PROGRAM. (a) The department shall develop and
11 implement a program to preserve affordable housing in this state.

12 (b) Through the program, the department shall:

13 (1) maintain data on housing projected to lose its
14 affordable status;

15 (2) develop policies necessary to ensure the
16 preservation of affordable housing in this state;

17 (3) advise other program areas with respect to the
18 policies; and

19 (4) assist those other program areas in implementing
20 the policies.

21 SECTION 11. Subsection (a), Section 2306.359, Government
22 Code, is amended to read as follows:

23 (a) In evaluating an application for an issuance of private
24 activity bonds, the department shall score and rank the application
25 using a point system based on criteria that are adopted by the
26 department, including criteria:

27 (1) regarding:

1 (A) the income levels of tenants of the
2 development, consistent with the funding priorities provided by
3 Section 1372.0321;

4 (B) the rent levels of the units;

5 (C) the level of community support for the
6 application;

7 (D) the period of guaranteed affordability for
8 low income tenants;

9 (E) the cost per unit of the development;

10 (F) the size, quality, and amenities of the
11 units;

12 (G) the services to be provided to tenants of the
13 development;

14 (H) from the county and, if applicable, the
15 municipality containing the development, the degree of commitment
16 of development funding [~~by local political subdivisions~~] that
17 enables additional units for individuals and families of very low
18 income; and

19 (I) other criteria as developed by the board; and

20 (2) imposing penalties on applicants who have
21 requested extensions of department deadlines relating to
22 developments supported by an issuance of private activity bonds
23 made in the application round preceding the current round.

24 SECTION 12. Section 2306.6015, Government Code, is amended
25 to read as follows:

26 Sec. 2306.6015. PERSONNEL. The division director may
27 employ and remove staff as necessary to perform the work of the

1 division and may prescribe the staff's [~~their~~] duties and
2 compensation. [~~Subject to applicable personnel policies and~~
3 ~~regulations, the division director may remove any division~~
4 ~~employee.~~]

5 SECTION 13. Sections (b) and (b-1), Section 2306.6704,
6 Government Code, are amended to read as follows:

7 (b) [~~The department shall award in the application~~
8 ~~evaluation process described by Section 2306.6710 an appropriate~~
9 ~~number of points as an incentive for participation in the~~
10 ~~preapplication process established under this section.~~

11 [~~(b-1)~~] The preapplication process must require the
12 applicant to provide the department with evidence that the
13 applicant has notified the following entities with respect to the
14 filing of the application:

15 (1) any neighborhood organizations on record with the
16 state or county in which the development is to be located and whose
17 boundaries contain the proposed development site;

18 (2) the superintendent and the presiding officer of
19 the board of trustees of the school district containing the
20 development;

21 (3) the presiding officer of the governing body of any
22 municipality containing the development and all elected members of
23 that body;

24 (4) the presiding officer of the governing body of the
25 county containing the development and all elected members of that
26 body; and

27 (5) the state senator and state representative of the

1 district containing the development.

2 SECTION 14. Section 2306.6705, Government Code, is amended
3 to read as follows:

4 Sec. 2306.6705. GENERAL APPLICATION REQUIREMENTS. An
5 application must contain at a minimum the following written,
6 detailed information in a form prescribed by the board:

7 (1) a description of:

8 (A) the financing plan for the development,
9 including any nontraditional financing arrangements;

10 (B) the use of funds with respect to the
11 development;

12 (C) the funding sources for the development,
13 including:

14 (i) construction, permanent, and bridge
15 loans; and

16 (ii) rents, operating subsidies, and
17 replacement reserves; and

18 (D) the commitment status of the funding sources
19 for the development;

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

23 (3) from a syndicator or a financial consultant of the
24 applicant, an estimate of the amount of equity dollars expected to
25 be raised for the development in conjunction with the amount of
26 housing tax credits requested for allocation to the applicant,
27 including:

- 1 (A) pay-in schedules; and
- 2 (B) syndicator consulting fees and other
3 syndication costs;
- 4 (4) if rental assistance, an operating subsidy, or an
5 annuity is proposed for the development, any related contract or
6 other agreement securing those funds and an identification of:
- 7 (A) the source and annual amount of the funds;
- 8 (B) the number of units receiving the funds; and
- 9 (C) the term and expiration date of the contract
10 or other agreement;
- 11 (5) if the development is located within the
12 boundaries of a political subdivision with a zoning ordinance,
13 evidence in the form of a letter from the chief executive officer of
14 the political subdivision or from another local official with
15 jurisdiction over zoning matters that states that:
- 16 (A) the development is permitted under the
17 provisions of the ordinance that apply to the location of the
18 development; or
- 19 (B) the applicant is in the process of seeking
20 the appropriate zoning and has signed and provided to the political
21 subdivision a release agreeing to hold the political subdivision
22 and all other parties harmless in the event that the appropriate
23 zoning is denied;
- 24 (6) if an occupied development is proposed for
25 rehabilitation:
- 26 (A) an explanation of the process used to notify
27 and consult with the tenants in preparing the application;

1 (B) a relocation plan outlining:

2 (i) relocation requirements; and

3 (ii) a budget with an identified funding
4 source; and

5 (C) if applicable, evidence that the relocation
6 plan has been submitted to the appropriate local agency;

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

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

12 (9) evidence that the applicant has notified the
13 following entities with respect to the filing of the application,
14 unless the applicant has already provided the notice required by
15 Section 2306.6704:

16 (A) any neighborhood organizations on record
17 with the state or county in which the development is to be located
18 and whose boundaries contain the proposed development site;

19 (B) the superintendent and the presiding officer
20 of the board of trustees of the school district containing the
21 development;

22 (C) the presiding officer of the governing body
23 of any municipality containing the development and all elected
24 members of that body;

25 (D) the presiding officer of the governing body
26 of the county containing the development and all elected members of
27 that body; and

1 (E) the state senator and state representative of
2 the district containing the development.

3 SECTION 15. Section 2306.6710, Government Code, is amended
4 by amending Subsections (b) and (e) and adding Subsections (h),
5 (i), and (j) to read as follows:

6 (b) If an application satisfies the threshold criteria, the
7 department shall score and rank the application using a point
8 system that:

9 (1) prioritizes in descending order criteria
10 regarding:

11 (A) financial feasibility of the development
12 based on the supporting financial data required in the application
13 that will include a project underwriting pro forma from the
14 permanent or construction lender;

15 (B) quantifiable community participation with
16 respect to the development, evaluated on the basis of written
17 statements from any neighborhood organizations on record with the
18 state or county in which the development is to be located and whose
19 boundaries contain the proposed development site;

20 (C) the income levels of tenants of the
21 development;

22 (D) the size and quality of the units;

23 (E) the commitment of development funding by
24 local political subdivisions;

25 (F) the level of community support for the
26 application, evaluated on the basis of written statements from
27 state elected officials;

1 (G) the rent levels of the units;

2 (H) the cost of the development by square foot;

3 and

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

6 (2) uses criteria imposing penalties on applicants or
7 affiliates who have requested extensions of department deadlines
8 relating to developments supported by housing tax credit
9 allocations made in the application round preceding the current
10 round or a developer or principal of the applicant that has been
11 removed by the lender, equity provider, or limited partners for its
12 failure to perform its obligations under the loan documents or
13 limited partnership agreement; and

14 (3) is based on criteria adopted by the department
15 that are consistent with the department's housing goals, including
16 criteria addressing the ability of the proposed project to:

17 (A) leverage funds based on documented,
18 committed, and available third-party private, state, or federal
19 resources, including federal HOPE VI grants received through the
20 United States Department of Housing and Urban Development, when
21 consistent with sound underwriting practices and when economically
22 feasible; and

23 (B) serve traditionally underserved areas.

24 (e) In scoring applications for purposes of housing tax
25 credit allocations, the department shall award, consistent with
26 Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42),
27 preference points to a development that will:

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

5 (2) produce for the longest economically feasible
6 period the greatest number of high quality units committed to
7 remaining affordable to any tenants who are income-eligible under
8 the low income housing tax credit program.

9 (h) The department shall award an appropriate number of
10 points as an incentive for participation in the preapplication
11 process established under Section 2306.6704.

12 (i) As determined through the qualified allocation plan,
13 the department shall provide appropriate incentives to reward
14 applicants who agree to:

15 (1) equip the property that is the basis of the
16 application with energy saving devices that meet the standards
17 established by the state energy conservation office or to provide
18 to a qualified nonprofit organization or tenant organization a
19 right of first refusal to purchase the property at the minimum price
20 provided in, and in accordance with the requirements of, Section
21 42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section 42); and

22 (2) locate the development in a census tract in which
23 there are no other existing developments supported by housing tax
24 credits.

25 (j) For each scoring criterion, the department shall use a
26 range of points to evaluate the degree to which a proposed project
27 satisfies the criterion. The department may not award a number of

1 points for a scoring criterion that is disproportionate to the
2 degree to which a proposed project complies with that criterion.

3 SECTION 16. Section 2306.6711, Government Code, is amended
4 by adding Subsection (g) to read as follows:

5 (g) On awarding tax credit allocations, the board shall
6 document the reasons for each project's selection, including an
7 explanation of:

8 (1) all discretionary factors used in making its
9 determination; and

10 (2) the reasons for any decision that conflicts with
11 the recommendations of department staff under Section 2306.6731.

12 SECTION 17. Subsection (a), Section 2306.805, Government
13 Code, is amended to read as follows:

14 (a) The department shall establish and administer a housing
15 preservation incentives program to provide incentives through
16 [~~loan guarantees~~] loans[~~7~~] and grants to political subdivisions,
17 housing finance corporations, public housing authorities,
18 for-profit organizations, and nonprofit organizations for the
19 acquisition and rehabilitation of multifamily housing developments
20 assigned a Class A or Class B priority under Section 2306.803.

21 SECTION 18. Subchapter I, Chapter 487, Government Code, is
22 amended by adding Section 487.354 to read as follows:

23 Sec. 487.354. FUNDING OF COLONIA SELF-HELP CENTERS. The
24 office shall enter into a memorandum of understanding with the
25 Texas Department of Housing and Community Affairs to permit the
26 department to receive and administer the portion of the federal
27 community development block grant money specifically allocated

1 under the General Appropriations Act to fund the operation of
2 colonia self-help centers. The memorandum must require the office
3 to transfer to the department a portion of the office's total
4 administrative funds in the same ratio that the portion of
5 community development block grant money allocated for the self-help
6 centers bears to the total yearly allocation of community
7 development block grant money. The memorandum must require the
8 office to continue to fund the department's border field offices
9 through the community development block grant program and must
10 require the department to exercise oversight and supervision over
11 those field offices and staff.

12 SECTION 19. Subsection (d), Section 6.060, Water Code, is
13 amended to read as follows:

14 (d) The board shall meet annually with the board of the
15 Texas Department of Housing and Community Affairs, or the successor
16 agency that administers the portion of the federal community
17 development block grant nonentitlement program that addresses the
18 infrastructure needs of colonias, to assess the agencies' progress
19 in meeting the needs of colonia residents [~~and to receive an update~~
20 ~~and recommendations from the Colonia Initiatives Advisory~~
21 ~~Committee, as provided by Section 2306.590, Government Code]. For~~
22 purposes of this subsection, "colonia" has the meaning assigned by
23 Section 2306.581, Government Code.

24 SECTION 20. Sections 2306.079, 2306.080, 2306.2561,
25 2306.590, 2306.6725, Subsection (c), Section 2306.805, and Section
26 2306.806, Government Code, are repealed.

27 SECTION 21. The changes in law made by this Act relating to

1 the awarding of financial assistance administered by the Texas
2 Department of Housing and Community Affairs apply only to an
3 application for that assistance submitted on or after the effective
4 date of this Act.

5 SECTION 22. This Act takes effect September 1, 2005.