

BILL ANALYSIS

C.S.H.B. 3873
By: Menendez
Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The proposed complete committee substitute for House Bill No. 3873 addresses administrative non-programmatic issues for the Texas Department of Housing and Community Affairs (hereafter simply "TDHCA" or "Department").

The Department is operating under administrative provisions that are inconsistent with the Administrative Procedures Act--or otherwise inconsistent with current practice--or which create unnecessary burdens to the Department's operations.

This legislation is needed to assist the Department in providing safe, decent, affordable housing without time-consuming, duplicative, or costly administrative issues.

The changes will allow the Department to function more efficiently and still provide the public with open access to the Department.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the governing board of the Department in SECTION 4 (Section 2306.041 et. seq., Government Code in SECTION 11 (Section 2306.0723, Government Code) of the committee substitute, and in SECTION 21 (Section 2306.6735, Government Code.) of the committee substitute.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Section 2306.004 of the Government Code to provide new definitions or to clarify the existing definitions for "Department," "Development funding," "Elderly individual," "Grant," "Housing Sponsor," "Neighborhood Organization," "New construction," "Rehabilitation," "Rural Area," "Rural Development," "Uniform Application and Funding Cycle," and "Urban Area." These definitions will be utilized for all programs of the Department.

SECTION 2. Amends Section 2306.032 of the Government Code regarding the Department's record-keeping and meeting posting requirements. Subsection (b) requires the Department to keep complete transcripts of board meetings and make the transcript available on its Internet website. Changes subsections (c), (d), and (e) to bring the Department into compliance with the Texas Government Code Chapter 551 regarding open meetings.

SECTION 3. Amends Section 2306.039 of the Government Code, Subsection (b), to allow the Department to withhold from public information requests personally sensitive material submitted by applicants seeking Department assistance. Subsection (c) is a new subsection that would allow the board to hold executive sessions with key personnel to receive information regarding fraud, waste, or abuse of Department funds.

SECTION 4. Adds Section 2306.040 to the Government Code and replaces Section 2306.0661 which is being repealed (SECTION 22) regarding rulemaking hearings.

Additionally, SECTION 4 adds new Sections 2306.040 through 2306.050 to the Government Code to provide the Department with clear authority regarding participation in legislative activities as well as regarding administrative violations and penalties.

Section 2306.040 provides that the Department participate in any public hearing conducted by a legislator to discuss a rule to be adopted by the Department. Section 2306.041 provides board rulemaking authority for the imposition of penalties and Section 2306.042 caps the authority at no more than \$1,000 per violation and establishes the standards for creating a schedule of penalties with new rulemaking authority.

New Sections 2306.043 through 2306.050 provide the notice requirements and the review process for assessing, challenging and collecting of penalties.

Also added by SECTION 4 are Sec. 2306.0501, Release of Bond; Sec. 2306.0502, Collection of Penalty; and Sec. 2306.0503, Administrative Procedure.

SECTION 5. Amends Section 2306.054 of the Government Code to include that the Department's special advisory councils are subject to Texas Government Code Section 2110.

SECTION 6. Amends Section 2306.057, subsection (a) of the Government Code to clarify that the Department is to assess the compliance history of the applicant within the State of Texas.

SECTION 7. Amends section 2306.069, subsection (a) of the Government Code to make the Department consistent with other agencies in requirements for information submitted to the Office of Attorney General for approval of outside legal counsel.

SECTION 8. Amends Section 2306.070 of the Government Code, to require the department to submit to the Legislative Budget Board, the Senate Finance Committee, and the House Appropriations Committee, as part of its legislative appropriations request, a report detailing the fees received, on a cash basis, for each activity administered by the department during each of the three preceding years and an explanation of any projected increase or decrease of three percent or more in fees estimated for the operating budget as compared to the fees received in the most recent budget year.

SECTION 9. Amends Section 2306.072 of the Government Code altering the date of submission for the Annual Low Income Housing Report and clarifies that the plan requires board approval.

SECTION 10. Amends Section 2306.0721 of the Government Code altering the date of the Low Income Housing Plan submission and requires board approval. The section eliminates the Texas State Affordable Housing Corporations programs from the analysis.

SECTION 11. Amends Section 2306.0723 of the Government Code to require that the Annual Low Income Housing Report be treated as a rule and follow the Administrative Procedures Act in its adoption rather than specific targets previously required public participation.

SECTION 12. Amends Section 2306.082 of the Government Code to update the alternative dispute resolution requirements to be consistent with current practice by the Department that encourages early use of Alternative Dispute Resolution (ADR) and clarifies the board's role in the process.

SECTION 13. Amends Section 2306.092 of the Government Code to provide clarification that the governing board establishes policies for duties regarding certain federal programs.

SECTION 14. Amends Section 2306.1111 of the Government Code to clarify that the uniform application cycle is for competitive programs. Also exempts the private activity bond program from the uniform application cycle recognizing other laws governing the time lines for the private activity bond cycle.

SECTION 15. Amends Section 2306.1112 of the Government Code to clarify who serves on the Executive Award and Review Advisory Committee for the department.

SECTION 16. Amends Section 2306.1113 of the Government Code to clarify existing ex-parte language to prevent applicants from discussing any applications with board members prior to the

issue being heard in public. The amended language also provides limits on communications between interested parties and board members outside the public meetings.

SECTION 17. Amends Section 2306.185 Government Code to clarify that the board may establish the length of time applicants should provide pro forma's for operations of an affordable housing property when submitted to the department.

SECTION 18. Amends Section 2306.229 of the Government Code by adding subsection c that requires the department to accept the use of title companies requested by the applicant/developer.

SECTION 19. Amends Section 2306.359 of the Government Code, to remove certain scoring criteria for private activity bond applications by the department, including criteria awarding points for leveraging of funds from local political subdivisions, and criteria imposing penalty points on applicants who have requested extensions of department deadlines relating to developments supported by the issuance of private activity bonds made in the application round preceding the current round.

SECTION 20. Amends Section 2306.514 of the Government Code to eliminate the breaker box requirement to remove potential conflicts with the international building code and with municipal codes requiring outside access to electrical shut off systems and panels no higher than 48 inches above the floor.

SECTION 21. Subchapter DD, Chapter 2306, Government Code, is amended by adding Section 2306.6735, which makes provisions for required lease agreements, stating that agreements must include any applicable federal or state standards identified by department rule that relate to the termination or nonrenewal of the lease agreement and they must be consistent with state and federal law.

SECTION 22. Repeals the following sections of the Government Code:

2306.021, Department Divisions

2306.062, Career Ladder

2306.0631, State Employee Incentive Program

2306.0661, Public Hearings

2306.0721 (h)

2306.079, Regional Development Coordinator

2306.081 (e)

2306.254, Tenant Services Program

2306.257 (b-d), Applicant Compliance with State and Federal Discrimination Laws Prohibiting Discrimination: Certification and Monitoring

2306.806, Approval of Office of Rural Community Affairs

Subchapter N, Housing Finance Division -Tenants of Housing Developments

Subchapter O, Housing Finance Division -Regulation of Mortgage Lenders, Services and Contractors

Subchapter BB-Texas Youthworks Program

Subchapter CC-Emergency Nutrition & Temporary Relief Program

Subchapter EE-Builder Incentive Partnership Program

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SECTION 23. Clarifies that any inconsistencies between this bill and other bills will be subject to the statutory interpretation under the Code Construction Act reconciliation provisions.

SECTION 24. Clarifies that the changes in law made by this Act relating to the evaluation of applications for financial assistance administered by the Texas Department of Housing and Community Affairs apply only to an application submitted on or after the effective date of this Act. An application submitted before the effective date of this Act is governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose.

SECTION 25. This Act takes effect September 1, 2007.

EFFECTIVE DATE

This Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1: Amends Sec. 2306.004 (28-b) by decreasing the number of units allowed to be built in rural areas from 96 to 80.

SECTION 2: Sec. 2306.032(c) shortens the time the Department must post information given to its governing board from seven days to three days. Sec. 2306.032(d) restores the requirement that any material made available to the board by the department at a board meeting must be made available to the public. In addition it requires that the material must be available in hard copy format.

SECTION 3: No changes.

SECTION 4: Sections 2306.040 through 2306.0503 are amended to delete redundant rulemaking language and to add provisions related to hearings, decisions by the board, administrative procedures.

SECTION 5: No changes.

SECTION 6: No changes.

SECTION 7 (former SECTION 8): Original section 7 is deleted and subsequent sections are renumbered.

SECTION 8 (former SECTION 9): No changes.

SECTION 9 (former SECTION 10): Sec 2306.072(c) The report must include, is omitted.

SECTION 10 (former SECTION 11): Sec. 2306.072(c) The plan must include, is omitted.

SECTION 11 (former SECTION 12): Sec. 2306.0723 has been renamed "Report Considered As Rule" and "consider the Annual Low Income Housing Report to be a rule and follow the procedures relevant to rulemaking as required under Texas Government Code 2001" in Sec. 2306.0723(d) is moved to the beginning of Sec. 2306.0723(a).

SECTION 12 (former SECTION 14): SECTION 13 in the original has been omitted and subsequent sections are renumbered. New SECTION 12 reinserts language regarding negotiated rulemaking.

SECTION 13 (former SECTION 15): No changes.

SECTION 14 (former SECTION 16): "Cycle" is changed to "Cycles".

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SECTION 15 (former SECTION 17): Sec. 2306.1112(a) in the original is omitted.

SECTION 16 (former SECTION 18): in Sec. 2306.1113(a) the words "in an application cycle" is added between "filed" and "and". (a-2) is omitted.

SECTION 17 (former SECTION 19): Sec. 2306.185 (a), (c)-(h) are omitted.

SECTION 18 (former SECTION 20): removes language that singled out title companies for debarment in the statute.

SECTION 19 (former SECTION 21): Only amends Sec. 2306.359(a) and in Sec. 2306.359(a) the lettering system is changed to number system.

SECTION 20 (former SECTION 22): Omits Sec. 2306.514(b) and adds language that says where possible, breaker boxes should be no more than 48 inches from the floor inside the building and on the first floor.

SECTION 21 (former SECTION 23): Removes old Section 23 to retain the current language in statute regarding requests for amendments on properties supported with funds or credits awarded by TDHCA. The committee substitute adds in new Section 21 to provide rule making authority for the department regarding leases to be in compliance with state and federal law.

SECTION 22 (former SECTION 24): Current Section 22 inserts Sec. 2306.0721(h) regarding TSAHC uses in Low Income Housing Plan and 2306.081(e) regarding access to the compliance data base. It also removes and retains the language to keep current statutory language regarding section 2306.802 and 2306.803 regarding at-risk properties and also maintains Subchapter L of Texas Government Code section 2306 regarding Regulation of Housing Sponsors.

SECTION 23 (former SECTION 25): No changes.

SECTION 24 (former SECTION 26): No changes.

SECTION 25 (former SECTION 27): No changes.