

BILL ANALYSIS

Senate Research Center

S.B. 1908
By: Ellis et al.
Government Organization
8/9/2007
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently in Texas there is no single access point for information regarding housing resources. The Texas Department of Housing and Community Affairs (TDHSC), the Texas Real Estate Commission, and other agencies each maintain some resource information. For developers, the process for increasing access to affordable housing is complex. Moreover, for consumers looking to access housing resources, the myriad sources of various pieces of information is even more complex. Streamlining the information process will help both developers and consumers better access the necessary information regarding housing in Texas.

S.B. 1908 directs TDHCA to work with the Department of Information Resources and other state agencies with housing resources to create an Internet portal to serve as a single point of access for state and federal resources regarding housing needs.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 403.302(d) and (i), Government Code, to redefine "taxable value" and to make conforming changes.

SECTION 2. Amends Chapter 2306, Government Code, by adding Subchapter MM, as follows:

SUBCHAPTER MM. TEXAS FIRST-TIME HOMEBUYER PROGRAM

Sec. 2306.1071. DEFINITIONS. Defines "first-time homebuyer," "home," "mortgage lender," and "program."

Sec. 2306.1072. TEXAS FIRST-TIME HOMEBUYER PROGRAM. (a) Requires the Texas First-Time Homebuyer Program (program) to facilitate the origination of single-family mortgage loans for eligible first-time homebuyers.

(b) Authorizes the program to include down payment and closing cost assistance.

Sec. 2306.1073. ADMINISTRATION OF PROGRAM; RULES. (a) Requires the Texas Department of Housing and Community Affairs (TDHCA) to administer the program.

(b) Requires the governing board of TDHCA (board) to adopt rules governing certain aspects of the program.

Sec. 2306.1074. ELIGIBILITY. (a) Sets forth requirements for a homebuyer to be eligible for a mortgage loan under this subchapter.

(b) Sets forth requirements for a homebuyer to be eligible for a loan under this subchapter to assist a homebuyer with down payment and closing costs.

(c) Authorizes TDHCA to contract with other agencies of the state or with private entities to determine whether applicants qualify as first-time homebuyers under this section or otherwise to administer all or part of this section.

Sec. 2306.1075. FEES. Authorizes the board to set and collect from each applicant any fees the board considers reasonable and necessary to cover the expenses of administering the program.

Sec. 2306.1076. FUNDING. (a) Requires TDHCA to ensure that a loan under this section is structured in a way that complies with any requirements associated with the source of the funds used for the loan.

(b) Authorizes TDHCA, in addition to funds set aside for the program under Section 1372.023, to solicit and accept gifts and grants for the purposes of this section.

SECTION 3. Reenacts and amends Section 2306.111(c), Government Code, as amended by Chapters 1367 and 1448, Acts of the 77th Legislature, Regular Session, 2001, to require the Texas Department of Housing and Community Affairs (TDHCA), in administering federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), to expend five percent of these funds for the benefit of persons with disabilities who live in any area of this state. Deletes existing text providing specification for the expenditure of funds.

SECTION 4. Amends Section 2306.111, Government Code, by amending Subsections (d), (d-1), (e), (f), and (g), and adding Subsections (d-2) and (d-3), as follows:

(d) Requires TDHCA to allocate housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), housing trust funds administered by TDHCA under Sections 2306.201-2306.206, and commitments issued under the federal low income housing tax credit program administered by TDHCA under Subchapter DD to all urban, rather than urban/exurban, areas and rural areas of each uniform state service region based on a formula developed by TDHCA under Section 2306.1115. Deletes existing text relating to the allocation of federal funds. Makes a conforming change.

(d-1) Requires TDHCA, in allocating low income housing tax credit commitments under Subchapter DD, before applying the regional allocation formula prescribed by Section 2306.1115, set aside for at-risk developments, as defined by Section 2306.6702, not less than the minimum amount of housing tax credits required under Section 2306.6714. Provides that funds or credits are not required to be allocated according to the regional allocation formula under Subsection (d) if the funds or credits are allocated by TDHCA primarily to serve persons with disabilities or the funds are housing trust funds administered by TDHCA under Sections 2306.201-2306.206 that are not otherwise required to be set aside under state or federal law and do not exceed \$3 million during each application cycle. Makes conforming changes.

(d-2) Requires TDHCA, in allocating low income housing tax credit commitments under Subchapter DD, to allocate five percent of the housing tax credits in each application cycle to developments that receive federal financial assistance through the Texas Rural Development Office of the United States Department of Agriculture. Requires any funds allocated to developments under this subsection that involve rehabilitation to come from the funds set aside for at-risk developments under Section 2306.6714 and any additional funds set aside for those developments under Subsection (d-1). Provides that this subsection does not apply to a development financed wholly or partly under Section 538 of the Housing Act of 1949 (42 U.S.C. Section 1490p-2).

(d-3) Requires TDHCA, in allocating low income tax credit commitments under Subchapter DD, to allocate to developments in rural areas 20 percent or more of the housing tax credits in the state in the application cycle, with \$500,000 or more in housing tax credits being reserved for each uniform state service region under this subsection.

Provides that any amount of housing tax credits set aside for developments in a rural area in a specific uniform state service region under this subsection that remains after the initial allocation of housing tax credits is available for allocation to developments in any other rural area first, and then is available to developments in urban areas of any uniform state service region, except that if the credits were set aside under this subsection for developments in rural areas in a specific uniform state service region and if qualified applications are submitted with respect to developments in urban areas in that region, TDHCA is required to allocate the funds to those developments.

(e) - (g) Makes conforming changes.

SECTION 5. Amends Subchapter F, Chapter 2306, Government Code, by adding Section 2306.1115, as follows:

Sec. 2306.1115. REGIONAL ALLOCATION FORMULA. (a) Requires TDHCA to develop a certain formula to allocate housing funds under Section 2306.111(d).

(b) Requires TDHCA to use information contained in its annual state low income housing plan and other appropriate data to develop the formula under this section.

SECTION 6. Amends Section 2306.6710(b), Government Code, to require TDHCA to score and rank the application using a point system that prioritizes certain criteria if an application satisfies the threshold criteria and encourages applicants to provide free notary public service to the residents of the developments for which the allocation of housing tax credits is requested.

SECTION 7. Amends Section 2306.004, Government code, by amending Subdivisions (4), (7), and (14) and adding Subdivisions (4-a), (12-a), (23-a), (23-b), (26-a), (28-a), (28-b), (35), and (36), to redefine "department," "elderly individual" and "housing sponsor" and define "development funding," "grant," "neighborhood organization," "new construction," "rehabilitation," "rural area," "rural development," "uniform application and funding cycle," and "urban area."

SECTION 8. Amends Sections 2306.032(b) through (e), Government Code, as follows:

(b) Requires the governing board (board) of the Texas Department of Housing and Community Affairs (TDHCA) to keep minutes, rather than complete minutes, and complete transcripts of board meetings. Requires TDHCA to post the transcripts on its website and otherwise maintain all accounts, minutes, and other records related to the meetings, rather than requiring the accounts, minutes, and other records to be maintained by TDHCA.

(c) Requires all materials provided to the board, rather than in the possession of TDHCA, that are relevant to a matter proposed for discussion at a board meeting to be posted on TDHCA's website not later than the third day before the date of the meeting. Deletes existing text requiring all material to be made available in hard-copy format at TDHCA, 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) Requires any materials made available to the board by TDHCA at a board meeting to be made available in hard copy format to the members of the public in attendance at the meeting, rather than as required by Subsection (c) not later than the seventh day before the date of the meeting. Deletes existing text prohibiting the board from considering at the meeting any material that is not made available to the public by the date required by this subsection.

(e) Requires the board to conduct its meetings in accordance with Chapter 551 (Open Meetings), except as otherwise required by this chapter. Deletes existing text requiring the agenda for a board meeting to state each project the staff is recommending for assistance by TDHCA.

SECTION 9. Amends Section 2306.039, Government Code, as follows:

(a) Includes Subsection (c), in addition to Subsection (b), as an exception to the subsection, providing that TDHCA and the Texas State Affordable Housing Corporation (corporation) are subject to Chapters 551 and 552 (Public Information).

(b) Provides that Chapters 551 and 552 do not apply to the personal or business financial information, including Social Security numbers, taxpayer identification numbers, or bank account numbers, submitted by a housing sponsor or an individual or family to receive a loan, grant, or other housing assistance under a program administered by TDHCA or the corporation or from bonds issued by TDHCA, except that TDHCA and the corporation are permitted to disclose information about any applicant in a form that does not reveal the identity of the sponsor, individual, or family for purposes of determining eligibility for programs and in preparing reports required under this chapter.

(c) Authorizes TDHCA's internal auditor, fraud prevention coordinator, or ethics advisor to meet in an executive session of the board to discuss issues related to fraud, waste, or abuse.

SECTION 10. Amends Subchapter B, Chapter 2306, Government Code, by adding Sections 2306.040 through 2306.0503, as follows:

Sec. 2306.040. DEPARTMENT PARTICIPATION IN LEGISLATIVE HEARING. Requires TDHCA, on request, to participate in any public hearing conducted by a legislator to discuss a rule to be adopted by TDHCA.

Sec. 2306.041. IMPOSITION OF PENALTY. Authorizes the board to impose an administrative penalty on a person who violates this chapter or a rule or order adopted under this chapter.

Sec. 2306.042. AMOUNT OF PENALTY. Prohibits the amount of an administrative penalty from exceeding \$1,000 for each violation. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Sets forth the criteria of which the amount of penalty is required to be based. Requires the board by rule or through procedures adopted by the board and published in the Texas Register to develop a standardized penalty schedule based on the criteria listed in this section.

Sec. 2306.043. REPORT AND NOTICE OF VIOLATION AND PENALTY. Requires the director, if the director determines that a violation occurred, to issue to the board a report stating the facts on which the determination is based and the director's recommendation on the imposition of the penalty, including a recommendation on the amount of the penalty. Requires the director, not later than the 14th day after the date the report is issued, to give written notice of the report to the person. Sets forth the requirements of the notice.

Sec. 2306.044. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, not later than the 20th day after the date the person receives the notice, in writing to accept the determination and recommended penalty of the director or make a request for a hearing before the board on the occurrence of the violation, the amount of the penalty, or both. Requires the board, if the person accepts the determination and recommended penalty of the director, by order to approve the determination and impose the recommended penalty.

Sec. 2306.045. HEARING. Requires the director, if the person requests a hearing before the board or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person. Requires the board to hold the hearing and make findings of fact and conclusions of law about the occurrence of the violation and the amount of a proposed penalty.

Sec. 2306.046. DECISION BY BOARD. Authorizes the board, based on the findings of fact and conclusions of law, by order to find that a violation occurred and impose a penalty or find that a violation did not occur. Requires the notice of the board's order

given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 2306.047. **OPTIONS FOLLOWING DECISION: PAY OR APPEAL.** Requires the person, not later than the 30th day after the date the board's order becomes final, to pay the penalty or to file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 2306.048. **STAY OF ENFORCEMENT OF PENALTY.** Authorizes a person who files a petition for judicial review, within the 30-day period prescribed by Section 2306.047, to stay enforcement of the penalty or request the court to stay enforcement of the penalty by taking certain actions. Authorizes the director, if the director receives a copy of an affidavit under Subsection (a)(2), to file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 2306.049. **DECISION BY COURT.** Provides that judicial review of a board order imposing an administrative penalty is by trial de novo. Authorizes the court, if the court sustains the finding that a violation occurred, to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. Requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed, and authorizes the court to award the person reasonable attorney's fees.

Sec. 2306.050. **REMITTANCE OF PENALTY AND INTEREST.** Requires the court, if the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person. Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 2306.0501. **RELEASE OF BOND.** Requires the court, if the person gave a supersedeas bond and the penalty is not upheld by the court, to order, when the court's judgment becomes final, the release of the bond. Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 2306.0502. **COLLECTION OF PENALTY.** Authorizes the penalty, if the person and the enforcement of the penalty is not stayed, to be collected. Authorizes the attorney general to sue to collect the penalty.

Sec. 2306.0503. **ADMINISTRATIVE PROCEDURE.** Provides that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001.

SECTION 11. Amends Section 2306.054, Government Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes the governor or director to appoint special advisory councils to assist TDHCA in reviewing, rather than adopting, basic policy and to offer advice on technical aspects of certain programs.

(c) Provides that a special advisory council is subject to Chapter 2110 (State Agency Advisory Committees), including Section 2110.008(a) (authorizing a state agency to designate the date the advisory committee will be abolished) but not including Section 2110.008(b) (providing for automatic abolishment of an advisory committee).

SECTION 12. Amends Section 2306.057(a), Government Code, to require TDHCA, before the board approves any project application submitted under this chapter, through the division with responsibility for compliance matters, to assess the compliance history in this state of the applicant and any affiliate of the applicant with respect to all applicable requirements and the compliance issues associated with the proposed project, and to provide to the board a written report regarding the results of the assessments described by Subdivision (1).

SECTION 13. Amends Section 2306.069(a), Government Code, to authorize TDHCA to hire appropriate outside legal counsel with the approval of the attorney general. Deletes existing text requiring TDHCA to obtain and evaluate information regarding the affirmative action policies and practices of proposed outside legal counsel. Deletes existing text requiring TDHCA to include the evaluation in a request to the attorney general for outside legal counsel.

SECTION 14. Amends Section 2306.070, Government Code, as follows:

(a) Creates this subsection from existing text. Requires TDHCA, in preparing TDHCA's legislative appropriations request, to also prepare, in addition to an operating budget for the housing finance division, a report detailing the fees received, on a cash basis, for each activity administered by TDHCA during each of the three preceding year 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.

(b) Requires TDHCA to submit the report, operating budget, and explanation to the Legislative Budget Board, the Senate Finance Committee, and the House Appropriations Committee.

SECTION 15. Amends Sections 2306.072(a) and (b), Government Code, to require the director, not later than March, rather than December, 18 of each year, to prepare and submit to the board an annual report of TDHCA's housing activities for the preceding year. Requires the board, not later than the 30th day after the date the board receives and approves the report, to submit the report to certain persons.

SECTION 16. Amends Sections 2306.0721(a) and (b), Government Code, to make conforming changes.

SECTION 17. Amends Section 2306.0723, Government Code, as follows:

Sec. 2306.0723. New heading: REPORT CONSIDERED AS RULE. Requires TDHCA to consider the annual low income housing report to be a rule, and requires TDHCA, in developing the report, to follow rulemaking procedures required by Chapter 2001, rather than hold public hearings on the annual state low income housing plan and report before the director submits the report and the plan to the board. Deletes existing text requiring TDHCA to provide notice of the public hearings as required by Section 2306.0661. Deletes existing text requiring the published notice to include a summary of the report and plan. Deletes existing text requiring TDHCA to accept comments on the report and plan at the public hearing and for at least 30 days after the date of the publication of the notice of the hearings. Deletes existing Subsections (b), (c), and (d).

SECTION 18. Amends Section 2306.082, Government Code, by amending Subsections (b) and (c) and adding Subsections (d), (e), and (f), as follows:

(b) Requires TDHCA's procedures relating to alternative dispute resolution to designate the State Office of Administrative Hearings as the primary mediator, rather than conform, to the extent possible, to any model guidelines issued, and, to the extent practicable, conform to any guidelines or rules issued by that office.

(c) Requires TDHCA to designate a person, rather than a trained person, employed by or appointed to the office of the director but who is not in the legal division to coordinate and process requests for the alternative dispute resolution procedures. Requires the person to receive training from an independent source in alternative dispute resolution not

later than the 180th day after the date the person was designated to coordinate and process requests for the alternative dispute resolution procedures. Deletes existing text regarding the duties of the person to be designated by TDHCA.

(d) Requires TDHCA to notify a person requesting the alternative dispute resolution procedures that an alternative dispute resolution decision is not binding on the state and TDHCA will mediate in good faith.

(e) Authorizes the alternative dispute resolution procedures to be requested before the board makes a final decision.

(f) Prohibits the alternative dispute resolution procedures, notwithstanding any other provision of this section, from being used to unnecessarily delay a proceeding under this chapter.

SECTION 19. Amends Section 2306.092, Government Code, to require TDHCA to administer, as appropriate under policies established by the board, certain programs.

SECTION 20. Amends Section 2306.1111, Government Code, as follows:

Sec. 2306.1111. New heading: UNIFORM APPLICATION AND FUNDING CYCLES. Requires TDHCA, notwithstanding any other state law and to the extent consistent with federal law, to establish uniform application and funding cycles, rather than a cycle, for all competitive single-family and multifamily housing program administered by TDHCA under this chapter, other than programs involving the issuance of private activity bonds.

SECTION 21. Amends Sections 2306.1112(b), (c), and (d), Government Code, as follows:

(b) Requires the advisory committee to include representatives from TDHCA's underwriting and compliance functions and from the division responsible for administering federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act and for administering low income housing tax credits, rather than providing that the advisory committee is composed of the director, the administrator of each of TDHCA's programs, and one representative from each of TDHCA's planning, underwriting, and compliance functions.

(c) Deletes existing Subsection (c) requiring the advisory committee to develop the funding priorities required by Section 2306.111(g) (relating to funding priorities for all urban/exurban areas and rural areas of each uniform state service region) and to make funding and allocation recommendations to the board based on the ability of applicants to meet those priorities. Redesignates existing Subsection (d) as (c). Provides that the advisory committee is not subject to Chapter 2110.

SECTION 22. Amends Section 2306.1113, Government Code, by amending Subsection (a), (a-1), and (b) and adding Subsection (c), as follows:

(a) Prohibits a member of the board, during the period beginning on the date project applications are filed, rather than on the date a project application is filed, in an application cycle and ending on the date the board makes a final decision with respect to the approval of any application, rather than any approval of that application, in that cycle, from communicating with an applicant or a related party, as defined by state law, including board rules, and federal law, and any person who is active in the construction, rehabilitation, ownership, or control of a proposed project, including certain persons, or who is employed as a consultant, lobbyist, or attorney by an applicant or a related party.

(a-1) Makes conforming changes.

(b) Authorizes a board member or TDHCA employee, notwithstanding Subsection (a) or (a-1), to communicate without restriction with a person listed in Subsection (a) or (a-1) during any board meeting or public hearing held with respect to the application, but not during a recess or other nonrecord portion of the meeting or hearing.

(c) Provides that Subsection (a) does not prohibit the board from participating in social events at which a person with whom communications are prohibited may or will be present, provided that all matters related to applications to be considered by the board will not be discussed.

SECTION 23. Amends Section 2306.185(b), Government Code, as follows:

(b) Requires TDHCA, in implementing Subsection (a)(1) and in developing underwriting standards and application scoring criteria for the award of loans, grants, or tax credits to multifamily developments, to ensure that the economic benefits of longer affordability terms, for specific terms of years as established by the board, and below market rate rents are accurately assessed and considered.

SECTION 24. Amends Section 2306.229, Government Code, by adding Subsection (c), as follows:

(c) Requires TDHCA, for each loan made for the development of multifamily housing with funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act, to obtain a mortgagee's title policy in the amount of the loan. Prohibits TDHCA from designating a specific title insurance company to provide the mortgagee title policy or require the borrower to provide the policy from a specific title insurance company. Requires the borrower to select the title insurance company to close the loan and to provide the mortgagee title policy.

SECTION 25. Amends Section 2306.359(a), Government Code, as follows:

(a) Deletes existing Subdivision (2) regarding imposing penalties on applicants who have requested extensions of TDHCA deadlines relating to developments supported by an issuance of private activity bonds made in the application round preceding the current round. Deletes existing Paragraph (H) regarding the commitment of development funding by local political subdivisions that enables additional units for individuals and families of very low income. Redesignates existing paragraphs (A) through (G) and (I) to Subdivisions (1) through (8).

SECTION 26. Amends Section 2306.514(a), Government Code, to include, among the construction requirements of the affordable housing identified on a person's funding application, if a person is awarded state or federal funds by TDHCA to construct single family affordable housing for individuals and families of low and very low income, that each breaker box is located not higher than 48 inches above the floor inside the building on the first floor, if the applicable building code or codes do not prescribe another location for the breaker boxes.

SECTION 27. Amends Subchapter DD, Chapter 2306, Government Code, by adding Section 2306.6735, as follows:

Sec. 2306.6735. **REQUIRED LEASE AGREEMENT PROVISIONS.** Requires a lease agreement with a tenant in a development supported with a housing tax credit allocation to include any applicable federal or state standards identified by TDHCA rule that relate to the termination or nonrenewal of the lease agreement and be consistent with state and federal law.

SECTION 28. Amends Subchapter DD, Chapter 2306, Government Code, by adding Section 2306.67171, as follows:

Sec. 2306.67171. **ELECTRONIC MAIL NOTIFICATION SERVICE.** (a) Requires TDHCA to maintain an electronic mail notification service to which any person in this state may electronically subscribe to receive information concerning the status of preapplications and applications under this subchapter.

(b) Requires the electronic mail notification services maintained under Subsection (a) to allow a subscriber to request for a zip code notification of the filing of any

preapplication or application concerning a development that is or will be located in the zip code, the posting of the board materials for board approval of a list of approved applications or the issuance of final allocation commitments for applications described by Paragraph (a), and any public hearing to be held concerning an application or preapplication described by Paragraph (A), and to respond to a subscriber via electronic mail not later than the later of the 14th day after the date TDHCA receives notice of an event described by Subdivision (1) or if applicable, the date or dates specified by Section 2306.6717(a).

(c) Authorizes TDHCA to include in an electronic mail notification sent to a subscriber any applicable information described by Section 2306.6717.

SECTION 29. Amends Section 214.003, Local Government Code, by amending Subsections (a), (b), (h), (k), (l), (n), (o), and (p), and adding Subsection (h-1), as follows:

(a) Authorizes a home-rule municipality to bring an action in district court against an owner of property, rather than an owner of residential property, that is not in substantial compliance with certain municipal ordinances.

(b) Makes a conforming change.

(h) Provides that on completion of the restoration of the property to the minimum code standards of the municipality or guidelines for rehabilitating historic property, or before petitioning the court for termination of the receivership under Subsection (1) certain actions may occur.

(1) Requires the receiver to file with the court a full accounting of all costs and expenses incurred in the repairs, including reasonable costs for labor and supervision, all income received from the property, and, at the receiver's discretion, a receivership fee of 10 percent of those costs and expenses;

(2) Requires the property to be restored and any net income to be returned to the owners if the income exceeds the total of the costs and expense of rehabilitation and the receivership fee, rather than exceeds the cost of expense of rehabilitation; and

(3) Authorizes the receiver, if the total of the costs and expenses and the receivership fee exceeds the income received during the receivership, to maintain control of the property until all rehabilitation and maintenance costs and any receivership fee are recovered or until the termination of the receivership under this section, rather than if the costs and expenses exceed the income received during the receivership the receiver is required to maintain control until the time all costs are recovered.

(h-1) Requires the receiver to have a lien on the property under receivership for all of the receiver's unreimbursed costs and expenses and any receivership fee.

(k) Deletes existing text prohibiting the court from appointing a receiver for any property that is zoned nonresidential and used in a nonresidential character.

(l) Authorizes a receiver appointed by a district court under this section, or the home-rule municipality that filed the action under which the receiver was appointed, to petition the court to terminate the receivership and order the sale of the property after the receiver has been in control of the property for more than one year, rather than three years, if an owner has been served with notice, rather than be identified and served with notices, but has failed to assume control or repay all rehabilitation and maintenance costs and the receivership fee of the receiver. Deletes existing text authorizing a receiver appointed by a district court under this section, or the home-rule municipality that filed the action under which the receiver was appointed, to petition the court to terminate the receivership and order the sale of the property if the receiver has been in control of the property for more than two years and no legal owner has been identified after a diligent search.

(n) Authorizes the court to order the sale of the property if the court finds that the receiver has been in control of the property for more than one year and an owner has failed to repay all rehabilitation and maintenance costs and any receivership fee of the receiver. Deletes existing text authorizing the court to order the sale of the property if the court finds that the receiver has been in control of the property for more than two years and no legal owner has been identified after a diligent search or the receiver has been in control of the property for more than three years.

(o) Authorizes a receiver to bid on the property at the sale and to use a receiver's lien established under Subsection (h-1) as credit towards the purchase.

(p) Requires the court to confirm the sale and order a distribution of the proceeds of the sale in a certain order.

SECTION 30. Amends Section 379D.010(a), Local Government Code, as follows:

(a) Requires the Urban Land Bank (land bank) to impose deed restrictions with appropriate terms and conditions on property sold to qualified participating developers and eligible adjacent property owners that require the development and sale or rental of the property to low income households, if the property is sold to a qualified participating developer, or that require the use of the property to be consistent and compatible with the residential character of the neighborhood and any applicable standards for use adopted by the land bank, if the property is sold to an eligible adjacent property owner.

SECTION 31. Amends Section 379D.011, Local Government Code, as follows:

Sec. 379D.011. New heading: **RIGHT OF FIRST REFUSAL IN ELIGIBLE ADJACENT PROPERTY OWNERS; CONDITIONS OF PURCHASE.** (a) Requires property acquired by the land bank to be offered for sale at fair market value as determined by the appraisal district in which the property is located.

(b) Includes the additional requirement that an owner of property adjacent to property acquired by the land bank is required to meet any eligibility requirements adopted by the land bank to be eligible to exercise a right of first refusal under this section.

(c) Prohibits an adjacent property owner who purchases property under this section from leasing, selling, or otherwise transferring the property to another party before the 10th anniversary of the date the adjacent property owner purchases the property. Sets forth certain situations for which this prohibition does not apply.

SECTION 32. Amends Chapter 379D, Local Government Code, by adding Section 379D.015, as follows:

Sec. 379D.015. **EFFECT OF SALE TO LAND BANK OR SUBSEQUENT PURCHASERS OR LENDERS FOR VALUE; LIMITATION ON CERTAIN CAUSES OF ACTION.** Provides that after the first anniversary of a sale of property to a land bank under this chapter (Urban Land Bank Program in Municipality With Population of 1.9 Million or More):

(1) a third party, other than a qualified participating developer or eligible adjacent property owner who purchased the property from the land bank under this chapter or a person with a cause of action based on a right, title, interest, or other claim described by Subdivision (2)(A)(ii), is prohibited from bringing a cause of action to set aside or otherwise challenge the sale of the property to the land bank, including a cause of action that is brought against certain persons; and

(2) a qualified participating developer or eligible adjacent property owner who purchases property from a land bank under this chapter, any other subsequent

purchaser for value, or, if applicable, a lender for a developer, owner, or purchaser described by this subdivision or any other subsequent lender for value has full title to certain property and authorizes such persons to conclusively presume that the sale of the property to the land bank under this chapter was valid and a mortgage on or a subsequent sale of the property complies with this chapter and is subject only to a right, title, interest, or other claim provided by Paragraph (A)(ii).

SECTION 33. Amends Subtitle A, Title 12, Local Government Code, by adding Chapter 379E, as follows:

CHAPTER 379E. URBAN LAND BANK PROGRAM

Sec. 379E.001. SHORT TITLE. Authorizes this chapter to be cited as the Urban Land Bank Program Act.

Sec. 379E.002. APPLICABILITY; CONSTRUCTION WITH OTHER LAW. Provides that this chapter applies only to a municipality to which Chapter 379C (Urban Land Bank Demonstration Program) or 379D (Urban Land Bank Program in Municipality with Population of 1.9 Million or More) does not apply, and that has not ever adopted a homestead land bank program under Subchapter E (Homestead Land Bank Program), Chapter 373A.

Sec. 379E.003. DEFINITIONS. Defines "affordable," "community housing development organization" or "organization," "land bank," "low income household," "qualified participating developer," "urban land bank plan" or "plan," and "urban land bank program" or "program."

Sec. 379E.004. URBAN LAND BANK PROGRAM. (a) Authorizes the governing body of a municipality to adopt an urban land bank program (program) in which the officer charged with selling certain real property is authorized to sell certain eligible real property by private sale for purposes of affordable housing development as provided by this chapter.

(b) Requires the governing body of a municipality that adopts a program to establish or approve a land bank for the purposes of acquiring, holding, and transferring unimproved real property under this chapter.

Sec. 379E.005. QUALIFIED PARTICIPATING DEVELOPER. Sets forth the qualification requirements for a developer in order to participate in a program.

Sec. 379E.006. URBAN LAND BANK PLAN. (a) Requires a municipality that adopts a program to operate the program in conformance with an urban land bank plan (plan).

(b) Requires the governing body of a municipality that adopts a program to adopt a plan annually, which is authorized to be amended from time to time.

(c) Require the municipality, in developing the plan, to consider any other fair housing plans or policies adopted or agreed to by the municipality, including the comprehensive plan submitted to the United States Department of Housing and Urban Development.

(d) Sets forth the required content for a plan under this chapter.

Sec. 379E.007. PUBLIC HEARING ON PROPOSED PLAN. (a) Requires a municipality to hold a public hearing on the proposed plan before it is adopted.

(b) Requires the city manager, or designee thereof, to provide notice of the hearing to all community housing development organizations and to neighborhood associations identified by the municipality as serving the neighborhoods in which properties anticipated to be available for sale to the land bank under this chapter are located.

(c) Requires the city manager, or designee thereof, to make copies of the proposed plan available to the public not later than the 60th day before the date of the public hearing.

Sec. 379E.008. PRIVATE SALE TO LAND BANK. (a) Authorizes certain property, notwithstanding any other law and except as provided by Subsection (f), to be sold in a private sale to a land bank by the officer charged with the sale of the property (officer) without first offering the property for sale as otherwise provided by Section 34.01 (Sale of Property), Tax Code, under certain circumstances.

(b) Provides that the sale of property for use in connection with the program is a sale for a public purpose.

(c) Provides that a person who is being sued in a suit for foreclosure of a tax lien waives the right to challenge the amount of the market value determined by the court for purposes of the sale of the property under Section 33.50 (Adjudged Value), Tax Code, if the person does not contest the market value of the property in the suit.

(d) Requires, for any sale of property under this chapter, each person who was a defendant to the judgment, or that person's attorney, to be given written notice of the proposed method of sale of the property by the officer, and requires such notice to be given in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure.

(e) Authorizes the owner of the property subject to sale, after receipt of the notice and before the date of the proposed sale, to file a written request with the officer that the property not be sold in the manner provided by this chapter.

(f) Requires the officer to sell the property as otherwise provided in Section 34.01, Tax Code, if the officer receives a written request as provided by Subsection (e).

(g) Prohibits the owner of the property subject to sale from receiving any proceeds of a sale under this chapter, and provides that the owner does not have any personal liability for a deficiency of the judgment as a result of a sale.

(h) Authorizes property, if consent is given by the taxing units that are a party to the judgment, to be sold to the land bank for less than the market value of the property or less than the total value of all taxes, penalties, and interest, plus the value of nontax liens held by a taxing unit and awarded by the judgment, court costs, and the cost of the sale.

(i) Provides that the deed of conveyance of the property sold to a land bank conveys the right, title, and interest acquired or held by certain taxing units to the land bank, subject to the right of redemption.

Sec. 379E.009. SUBSEQUENT RESALE BY LAND BANK. (a) Requires each subsequent resale of property acquired under this chapter to comply with the conditions of this section.

(b) Requires the land bank, within the three-year period following the date of acquisition to sell a property to a qualified participating developer (developer) for the purpose of construction of affordable housing for sale or rent to low income households. Requires the property to be transferred to certain taxing units for disposition as otherwise allowed under the law, if a developer has not purchased the property after three years.

(c) Sets forth the maximum number of properties that may be acquired by a developer, unless the municipality increases the amount in its plan.

(d) Requires the deed conveying the property sold by the land bank to include a right of reverter so that the property will revert to the land bank for subsequent resale to another developer or conveyance to certain taxing units for disposition, if the developer does not apply for a construction permit and close on any construction financing with a certain timeframe.

Sec. 379E.010. RESTRICTIONS ON OCCUPANCY AND USE OF PROPERTY. (a) Requires the land bank to impose deed restrictions on property sold to a developer requiring the development and sale or rental of the property to low income households.

(b) Requires at least 25 percent of the land bank properties sold during any fiscal year to be developed for sale to be deed restricted for sale to households with gross household incomes not greater than 60 percent of the area median family income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development.

(c) Requires the deed restrictions to be for a period of not less than 20 years and meet certain requirements if the property is developed for rental housing.

(d) Requires the deed restrictions under Subsection (c) to require the owner to file an annual occupancy report with the municipality on a reporting form provided by the municipality. Require the deed restrictions to prohibit any exclusion of an individual or family from admission to the development based solely on the participation of the individual or family in the housing choice voucher program under federal law.

(e) Requires the deed restrictions to renew automatically if said restrictions are for a term of years, except as otherwise provided by this section.

(f) Authorizes the governing body of a municipality to modify or add to the deed restrictions imposed under this section, and require any modifications or additions to be adopted by the municipality as part of its plan and to comply with the restrictions set forth in this section.

Sec. 379E.011. RIGHT OF FIRST REFUSAL. (a) Defines "qualified organization."

(b) Requires the land bank to first offer a property for sale to qualified organizations.

(c) Requires notice to be provided to the qualified organizations by certified mail, return receipt requested, not later than the 60th day before the beginning of the period in which a right of first refusal may be exercised.

(d) Requires the municipality to specify in its plan the period during which the right of first refusal may be exercised by a qualified organization, and requires that period to be at least nine months but not more than 26 months from the date of the deed conveyance of the property to the land bank.

(e) Requires the interlocal agreement executed under Section 379E.008(a)(4) to provide tax abatement for the property until the expiration of the period specified by the municipality under Subsection (d), if the land bank conveys the property before the expiration of that period.

(f) Prohibits the land bank from selling the property to a developer other than a qualified organization during the specified period. Authorizes the land bank to sell the property to any other developer at the same price that the land bank offered the property to the qualified organizations, under certain circumstances.

(g) Requires a municipality, in its plan, to establish the amount of additional time that a property may be held in the land bank once an offer has been received and accepted from a qualified organization or other developer.

(h) Requires the organization having designated the most geographically compact area encompassing a portion of the property to be given priority if more than one qualified organization expresses an interest in exercising its right of first refusal.

(i) Authorizes a municipality, in its plan, to provide for other rights of first refusal for any other nonprofit corporation exempted from income tax, provided that the preeminent right of first refusal is provided to qualified organizations.

(j) Provides that the land bank is not required to provide a right of first refusal to qualified organizations if the bank is selling property that reverted to the land bank.

Sec. 379E.012. OPEN RECORDS AND MEETINGS. Requires the land bank to comply with the requirement of Chapters 551 (Open Meetings) and 552 (Public Information), Government Code.

Sec. 379E.013. RECORDS; AUDIT; REPORT. (a) Requires the land bank to keep accurate minutes of its meetings and keep accurate records and books of account that conform with generally accepted principles of accounting and that clearly reflect the income and expenses of the land bank and all transactions in relation to its property.

(b) Requires the land bank to file with the municipality annual audited financial statements prepared by a certified public accountant not later than the 90th day after the close of the fiscal year, and provides that the financial transactions of the land bank are subject to audit by the municipality.

(c) Requires the land bank, for the purposes of evaluating the effectiveness of the program, to submit an annual performance report to the municipality not later than November 1 of each year in which the bank acquires or sell property under this chapter. Sets forth the required content of the performance report.

(d) Requires the land bank to maintain certain copies of documents in its records for inspection.

(e) Requires the land bank to provide copies of the performance report to certain taxing units and to provide notice of the availability of the report for review to the organizations and neighborhood associations serving the neighborhoods in which properties sold to the land bank under this chapter are located.

(f) Requires the land bank and the municipality to maintain copies of the performance report available for public review.

SECTION 34. Amends Section 11.18, Tax Code, by amending Subsection (d) and adding Subsection (o), as follows:

(d) Includes acquiring, holding, and transferring unimproved real property under an urban land bank demonstration program established under Chapter 379C, Local Government Code, or under Chapter 379E, Local Government Code, as or on behalf of a land bank, as a charitable function that meets the requirement to be a charitable organization under this section (Charitable Organizations).

(o) Provides that for purposes of Subsection (a)(2), real property acquired, held, and transferred by an organization that performs the function described by Subsection (d)(21) is considered to be used exclusively by the qualified charitable organization to perform that function.

SECTION 35. Makes application of Section 403.302, Government Code, as added by this Act prospective to January 1, 2008.

SECTION 36. Makes application of Section 214.003, Local Government Code, as added by this Act prospective.

SECTION 37. Makes application of Section 379D.015, Local Government Code, as amended by this Act prospective.

SECTION 38. Makes application of Section 11.18, Tax Code, of this Act prospective to an ad valorem tax year that begins on or after the effective date.

SECTION 39. (a) Requires TDHCA to adopt the rules required by Section 2306.1073, Government Code, as added by this Act, not later than December 1, 2007.

(b) Provides that the changes in law made by this Act apply only to an application for assistance from the Texas First-Time Homebuyer Program that is filed on or after January 1, 2008.

SECTION 40. Provides that the changes in law made by this Act relating to the evaluation of applications for financial assistance administered by TDHCA apply only to an application submitted on or after the effective date of this Act.

SECTION 41. Provides that the change in law made by this Act applies only to an application for a low income housing tax credit filed on or after the effective date of this Act.

SECTION 42. Repealer: Section 2306.021 (Department Divisions); Section 2306.062 (Career Ladder); Section 2306.0631 (State Employee Incentive Program); Section 2306.0661 (Public Hearings); Section 2306.0721(h) (Low Income Housing Plan); Section 2306.079 (Regional Development Coordinator); Section 2306.081(e) (Project Compliance; Database); Section 2306.254 (Tenant Services Program); Sections 2306.257(b), (c), and (d) (Applicant Compliance With State and Federal Laws Prohibiting Discrimination: Certification and Monitoring); Section 2306.806 (Approval of Office of Rural Community Affairs); Subchapter N (Housing Finance Division: Tenants of Housing Developments), Chapter 2306; Subchapter O (Housing Finance Division: Regulation of Mortgage Lenders, Servicers, and Contractors), Chapter 2306; Subchapter BB (Texas Youthworks Program), Chapter 2306; Subchapter CC (Emergency Nutrition and Temporary Emergency Relief Program), Chapter 2306; Subchapter EE (Builder Incentive Partnership Program), Chapter 2306; and Section 2306.6710(g) (Evaluation and Underwriting of Applications), Government Code.

SECTION 43. Provides that it is the intent of the legislature that the passage by the 80th Legislature, Regular Session, 2007, of another bill that amends Chapter 2306, Government Code, and the amendments made by this Act is required to be harmonized, if possible, as provided by Section 311.025(b), Government Code, so that effect may be given to each. Provides that if the amendments made by this Act to Chapter 2306, Government Code, and the amendments made to Chapter 2306, Government Code, by any other bill are irreconcilable, it is the intent of the legislature that this Act prevail, regardless of the relative dates of enactment of this Act and the other bill or bills, but only to the extent that any differences are irreconcilable.

SECTION 44. Effective date: September 1, 2007.