

## **BILL ANALYSIS**

C.S.S.B. 1908  
By: Ellis  
Urban Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, there is great disagreement about the role that state elected officials should play in the allocation of tax credits distributed by the Texas Department of Housing and Community Affairs.

The proposed complete committee substitute for Senate Bill No. 1908 addresses and clarifies this issue in order to bring stability back to the industry that serves the affordable housing needs of the State of Texas.

Additionally, C.S.S.B. 1908 adds other housing measures previously passed by the House during the 80<sup>th</sup> Texas Legislature.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Department of Housing and Community Affairs is modified in SECTION 1 (Section 2306.1073(b), Government Code) and SECTION 31 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTION 3 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the governing board of the Department in SECTION 12 (Section 2306.041 et. seq., Government Code in SECTION 19 (Section 2306.0723, Government Code) of the committee substitute, and in SECTION 29 (Section 2306.6735, Government Code.) of the committee substitute.

### **SECTION-BY-SECTION ANALYSIS**

SECTION 1. Amends Chapter 2306, Government Code by adding Subchapter MM, "Texas First-Time Homebuyer Program," as follows:

Section 2306.1071 defines "First-time homebuyer," "Home," Mortgage lender;" and "Program."

Section 2306.1072, "Texas First-Time Homebuyer Program:" (a) Requires the facilitation of the origination of single-family mortgage loans for eligible first-time homebuyers.

(b) Includes that the program may include down payment and closing cost assistance.

Section 2306.1073, "Administration of Program, Rules:" (a) Requires the Texas Department of Housing and Community Affairs (TDHCA) to administer the program.

(b) Requires the board of TDHCA to adopt rules governing the administration of the program; the making of loans under the program; the criteria for approving participating mortgage lenders; the use of insurance on the loans the homes financed under the program; the verification of occupancy of the home by the homebuyer as the homebuyer's principal residence; and the terms of any contract made with any mortgage lender for processing, origination, servicing, or administering the loans.

Section 2306.1074, “Eligibility:” (a) For a mortgage loan, requires a homebuyer to qualify as a first-time homebuyer; have an income of not more than 115% of area median income or 140 percent of area median family income in targeted areas; and meet any additional limitations or requirements prescribed by TDHCA.

(b) For a loan for closing costs and down payment assistance, requires a homebuyer to qualify as a first-time homebuyer; have an income of not more than 80% of area median family income; and meet any additional requirements or limitations prescribed by TDHCA.

(c) Authorizes TDHCA to contract with other agencies of the state or with private entities to determine whether applicants qualify as first-time homebuyers.

Section 2306.1075, “Fees:” Authorizes the board of directors of TDHCA to set and collect from each applicant reasonable and necessary fees to cover the expenses of the program.

Section 2306.1076, “Funding:” (a) Requires TDHCA to ensure that a loan is structured in a way that complies with any requirements associated with the source of the funds used for the loan.

(b) Includes that in addition to funds set aside under Section 1372.023 (Dedication of Portions of State Ceiling to Texas Department of Housing and Community Affairs), requires TDHCA to solicit and accept funding from gifts and grants for the purposes of this section.

SECTION 2. Amends Section 2306.111(c), Government Code to specify that exactly 95 percent of funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act shall be expended for the benefit of those areas that do not qualify to receive those funds directly from the United States Department of Housing and Urban Development; and requires that the remaining five percent of those funds shall be expended in any area of the state for the benefit of persons with disabilities.

SECTION 3. Amends Section 2306.111 (d), (d-1), (e), (f), and (g) and adds Subsections (d-2) and (d-3) as follows:

Sections 2306.111 (d) and (e) are amended by striking the formulary authority by which TDHCA is authorized to allocate tax credits and restoring it, with amendments, in SECTION 4; and amended by striking the area designation known as “urban/exurban” and substituting “urban.”

Sections 2306.111(f) and (g) are also amended by striking the area designation known as “urban/exurban” and substituting “urban.”

Section 2306.111(d-1) is amended by requiring the department to allocate the tax credit program’s “at-risk” set aside before applying the regional allocation formula; and also amends by specifying that funds or credits allocated to primarily serve persons with disabilities, as well as the state’s housing trust funds that are not otherwise required to be set aside and that do not exceed \$3 million during each application cycle, are not required to be allocated according to the regional allocation formula.

Section 2306.111(d-2) adds language to require the department to set aside five percent of the tax credit allocation in each application cycle for developments that receive assistance through the Texas Rural Development Office of the United States Department of Agriculture; also requires that any funds allocated under this subsection for developments that involve rehabilitation shall come from the at-risk set aside and any additional funds set aside for developments under Subsection (d-1); also specifies that this subsection does not apply to a development financed under Section 538 of the Housing Act of 1949 (rural rental housing guaranteed loans).

Section 2306.111(d-3) adds language to require the department to set aside 20 percent of the tax credit allocation in the application cycle for developments that are located in rural areas, with a minimum of \$500,000 of tax credits to be allocated in each uniform state service region for rural areas; also requires that any unused portion of housing tax credits set aside for developments in rural area in a specific uniform state service region are to be allocated in any other rural area of the state before the remainder is then made available to developments in any urban area of the state.

SECTION 4. Restores the formulary authority in 2306.111(d) and (e) above in a separate section titled 2306.1115, and amends to require the department to develop a regional allocation formula that includes the need for housing assistance and the availability of housing resources as a factor in the formula, and not as the basis for the formula; also amended by striking the area designation known as “urban/exurban” and substituting “urban;” also adds language to allow the department to include other factors that are relevant to the equitable distribution of housing funds identified in subsection 2306.111(d).

SECTION 5. Amends Section 2306.127 by making a conforming amendment to reflect the placement of the formulary authority in Section 2306.1115 and by adding a specification that priority for certain communities, given in a manner consistent with the regional allocation formula, shall be contingent with the timing of complete applications that are submitted under a housing program in relation to those communities.

SECTION 6. Amends Section 2306.6703, Government Code, by amending subsections (a)(3), and (b), as follows:

(a)(3) Provides an exception to the ineligibility of a new construction tax credit application that is located one linear mile or less from a development that serves the same type of household as the new development, by making it allowable if the applicant obtains approval from the appropriate municipality or county containing the development.

(b) Provides that subsections (a)(2), (a)(3), and (a)(4) do not apply to a development that is using HOPE IV, or other similar funds received through the United States Department of Housing and Urban Development, that are used to assist in the preservation, through same-site reconstruction or rehabilitation, of distressed federally assisted housing. Deletes the following exceptions to the ineligibility provisions: that the application is located outside a metropolitan statistical area, or that a local government has by a vote specifically allowed construction of a new development located within one linear mile or less from a development under Subsection (a).

SECTION 7. Amends Section 2306.6711(f), Government Code, as follows:

(f) Allows the board of directors to allocate tax credits to developments in a single community that are less than one linear mile apart only if the community is located in a county with a population of one million or less; or if at least one allocation involves the rehabilitation of existing developments, with not more than one new construction allocation; or if the developments each serve a different type of household from the other.

SECTION 8. Amends Section 2306.6710(b), and adds Subsection (h), to require that elected official support letters from the state representative or the state senator that represents the district containing the proposed development site will be evaluated to determine the levels of community support; and also to allow the TDHCA to account for a due diligence, good faith award of quantifiable community participation points to an application for a project whose boundaries do not include a recognized neighborhood group or association as otherwise determined by the department.

SECTION 9. 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 10. 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 11. 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 12. Adds Section 2306.040 to the Government Code and replaces Section 2306.0661 which is being repealed (SECTION 34) regarding rulemaking hearings.

Additionally, SECTION 12 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. Amends Section 2306.0721 of the Government Code altering the date of the Low Income Housing Plan submission and requires board approval.

SECTION 19. 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 20. 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 21. Amends Section 2306.092 of the Government Code to provide clarification that the governing board establishes policies for duties regarding certain federal programs.

SECTION 22. 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 23. Amends Section 2306.1112 of the Government Code to clarify the duties of, and who serves on the Executive Award and Review Advisory Committee for the department.

SECTION 24. 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 25. 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 26. 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 27. 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 28. 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 29. 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 non-renewal of the lease agreement and they must be consistent with state and federal law.

SECTION 30. Adds Section 2306.67171, Government Code, to require that the department maintain an electronic mail notification service that notifies any person who subscribes about the filing of a pre-application, or application, concerning a development that is or will be located in a zip code. Also requires notification regarding board approval of such applications.

SECTION 31. Requires the department to adopt rules required by Section 2306.1073, Government Code, as added by this Act, not later than December 1, 2007; also makes the changes required by the Texas First-Time Homebuyer Program applicable only to applications that are filed on or after January 1, 2008.

SECTION 32. Makes this Act prospective.

SECTION 33. Makes this Act, as it applies to the tax credit program, prospective.

SECTION 34. 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

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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;

and Subsection (g), Section 2306.6710.

SECTION 35. Clarifies that any inconsistencies between this bill and other bills will be subject to the statutory interpretation under the Code Construction Act reconciliation provisions, and that if amendments made by any other bill are irreconcilable, this Act prevails.

SECTION 36. This Act takes effect September 1, 2007.

#### **EFFECTIVE DATE**

September 1, 2007

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute differs from the original in that the substitute (all sectional references are to the analysis above):

1. The caption of the substitute is changed to read as “relating to affordable housing.” Previously, the caption read as “ relating to the system by which an application for a low income housing tax credit is scored.”
2. Adds SECTION 1. Previously passed by the House as HB 1637, amended to require that, for a homebuyer to be eligible for the program, he must have an income of not more than 115 percent of area median income or 140 percent of area median family income in targeted areas;
3. Adds SECTIONs 2 through 5. Previously passed by the House as HB 2063, amended to require that any unallocated credits intended for a specific rural area of a state service region shall first be made available to any other rural area of the state before they are made available to any urban area of the state;
4. Adds SECTIONs 6 and 7. Previously passed by the House as HB 3872, amended by deleting proposed language in that measure that inserted a time line for local support statements that conflicted with existing language in the bond program;

5. Amends language in SECTION 8. Requiring that letters of support from either the state representative or state senator be evaluated, rather than requiring the letters from both officials; Also adds language in SECTION 8 previously passed by the House as HB 3871;
6. Adds SECTION 9 through SECTION 30. Previously passed by the House as HB 3873, amended by adjusting the electronic mail notification language found in SECTION 30 to clarify the times of notification;
7. Adds SECTION 31 through SECTION 33. Providing implementation instructions.
8. Amends repealers in the original, in SECTION 34. Deletes the repealers that instruct the department how to score elected official letters. Adds the following repealers that were contained in HB 3873, that was previously passed by the House:
  - 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;
9. Adds SECTION 35. Provides that, in the event that amendments made to Chapter 2306 by any other bill are irreconcilable with the amendments made by this Act to Chapter 2306, this Act prevails;
10. Adds SECTION 36. Provides that the committee substitute takes effect September 1, 2007.