

By: Chisum

H.B. No. 2680

A BILL TO BE ENTITLED

AN ACT

relating to the administration of the low income housing tax credit program.

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

SECTION 1. Section 2306.6702(a)(10), Government Code, is amended to read as follows:

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

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

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

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

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

(B) [~~(C)~~] provides a procedure for the department, the department's agent, or another private contractor of the department to use in monitoring compliance with the

1 qualified allocation plan and this subchapter.

2 SECTION 2. Section 2306.6704, Government Code, is amended
3 by amending Subsection (d) and adding Subsection (e) to read as
4 follows:

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

7 (e) The department shall specify the date for filing an
8 application under this section. The last date for submitting an
9 application under this section may not be earlier than February 1.

10 SECTION 3. Section 2306.6705, Government Code, is amended
11 to read as follows:

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

15 (1) a description of:

16 (A) the financing plan for the development,
17 including any nontraditional financing arrangements;

18 (B) the use of funds with respect to the
19 development;

20 (C) the funding sources for the development,
21 including:

22 (i) construction, permanent, and bridge
23 loans; and

24 (ii) rents, operating subsidies, and
25 replacement reserves; and

26 (D) the commitment status of the funding sources
27 for the development;

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

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

9 (A) pay-in schedules; and

10 (B) syndicator consulting fees and other
11 syndication costs;

12 (4) if rental assistance, an operating subsidy, or an
13 annuity is proposed for the development, any related contract or
14 other agreement securing those funds and an identification of:

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

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

17 (C) the term and expiration date of the contract
18 or other agreement;

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

24 (A) the development is permitted under the
25 provisions of the ordinance that apply to the location of the
26 development; or

27 (B) the applicant is in the process of seeking

1 the appropriate zoning and has signed and provided to the political
2 subdivision a release agreeing to hold the political subdivision
3 and all other parties harmless in the event that the appropriate
4 zoning is denied;

5 (6) if an occupied development is proposed for
6 rehabilitation:

7 (A) an explanation of the process used to notify
8 and consult with the tenants in preparing the application;

9 (B) a relocation plan outlining:

10 (i) relocation requirements; and

11 (ii) a budget with an identified funding
12 source; and

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

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

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

20 (9) evidence that the applicant has notified the
21 following entities with respect to the filing of the application:

22 (A) ~~[any neighborhood organizations on record~~
23 ~~with the state or county in which the development is to be located~~
24 ~~and whose boundaries contain the proposed development site,~~

25 ~~[(B) the superintendent and the presiding~~
26 ~~officer of the board of trustees of the school district containing~~
27 ~~the development,~~

1 ~~(C)~~ the presiding officer of the governing body
2 of any municipality containing the development ~~[and all elected~~
3 ~~members of that body]~~;

4 (B) ~~(D)~~ the presiding officer of the governing
5 body of the county containing the development ~~[and all elected~~
6 ~~members of that body]~~; and

7 (C) ~~(E)~~ the state senator and state
8 representative of the district containing the development.

9 SECTION 4. Section 2306.6710, Government Code, is amended
10 to read as follows:

11 Sec. 2306.6710. EVALUATION AND UNDERWRITING OF
12 APPLICATIONS. (a) In evaluating an application, the department
13 shall determine whether the application satisfies the threshold
14 criteria required by the board in the qualified allocation plan. On
15 the expiration of the application deficiency correction period
16 allowed by the department, the ~~The~~ department shall reject and
17 return to the applicant any application that fails to satisfy the
18 threshold criteria.

19 (b) If an application satisfies the threshold criteria, the
20 department shall score and rank the application using a point
21 system that:

22 (1) prioritizes in descending order criteria
23 regarding:

24 (A) financial feasibility of the development
25 based on the supporting financial data required in the application
26 that must ~~will~~ include a 15-year project underwriting pro forma
27 from the permanent or construction lender;

1 (B) the size and quality of the units
2 ~~[quantifiable community participation with respect to the~~
3 ~~development, evaluated on the basis of written statements from any~~
4 ~~neighborhood organizations on record with the state or county in~~
5 ~~which the development is to be located and whose boundaries contain~~
6 ~~the proposed development site];~~

7 (C) the income levels of tenants of the
8 development;

9 (D) ~~[the size and quality of the units;~~
10 ~~[(E) the commitment of development funding by~~
11 ~~local political subdivisions;~~

12 ~~[(F)]~~ the level of community support for the
13 application, evaluated on the basis of written statements of
14 support or opposition from the state senator or state
15 representative that represents the district containing the
16 development ~~[state elected officials];~~

17 (E) ~~[(G) the rent levels of the units;~~
18 ~~[(H)]~~ the cost of the development by square foot;

19 and

20 (F) ~~[(I)]~~ the services to be provided to tenants
21 of the development; and

22 (2) uses criteria imposing penalties on ~~[applicants or~~
23 ~~affiliates who have requested extensions of department deadlines~~
24 ~~relating to developments supported by housing tax credit~~
25 ~~allocations made in the application round preceding the current~~
26 ~~round or] a developer or principal of the applicant that has been~~
27 removed by the lender, equity provider, or limited partners for its

1 failure to perform its obligations under the loan documents or
2 limited partnership agreement.

3 (c) The department shall publish in the qualified
4 allocation plan details of the scoring system used by the
5 department to score applications.

6 (d) The department shall underwrite the applications ranked
7 under Subsection (b) beginning with the applications with the
8 highest scores in each region described by Section 2306.111(d) and
9 in each set-aside category described in the qualified allocation
10 plan. Based on application rankings, the department shall continue
11 to underwrite applications until the department has processed
12 enough applications satisfying the department's underwriting
13 criteria to enable the allocation of all available housing tax
14 credits according to regional allocation goals and set-aside
15 categories. To enable the board to establish an applications
16 waiting list under Section 2306.6711, the department shall
17 underwrite as many additional applications as the board considers
18 necessary to ensure that all available housing tax credits are
19 allocated within the period required by law. The department shall
20 underwrite an application to determine the financial feasibility of
21 the development and an appropriate level of housing tax credits.

22 (d-1) In determining an appropriate level of housing tax
23 credits under Subsection (d), the department shall evaluate the
24 cost of the development based on acceptable cost parameters as
25 adjusted for inflation and as established by historical final cost
26 certifications of all previous housing tax credit allocations for:

27 (1) the county in which the development is to be

1 located;

2 (2) if certifications are unavailable under
3 Subdivision (1), the metropolitan statistical area in which the
4 development is to be located; or

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

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

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

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

20 (f) For purposes of Subsection (b)(1)(C), the department
21 shall award an applicant the maximum number of points possible
22 under that paragraph if:

23 (1) for a development to be located in a county with a
24 median income that is higher than the statewide median income, the
25 applicant reserves:

26 (A) 80 percent or more of the units in the
27 development for households that have median incomes that are equal

1 to or less than 50 percent of the area median income adjusted for
2 family size; or

3 (B) 10 percent or more of the units in the
4 development for households that have median incomes that are equal
5 to or less than 30 percent of the area median income adjusted for
6 family size; or

7 (2) for a development to be located in a county with a
8 median income that is equal to or less than the statewide median
9 income, the applicant reserves 90 percent or more of the units in
10 the development for households that have median incomes that are
11 equal to or less than 60 percent of the area median income adjusted
12 for family size [~~In evaluating the level of community support for an~~
13 ~~application under Subsection (b)(1)(F), the department shall~~
14 ~~award:~~

15 ~~(1) positive points for positive written statements~~
16 ~~received;~~

17 ~~(2) negative points for negative written statements~~
18 ~~received; and~~

19 ~~(3) zero points for neutral statements received].~~

20 (g) For purposes of Subsection (b)(1)(C), the department by
21 rule may adopt lower than maximum point awards for applicants that
22 reserve units for income levels of tenants other than the levels
23 described by Subsection (f) [~~In awarding points under Subsection~~
24 ~~(f), the department shall give equal weight to each written~~
25 ~~statement received].~~

26 (h) The department shall score letters from state senators
27 or state representatives under Subsection (b)(1)(D) not later than

1 the 30th day after the application filing deadline. The department
2 shall award to an applicant points under Subsection (b)(1)(D) as
3 follows:

4 (1) the maximum number of points possible under that
5 paragraph, if the development receives two letters of support;

6 (2) one-half the maximum number of points possible
7 under that paragraph, if the development receives one letter of
8 support;

9 (3) a negative number of points that is equal in number
10 to one-half the maximum number of points possible under that
11 paragraph, if the development receives one letter of opposition;
12 and

13 (4) a negative number of points that is equal in number
14 to the maximum number of points possible under that paragraph, if
15 the development receives two letters of opposition.

16 SECTION 5. Section 2306.6711, Government Code, is amended
17 by amending Subsection (b) and adding Subsections (b-1) and (b-2)
18 to read as follows:

19 (b) Not later than the deadline specified in the qualified
20 allocation plan, the board shall issue commitments for available
21 housing tax credits based on the application evaluation process
22 provided by Section 2306.6710. The board may not allocate to an
23 applicant housing tax credits in any unnecessary amount, as
24 determined by the department's underwriting policy and by federal
25 law, and, except as provided by Subsection (b-1), ~~[in any event]~~ may
26 not allocate to any one person ~~[the applicant]~~ housing tax credits
27 in an amount greater than \$2.4 ~~[\$2]~~ million in a single application

1 round. For purposes of this subsection, a housing tax credit
2 allocated for a development that is financed with tax-exempt bonds
3 may not be included in the \$2.4 million limitation described by this
4 subsection.

5 (b-1) The department may increase the possible allocation
6 amount as necessary to adjust for inflation, as determined by the
7 average over a calendar year of the Consumer Price Index for All
8 Urban Consumers (CPI-U), U.S. City Average, published monthly by
9 the United States Bureau of Labor Statistics, or its successor in
10 function.

11 (b-2) The \$2.4 million limitation described by Subsection
12 (b) and any applicable increase in that amount apply to a person
13 regardless of whether the person is involved in the development as
14 an applicant or as a related party. The \$2.4 million limitation and
15 any applicable increase in that amount do not apply to:

16 (1) an entity that raises or provides equity for one or
17 more developments, in that entity's capacity as an equity raiser or
18 provider;

19 (2) an entity's provision of qualified commercial
20 financing as that term is defined under Section 49(a)(1)(D)(ii),
21 Internal Revenue Code of 1986; or

22 (3) a development consultant with respect to the
23 provision of consulting services, provided that:

24 (A) the consultant:

25 (i) is not a related party with respect to
26 the applicant; and

27 (ii) does not own an interest in the

1 development; and

2 (B) the consultant fee received for the services
3 provided does not exceed \$150,000 or 10 percent of the developer
4 fee, whichever is greater.

5 SECTION 6. Sections 2306.6704(b-1), 2306.6712(e), and
6 2306.6725(b) and (d), Government Code, are repealed.

7 SECTION 7. It is the intent of the legislature that the
8 passage by the 80th Legislature, Regular Session, 2007, of another
9 bill that amends Chapter 2306, Government Code, and the amendments
10 made by this Act shall be harmonized, if possible, as provided by
11 Section 311.025(b), Government Code, so that effect may be given to
12 each. If the amendments made by this Act to Chapter 2306,
13 Government Code, and the amendments made to Chapter 2306,
14 Government Code, by any other bill are irreconcilable, it is the
15 intent of the legislature that this Act prevail, regardless of the
16 relative dates of enactment of this Act and the other bill or bills,
17 but only to the extent that any differences are irreconcilable.

18 SECTION 8. The changes in law made by this Act relating to
19 the evaluation of applications for the allocation of low income
20 housing tax credits by the Texas Department of Housing and
21 Community Affairs apply only to an application submitted on or
22 after the effective date of this Act. An application submitted
23 before the effective date of this Act is governed by the law in
24 effect when the application was submitted, and the former law is
25 continued in effect for that purpose.

26 SECTION 9. This Act takes effect September 1, 2007.