

By: Menendez

H.B. No. 3873

A BILL TO BE ENTITLED

AN ACT

relating to the administration of the Texas Department of Housing and Community Affairs; providing a penalty.

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

SECTION 1. Section 2306.004, Government Code, is amended by amending Subdivisions (4), (7), and (14), and adding Subdivisions (4-a), (12-b), (23-a), (23-b), (26-a), (28-a), (28-b), (35) and (36) to read as follows:

(4) "Department" means the Texas Department of Housing and Community Affairs or any successor agencies.

(4-a) "Development funding" means loans or grants, in-kind contributions such as donation of land or waivers of fees such as building permits, water and sewer tap fees, or similar contributions that provide a tangible economic benefit that results in a quantifiable cost reduction to benefit the Development.

(7) "Elderly individual" means an individual 62 ~~60~~ years or 55 years depending on application when related to federal funds of age or older or of an age specified by the applicable federal program.

(12-b) "Grant" means an award of financial assistance, including forgivable loans, that is in the form of money to a housing sponsor for a specific purpose and that is not required to be repaid.

(14) "Housing sponsor" means [+]

1           ~~[(A)]~~ an individual, ~~[including an individual or~~  
2 ~~family of low and very low income or family of moderate income,]~~  
3 joint venture, partnership, limited partnership, trust, firm,  
4 corporation, limited liability company, other form of business  
5 organization, or cooperative that is approved by the department as  
6 qualified to own, construct, acquire, rehabilitate, operate,  
7 manage, or maintain a housing development, subject to the  
8 regulatory powers of the department and other terms and conditions  
9 in this chapter~~, or~~

10           ~~[(B) in an economically depressed or blighted~~  
11 ~~area, or in a federally assisted new community located within a~~  
12 ~~home-rule municipality, the term may include an individual or~~  
13 ~~family whose income exceeds the moderate income level if at least 90~~  
14 ~~percent of the total mortgage amount available under a mortgage~~  
15 ~~revenue bond issue is designated for individuals and families of~~  
16 ~~low income or families of moderate income].~~

17           (23-a) "Neighborhood organization" means an  
18 organization that is composed of persons living near one another  
19 within the organization's defined boundaries for the neighborhood  
20 and that has a primary purpose of working to maintain or improve the  
21 general welfare of the neighborhood. A neighborhood organization  
22 includes a homeowners' or property owners' association.

23           (23-b) "New construction" means any development or  
24 portion of the development that does not meet the definition of  
25 rehabilitation.

26           (26-a) "Rehabilitation" means the improvement or  
27 modification of an existing residential development through

1 alterations, incidental additions or enhancements. Rehabilitation  
2 may include demolition of an existing residential development and  
3 reconstruction of any units on the development site. Developments  
4 proposing adaptive re-use are not considered rehabilitation.

5 (28-a) "Rural area" means an area that is located:

6 (A) outside the boundaries of a primary  
7 metropolitan statistical area or a metropolitan statistical area;

8 (B) within the boundaries of a primary  
9 metropolitan statistical area or a metropolitan statistical area,  
10 if the statistical area has a population of 25,000 or less and does  
11 not share a boundary with an urban area; or

12 (C) in an area that is eligible for funding by the  
13 Texas Rural Development Office of the United States Department of  
14 Agriculture, except in a municipality that has a population greater  
15 than 50,000.

16 (28-b) "Rural development" means a development or  
17 proposed development that is located in a rural area, except for  
18 rural new construction developments of more than 96 units.

19 (35) "Uniform Application Cycle" means the  
20 application cycle established in Section 2306.1111 of this Chapter.

21 (36) "Urban area" means the area that is located  
22 within the boundaries of a primary metropolitan statistical area or  
23 a metropolitan statistical area other than an area described by  
24 Subdivision (28-a) (B) or (C).

25 SECTION 2. Section 2306.032, Government Code, is amended to  
26 read as follows:

27 Section 2306.032. BOARD MEETINGS. (a) The board may hold

1 meetings when called by the presiding officer, the director, or  
2 three of the members.

3 (b) The board shall keep ~~complete~~ minutes of board meetings  
4 and complete transcripts of board meetings, in either electronic or  
5 written form, which shall be posted on its website. The accounts,  
6 minutes, and other records shall be maintained by the department.

7 (c) ~~All materials in the possession of the department that~~  
8 ~~are relevant to a matter proposed for discussion at a board meeting~~  
9 ~~must be posted on the department's website, made available in~~  
10 ~~hard-copy format at the department, filed with the secretary of~~  
11 ~~state for publication by reference in the Texas Register, and~~  
12 ~~disseminated by any other means required by this chapter or by~~  
13 ~~Chapter 551.~~ The board will conduct its meetings in accordance with  
14 Chapter 551 of the Texas Government Code, unless otherwise excepted  
15 by this statute. The Department will post a copy of any materials  
16 it distributes to the Board in advance of the meeting on its  
17 website.

18 ~~(d) The materials described by Subsection (c) must be made~~  
19 ~~available to the public as required by Subsection (c) not later than~~  
20 ~~the seventh day before the date of the meeting. The board may not~~  
21 ~~consider at the meeting any material that is not made available to~~  
22 ~~the public by the date required by this subsection.~~

23 ~~(e) The agenda for a board meeting must state each project~~  
24 ~~the staff is recommending for assistance by the department.~~

25 ~~(f)~~ (d) For each item on the board's agenda at the meeting,  
26 the board shall provide for public comment after the presentation  
27 made by department staff and the motions made by the board on that

1 topic.

2 ~~(g)~~ (e) The board shall adopt rules that give the public a  
3 reasonable amount of time for testimony at meetings.

4 SECTION 3. Section 2306.039, Government Code, is amended to  
5 read as follows:

6 Section 2306.039. OPEN MEETINGS AND OPEN RECORDS. (a)  
7 Except as provided by Subsections (b) and (c), the department and  
8 the Texas State Affordable Housing Corporation are subject to  
9 Chapters 551 and 552.

10 (b) Chapters 551 and 552 do not apply to the personal  
11 financial information, including social security numbers, taxpayer  
12 identification numbers, or bank account numbers, submitted by ~~an~~  
13 housing sponsor, individual or family for a loan, grant, or other  
14 housing assistance under a program administered by the department  
15 or the Texas State Affordable Housing Corporation or from bonds  
16 issued by the department, except that the department and the  
17 corporation are permitted to disclose information about any  
18 applicant in a form that does not reveal the identity of the housing  
19 sponsor, individual or family for purposes of determining  
20 eligibility for programs and in preparing reports required under  
21 this chapter.

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

25 SECTION 4. Subchapter B, Chapter 2306, Government Code, is  
26 amended by adding Sections 2306.040, 2306.041, 2306.042, 2306.043,  
27 2306.044, 2306.045, 2306.045, 2306.046, 2306.047, 2306.048,

1 2306.49, and 2306.050 to read as follows:

2 Section 2306.040. ADOPTION OF RULES. (a) The department  
3 shall follow the procedures relevant to rulemaking as required  
4 under Texas Government Code Sec. 2001 when adopting rules for the  
5 department.

6 (b) When requested, the department will participate in any  
7 public hearing conducted by a legislator to discuss a rule to be  
8 adopted by the department.

9 Section 2306.041. IMPOSITION OF PENALTY. The board may  
10 impose an administrative penalty on a person who violates this  
11 chapter or a rule or order adopted under this chapter.

12 Section 2306.042. AMOUNT OF PENALTY. (a) The amount of an  
13 administrative penalty may not exceed \$1,000 for each violation.  
14 Each day a violation continues or occurs is a separate violation for  
15 purposes of imposing a penalty.

16 (b) The amount of the penalty shall be based on:

17 (1) the seriousness of the violation, including:

18 (A) the nature, circumstance, extent, and  
19 gravity of any prohibited act; and

20 (B) the hazard or potential hazard created to the  
21 health, safety, or economic welfare of the public;

22 (2) the history of previous violations;

23 (3) the amount necessary to deter a future violation;

24 (4) efforts made to correct the violation; and

25 (5) any other matter that justice may require.

26 (c) The board by rule or through procedures adopted by the  
27 board and published in the Texas Register shall develop a

1 standardized penalty schedule based on the criteria listed in  
2 Subsection (b).

3 Section 2306.043. REPORT AND NOTICE OF VIOLATION AND  
4 PENALTY. (a) If the department staff determines that a violation  
5 occurred, the staff will issue to the director a report stating:

6 (1) the facts on which the determination is based; and  
7 (2) the director's recommendation on the imposition of  
8 the penalty, including a recommendation on the amount of the  
9 penalty.

10 (b) Not later than the 14th day after the date the report is  
11 issued, the director shall give written notice of the report to the  
12 person.

13 (c) The notice must:

14 (1) include a brief summary of the alleged violation;  
15 (2) state the amount of the recommended penalty; and  
16 (3) inform the person of the person's right to a  
17 hearing on the occurrence of the violation, the amount of the  
18 penalty, or both.

19 Section 2306.044. PENALTY TO BE PAID OR HEARING REQUESTED.

20 (a) Not later than the 20th day after the date the person receives  
21 the notice, the person in writing may:

22 (1) accept the determination and recommended penalty  
23 of the director; or

24 (2) make a request for an appeal to the board on the  
25 occurrence of the violation, the amount of the penalty, or both.

26 (b) If the person accepts the determination and recommended  
27 penalty of the executive director, the board by order shall approve

1 the determination and impose the recommended penalty.

2 Section 2306.045. OPTIONS FOLLOWING DECISION: PAY OR  
3 APPEAL. Not later than the 30th day after the date the board's order  
4 becomes final, the person shall:

5 (1) pay the penalty; or

6 (2) file a petition for judicial review contesting the  
7 occurrence of the violation, the amount of the penalty, or both.

8 Section 2306.046. STAY OF ENFORCEMENT OF PENALTY. (a)  
9 Within the 30-day period prescribed by Section 2306.044, a person  
10 who files a petition for judicial review may:

11 (1) stay enforcement of the penalty by:

12 (A) paying the penalty to the court for placement  
13 in an escrow account; or

14 (B) giving the court a supersedeas bond approved  
15 by the court that:

16 (i) is for the amount of the penalty; and

17 (ii) is effective until all judicial review  
18 of the board's order is final; or

19 (2) request the court to stay enforcement of the  
20 penalty by:

21 (A) filing with the court a sworn affidavit of  
22 the person stating that the person is financially unable to pay the  
23 penalty and is financially unable to give the supersedeas bond; and

24 (B) sending a copy of the affidavit to the  
25 director by certified mail.

26 (b) If the department receives a copy of an affidavit under  
27 Subsection (a)(2), the director may file with the court, not later



1 than the fifth day after the date the copy is received, a contest to  
2 the affidavit.

3 (c) The court shall hold a hearing on the facts alleged in  
4 the affidavit as soon as practicable and shall stay the enforcement  
5 of the penalty on finding that the alleged facts are true. The  
6 person who files an affidavit has the burden of proving that the  
7 person is financially unable to pay the penalty and to give a  
8 supersedeas bond.

9 Section 2306.047. DECISION BY COURT. (a) If the court  
10 sustains the finding that a violation occurred, the court may  
11 uphold or reduce the amount of the penalty and order the person to  
12 pay the full or reduced amount of the penalty.

13 (b) If the court does not sustain the finding that a  
14 violation occurred, the court shall order that a penalty is not  
15 owed, and may award reasonable attorney's fees to the person.

16 Section 2306.048. REMITTANCE OF PENALTY AND INTEREST. (a)  
17 If the person paid the penalty and if the amount of the penalty is  
18 reduced or the penalty is not upheld by the court, the court shall  
19 order, when the court's judgment becomes final, that the  
20 appropriate amount plus accrued interest be remitted to the person.

21 (b) The interest accrues at the rate charged on loans to  
22 depository institutions by the New York Federal Reserve Bank.

23 (c) The interest shall be paid for the period beginning on  
24 the date the penalty is paid and ending on the date the penalty is  
25 remitted.

26 Section 2306.049. RELEASE OF BOND. (a) If the person gave a  
27 supersedeas bond and the penalty is not upheld by the court, the

1 court shall order, when the court's judgment becomes final, the  
2 release of the bond.

3 (b) If the person gave a supersedeas bond and the amount of  
4 the penalty is reduced, the court shall order the release of the  
5 bond after the person pays the reduced amount.

6 Section 2306.050. COLLECTION OF PENALTY. (a) If the person  
7 does not pay the penalty and the enforcement of the penalty is not  
8 stayed, the penalty may be collected.

9 (b) The attorney general may sue to collect the penalty.

10 SECTION 5. Section 2306.054, Government Code, is amended  
11 to read as follows:

12 Section 2306.054. SPECIAL ADVISORY COUNCILS. (a) The  
13 governor or director may appoint special advisory councils to:

14 (1) assist the department in ~~adopting~~ reviewing basic  
15 policy; or

16 (2) offer advice on technical aspects of certain  
17 programs.

18 (b) A special advisory council is dissolved on completion of  
19 its stated purpose unless continued by the governor or director.

20 (c) Any council created under this section is subject to  
21 Texas Government Code Section 2110.

22 SECTION 6. Section 2306.057, Government Code, is amended to  
23 read as follows:

24 Section 2306.057. COMPLIANCE ASSESSMENT REQUIRED FOR  
25 PROJECT APPROVAL BY BOARD. (a) Before the board approves any  
26 project application submitted under this chapter, the department,  
27 through the division with responsibility for compliance matters,

1 shall:

2 (1) assess:

3 (A) the compliance history of the applicant  
4 within the State of Texas and any affiliate of the applicant with  
5 respect to all applicable requirements; and

6 (B) the compliance issues associated with the  
7 proposed project; and

8 (2) provide to the board a written report regarding  
9 the results of the assessments described by Subdivision (1).

10 SECTION 7. Section 2306.066, Government Code, is amended to  
11 read as follows:

12 Section 2306.066. INFORMATION AND COMPLAINTS. (a) The  
13 department shall prepare information of public interest describing  
14 the functions of the department and the procedures by which  
15 complaints of areas under the jurisdiction of the Department are  
16 filed with and resolved by the department. The department shall  
17 make the information available to the public and appropriate state  
18 agencies.

19 SECTION 8. Section 2306.069, Government Code, is amended to  
20 read as follows:

21 Section 2306.069. LEGAL COUNSEL. (a) ~~The department shall~~  
22 ~~obtain and evaluate information regarding the affirmative action~~  
23 ~~policies and practices of proposed outside legal counsel. The~~  
24 ~~department must include the evaluation in a request to the attorney~~  
25 ~~general for outside legal counsel.~~

26 ~~(b)~~ The department may hire in-house legal counsel. The  
27 director shall prescribe the duties of the legal counsel.

1        (b) With the approval of the attorney general, the  
2 department may hire outside counsel as appropriate.

3        SECTION 9. Section 2306.070, Government Code, is amended to  
4 read as follows:

5        Sec. 2306.070. BUDGET. (a) In preparing the department's  
6 legislative appropriations request, the department shall also  
7 prepare:

8                (1) a report detailing the fees received, on a cash  
9 basis, for each activity administered by the department during each  
10 of the three preceding years;

11                (2) an operating budget for the housing finance  
12 division; and

13                (3) an explanation of any projected increase or  
14 decrease of three percent or more in fees estimated for the  
15 operating budget as compared to the fees received in the most recent  
16 budget year.

17        (b) The department shall submit the report, operating  
18 budget, and explanation to the Legislative Budget Board, the Senate  
19 Finance Committee, and the House Appropriations Committee.

20        SECTION 10. Section 2306.072, Government Code, is amended  
21 to read as follows:

22        Section 2306.072. ANNUAL LOW INCOME HOUSING REPORT. (a) Not  
23 later than ~~December~~ March 18 of each year, the director shall  
24 prepare and submit to the board an annual report of the department's  
25 housing activities for the preceding year.

26        (b) Not later than the 30th day after the date the board  
27 receives and approves the report, the board shall submit the report

1 to the governor, lieutenant governor, speaker of the house of  
2 representatives, and members of any legislative oversight  
3 committee.

4 (c) The report must include:

5 (1) a complete operating and financial statement of  
6 the department;

7 (2) a comprehensive statement of the activities of the  
8 department during the preceding year to address the needs  
9 identified in the state low income housing plan prepared as  
10 required by Section 2306.0721, including:

11 (A) a statistical and narrative analysis of the  
12 department's performance in addressing the housing needs of  
13 individuals and families of low and very low income;

14 (B) the ethnic and racial composition of  
15 individuals and families applying for and receiving assistance from  
16 each housing-related program operated by the department; and

17 (C) the department's progress in meeting the  
18 goals established in the previous housing plan;

19 (3) an explanation of the efforts made by the  
20 department to ensure the participation of individuals of low income  
21 and their community-based institutions in department programs that  
22 affect them;

23 (4) a statement of the evidence that the department  
24 has made an affirmative effort to ensure the involvement of  
25 individuals of low income and their community-based institutions in  
26 the allocation of funds and the planning process;

27 (5) a statistical analysis, delineated according to

1 each ethnic and racial group served by the department, that  
2 indicates the progress made by the department in implementing the  
3 state low income housing plan in each of the uniform state service  
4 regions;

5 (6) an analysis, based on information provided by the  
6 fair housing sponsor reports required under Section 2306.0724 and  
7 other available data, of fair housing opportunities in each housing  
8 development that receives financial assistance from the department  
9 that includes the following information for each housing  
10 development that contains 20 or more living units:

11 (A) the street address and municipality or county  
12 in which the property is located;

13 (B) the telephone number of the property  
14 management or leasing agent;

15 (C) the total number of units, reported by  
16 bedroom size;

17 (D) the total number of units, reported by  
18 bedroom size, designed for individuals who are physically  
19 challenged or who have special needs and the number of these  
20 individuals served annually;

21 (E) the rent for each type of rental unit,  
22 reported by bedroom size;

23 (F) the race or ethnic makeup of each project;

24 (G) the number of units occupied by individuals  
25 receiving government-supported housing assistance and the type of  
26 assistance received;

27 (H) the number of units occupied by individuals

1 and families of extremely low income, very low income, low income,  
2 moderate income, and other levels of income;

3 (I) a statement as to whether the department has  
4 been notified of a violation of the fair housing law that has been  
5 filed with the United States Department of Housing and Urban  
6 Development, the Commission on Human Rights, or the United States  
7 Department of Justice; and

8 (J) a statement as to whether the development has  
9 any instances of material noncompliance with bond indentures or  
10 deed restrictions discovered through the normal monitoring  
11 activities and procedures that include meeting occupancy  
12 requirements or rent restrictions imposed by deed restriction or  
13 financing agreements;

14 (7) a report on the geographic distribution of low  
15 income housing tax credits, the amount of unused low income housing  
16 tax credits, and the amount of low income housing tax credits  
17 received from the federal pool of unused funds from other states;  
18 and

19 (8) a statistical analysis, based on information  
20 provided by the fair housing sponsor reports required by Section  
21 2306.0724 and other available data, of average rents reported by  
22 county.

23 SECTION 11. Section 2306.0721, Government Code, is amended  
24 to read as follows:

25 Section 2306.0721. LOW INCOME HOUSING PLAN. (a) Not later  
26 than ~~December~~ March 18 of each year, the director shall prepare and  
27 submit to the board an integrated state low income housing plan for

1 the next year.

2 (b) Not later than the 30th day after the date the board  
3 receives and approves the plan, the board shall submit the plan to  
4 the governor, lieutenant governor, and the speaker of the house of  
5 representatives.

6 (c) The plan must include:

7 (1) an estimate and analysis of the housing needs of  
8 the following populations in each uniform state service region:

9 (A) individuals and families of moderate, low,  
10 very low, and extremely low income;

11 (B) individuals with special needs; and

12 (C) homeless individuals;

13 (2) a proposal to use all available housing resources  
14 to address the housing needs of the populations described by  
15 Subdivision (1) by establishing funding levels for all  
16 housing-related programs;

17 (3) an estimate of the number of federally assisted  
18 housing units available for individuals and families of low and  
19 very low income and individuals with special needs in each uniform  
20 state service region;

21 (4) a description of state programs that govern the  
22 use of all available housing resources;

23 (5) a resource allocation plan that targets all  
24 available housing resources to individuals and families of low and  
25 very low income and individuals with special needs in each uniform  
26 state service region;

27 (6) a description of the department's efforts to



1 monitor and analyze the unused or underused federal resources of  
2 other state agencies for housing-related services and services for  
3 homeless individuals and the department's recommendations to  
4 ensure the full use by the state of all available federal resources  
5 for those services in each uniform state service region;

6 (7) strategies to provide housing for individuals and  
7 families with special needs in each uniform state service region;

8 (8) a description of the department's efforts to  
9 encourage in each uniform state service region the construction of  
10 housing units that incorporate energy efficient construction and  
11 appliances;

12 (9) an estimate and analysis of the housing supply in  
13 each uniform state service region;

14 (10) an inventory of all publicly and, where possible,  
15 privately funded housing resources, including public housing  
16 authorities, housing finance corporations, community housing  
17 development organizations, and community action agencies;

18 (11) strategies for meeting rural housing needs;

19 (12) a biennial action plan for colonias that:

20 (A) addresses current policy goals for colonia  
21 programs, strategies to meet the policy goals, and the projected  
22 outcomes with respect to the policy goals; and

23 (B) includes information on the demand for  
24 contract-for-deed conversions, services from self-help centers,  
25 consumer education, and other colonia resident services in counties  
26 some part of which is within 150 miles of the international border  
27 of this state;

1           (13) a summary of public comments received at a  
2 hearing under this chapter or from another source that concern the  
3 demand for colonia resident services described by Subdivision (12);  
4 and

5           (14) any other housing-related information that the  
6 state is required to include in the one-year action plan of the  
7 consolidated plan submitted annually to the United States  
8 Department of Housing and Urban Development.

9           (d) The priorities and policies in another plan adopted by  
10 the department must be consistent to the extent practical with the  
11 priorities and policies established in the state low income housing  
12 plan.

13           (e) To the extent consistent with federal law, the  
14 preparation and publication of the state low income housing plan  
15 shall be consistent with the filing and publication deadlines  
16 required of the department for the consolidated plan.

17           (f) The director may subdivide the uniform state service  
18 regions as necessary for purposes of the state low income housing  
19 plan.

20           (g) The department shall include the plan developed by the  
21 Texas State Affordable Housing Corporation under Section 2306.566  
22 in the department's resource allocation plan under Subsection  
23 (c)(5).

24           ~~(h) The department shall consider and incorporate the~~  
25 ~~specific results of the programs of the Texas State Affordable~~  
26 ~~Housing Corporation in the department's estimate and analysis of~~  
27 ~~the housing supply in each uniform state service region under~~

1 ~~Subsection (c)(9).~~

2 SECTION 12. Section 2306.0723 Government Code, is amended  
3 to read as follows:

4 Section 2306.0723. PUBLIC PARTICIPATION REQUIREMENTS. (a)  
5 The department shall ~~hold public hearings on the annual state low~~  
6 ~~income housing plan and report before the director submits the~~  
7 ~~report and the plan to the board. The department shall provide~~  
8 ~~notice of the public hearings as required by Section 2306.0661. The~~  
9 ~~published notice must include a summary of the report and plan. The~~  
10 ~~department shall accept comments on the report and plan at the~~  
11 ~~public hearings and for at least 30 days after the date of the~~  
12 ~~publication of the notice of the hearings.~~

13 ~~(b) In addition to any other necessary topics relating to~~  
14 ~~the report and the plan, each public hearing required by Subsection~~  
15 ~~(a) must address:~~

- 16 ~~(1) infrastructure needs,~~  
17 ~~(2) home ownership programs,~~  
18 ~~(3) rental housing programs,~~  
19 ~~(4) housing repair programs, and~~  
20 ~~(5) the concerns of individuals with special needs, as~~  
21 ~~defined by Section 2306.511.~~

22 ~~(c) The board shall hold a public hearing on the state low~~  
23 ~~income housing report and plan before the board submits the report~~  
24 ~~and the plan to the governor, lieutenant governor, speaker of the~~  
25 ~~house of representatives, and members of the legislature.~~

26 ~~(d) The board shall include with the report and the plan the~~  
27 ~~board submits to the governor, lieutenant governor, speaker of the~~

1 ~~house of representatives, members of the legislature, and members~~  
2 ~~of the advisory board formed by the department to advise on the~~  
3 ~~consolidated plan a written summary of public comments on the~~  
4 ~~report and the plan.~~ consider the Annual Low Income Housing Report  
5 to be a rule and follow the procedures relevant to rulemaking as  
6 required under Texas Government Code Sec. 2001 when developing the  
7 Annual Low Income Housing Report.

8 SECTION 13. Section 2306.081, Government Code, is amended  
9 to read as follows:

10 Section 2306.081. PROJECT COMPLIANCE; DATABASE. (a) The  
11 department, through the division with responsibility for  
12 compliance matters, shall monitor for compliance with all  
13 applicable requirements the entire construction phase associated  
14 with any project under this chapter. The monitoring level for each  
15 project must be based on the amount of risk associated with the  
16 project.

17 (b) After completion of a project's construction phase, the  
18 department shall periodically review the performance of the project  
19 to confirm the accuracy of the department's initial compliance  
20 evaluation during the construction phase.

21 (c) The department shall use the division responsible for  
22 credit underwriting matters and the division responsible for  
23 compliance matters to determine the amount of risk associated with  
24 each project.

25 (d) The department shall create an easily accessible  
26 database that contains all project compliance information  
27 developed under this chapter, including project compliance

1 information provided to the department by the Texas State  
2 Affordable Housing Corporation.

3 ~~(c) The department shall allow the Texas State Affordable~~  
4 ~~Housing Corporation timely access to the information in the~~  
5 ~~database.~~

6 SECTION 14. Section 2306.082, Government Code, is amended  
7 to read as follows:

8 Section 2306.082. ~~NEGOTIATED RULEMAKING,~~ ALTERNATIVE  
9 DISPUTE RESOLUTION. (a) The department shall develop and implement  
10 a policy to encourage the use of:

11 ~~(1) negotiated rulemaking procedures under Chapter~~  
12 ~~2008 for the adoption of department rules; and~~

13 ~~(2)~~ appropriate alternative dispute resolution  
14 procedures under Chapter 2009 to assist in the resolution of  
15 internal and external disputes under the department's  
16 jurisdiction.

17 (b) The department's procedures relating to alternative  
18 dispute resolution ~~must conform, to the extent possible, to any~~  
19 ~~model guidelines issued by~~ should provide for the use of the State  
20 Office of Administrative Hearings as the primary mediator and  
21 conform to the rules created by that office to the extent possible  
22 ~~for the use of alternative dispute resolution by state agencies.~~

23 (c) The department shall designate a ~~trained~~ person within  
24 the Executive Division, but may not be within the legal division,  
25 to:

26 ~~(1) coordinate the implementation of the policy~~  
27 ~~adopted under Subsection (a);~~

1           ~~(2) serve as a resource for any training needed to~~  
2 ~~implement the procedures for negotiating rulemaking or alternative~~  
3 ~~dispute resolution; and~~

4           ~~(3) collect data concerning the effectiveness of those~~  
5 ~~procedures, as implemented by the department~~ serve as a coordinator  
6 to process requests for ADR. The person chosen must receive outside  
7 training in ADR practices within six months of being selected.

8           (d) The department ADR rule shall recognize that ADR is not  
9 binding on the State of Texas, but shall provide participants with  
10 assurances the department will mediate in good faith.

11           (e) The primary use of ADR may be called for prior to  
12 Governing Board decisions, but in no case will an ADR provide an  
13 avenue to delay a required deadline for decision in this chapter.

14           SECTION 15. Section 2306.092, Government Code, is amended  
15 to read as follows:

16           Section 2306.092. DUTIES REGARDING CERTAIN PROGRAMS  
17 CREATED UNDER FEDERAL LAW. The department, under policies  
18 established by the board, shall administer, as appropriate:

19           (1) state responsibilities for programs created under  
20 the federal Economic Opportunity Act of 1964 (42 U.S.C. Section  
21 2701 et seq.);

22           (2) programs assigned to the department under the  
23 Omnibus Budget Reconciliation Act of 1981 (Pub.L. No. 97-35); and

24           (3) other federal acts creating economic opportunity  
25 programs assigned to the department.

26           SECTION 16. Section 2306.1111, Government Code, is amended  
27 to read as follows:

Section 2306.1111. UNIFORM APPLICATION AND FUNDING CYCLE.

(a) Notwithstanding any other state law and to the extent consistent with federal law, the department shall establish ~~a~~ uniform application and funding cycles for ~~all~~ competitive single-family and multifamily housing programs administered by the department under this chapter, except for programs related to private activity bonds.

(b) Wherever possible, the department shall use uniform threshold requirements for single-family and multifamily housing program applications, including uniform threshold requirements relating to market studies and environmental reports.

SECTION 17. Section 2306.1112 Government Code, is amended to read as follows:

Section 2306.1112. EXECUTIVE AWARD AND REVIEW ADVISORY COMMITTEE. (a) The department shall establish an executive award and review advisory committee to make recommendations to the board regarding funding and allocation decisions.

(b) The advisory committee ~~is composed of the director, the administrator of each of the department's programs, and one representative from each of the~~ shall include representatives from the department's ~~planning,~~ underwriting, the division responsible for administering low income tax credits, the division responsible for administering funds from the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.) and compliance functions.

(c) ~~The advisory committee shall develop the funding priorities required by Section 2306.111(g) and shall make funding~~

1 ~~and allocation recommendations to the board based on the ability of~~  
2 ~~applicants to meet those priorities.~~

3 ~~(d)~~ The advisory committee is not subject to Chapter 2110.

4 SECTION 18. Section 2306.1113 Government Code, is amended  
5 to read as follows:

6 Section 2306.1113. EX PARTE COMMUNICATIONS. (a) During the  
7 period beginning on the date ~~a~~ project applications are ~~is~~ filed and  
8 ending on the date the board makes a final decision with respect to  
9 any approval of ~~that~~ any application, a member of the board may not  
10 communicate with the following persons:

11 (1) the applicant or a related party, as defined by  
12 state law, including board rules, and federal law; and

13 (2) any person who is:

14 (A) active in the construction, rehabilitation,  
15 ownership, or control of the proposed project, including:

16 (i) a general partner or contractor; and

17 (ii) a principal or affiliate of a general  
18 partner or contractor; or

19 (B) employed as a consultant, lobbyist, or  
20 attorney by the applicant or a related party.

21 (a-1) Subject to Subsection (a-2), during the period  
22 beginning on the date ~~a~~ project applications are ~~is~~ filed and ending  
23 on the date the board makes a final decision with respect to any  
24 approval of ~~that~~ any application, an employee of the department may  
25 communicate about the application with the following persons:

26 (1) ~~the~~ an applicant or a related party, as defined by  
27 state law, including board rules, and federal law; and



1 (2) any person who is:

2 (A) active in the construction, rehabilitation,  
3 ownership, or control of ~~the~~ a proposed project, including:

4 (i) a general partner or contractor; and

5 (ii) a principal or affiliate of a general  
6 partner or contractor; or

7 (B) employed as a consultant, lobbyist, or  
8 attorney by the applicant or a related party.

9 (a-2) A communication under Subsection (a-1) may be oral or  
10 in any written form, including electronic communication through the  
11 Internet, and must satisfy the following conditions:

12 (1) the communication must be restricted to technical  
13 or administrative matters directly affecting the application;

14 (2) the communication must occur or be received on the  
15 premises of the department during established business hours; and

16 (3) a record of the communication must be maintained  
17 and included with the application for purposes of board review and  
18 must contain the following information:

19 (A) the date, time, and means of communication;

20 (B) the names and position titles of the persons  
21 involved in the communication and, if applicable, the person's  
22 relationship to the applicant;

23 (C) the subject matter of the communication; and

24 (D) a summary of any action taken as a result of  
25 the communication.

26 (b) Notwithstanding Subsection (a) or (a-1), a board member  
27 or department employee may communicate without restriction with a

1 person listed in Subsection (a) or (a-1) ~~at~~ during any board meeting  
2 or public hearing held with respect to the application, but not  
3 during a recess or other non-record portion of the meeting or  
4 hearing.

5 (c) nothing in this subsection shall prohibit board members  
6 from participating in social events where matters regarding  
7 applications to be before the board are not discussed.

8 SECTION 19. Section 2306.185 Government Code, is amended to  
9 read as follows:

10 Section 2306.185. LONG-TERM AFFORDABILITY AND SAFETY OF  
11 MULTIFAMILY RENTAL HOUSING DEVELOPMENTS. (a) The department shall  
12 adopt policies and procedures to ensure that, for a multifamily  
13 rental housing development funded through loans, grants, or tax  
14 credits under this chapter, the owner of the development:

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

17 (2) provides regular maintenance to keep the  
18 development sanitary, decent, and safe and otherwise complies with  
19 the requirements of Section 2306.186.

20 (b) In implementing Subsection (a)(1) and in developing  
21 underwriting standards and application scoring criteria for the  
22 award of loans, grants, or tax credits to multifamily developments,  
23 the department shall ensure that the economic benefits of longer  
24 affordability terms and below market rate rents are accurately  
25 assessed and considered for a term of years established by the  
26 board.

27 (c) The department shall require that a recipient of funding

1 maintains the affordability of the multifamily housing development  
2 for households of extremely low, very low, low, and moderate  
3 incomes for the greater of a 30-year period from the date the  
4 recipient takes legal possession of the housing or the remaining  
5 term of the existing federal government assistance. In addition,  
6 the agreement between the department and the recipient shall  
7 require the renewal of rental subsidies if available and if the  
8 subsidies are sufficient to maintain the economic viability of the  
9 multifamily development.

10 (d) The development restrictions provided by Subsection (a)  
11 and Section 2306.269 are enforceable by the department, ~~by tenants~~  
12 ~~of the development, or by private parties~~ against the initial owner  
13 or any subsequent owner. The department shall require a land use  
14 restriction agreement providing for enforcement of the  
15 restrictions by the department, a tenant, or a private party that  
16 includes the right to recover reasonable attorney's fees if the  
17 party seeking enforcement of the restriction is successful.

18 (e) Subsections (c) and (d) and Section 2306.269 apply only  
19 to multifamily rental housing developments to which the department  
20 is providing one or more of the following forms of assistance:

21 (1) a loan or grant in an amount greater than 33  
22 percent of the market value of the development on the date the  
23 recipient completed the construction of the development;

24 (2) a loan guarantee for a loan in an amount greater  
25 than 33 percent of the market value of the development on the date  
26 the recipient took legal title to the development; or

27 (3) a low income housing tax credit.

1 (f) An owner of the housing development who intends to sell,  
2 lease, prepay the loan insured by the United States Department of  
3 Housing and Urban Development, opt out of a housing assistance  
4 payments contract under Section 8, United States Housing Act of  
5 1937 (42 U.S.C. Section 1437f), or otherwise dispose of the  
6 development shall agree to provide notice to the department at  
7 least 12 months before the date of any attempt to dispose of the  
8 development, prepay the loan, or opt out of the Section 8 contract  
9 to enable the department to attempt to locate a buyer who will  
10 conform to the development restrictions provided by this section.

11 (g) Repealed by Acts 2003, 78th Leg., ch. 330, Sec. 31(1).

12 (h) The department shall monitor a development owner's  
13 compliance with this section.

14 SECTION 20. Section 2306.229, Government Code, is amended  
15 by adding Subsection (c) to read as follows:

16 (c) For each loan made for the development of multifamily  
17 housing with funds provided to the state under the  
18 Cranston-Gonzalez National Affordable Housing Act (42 U.S.C.  
19 Section 12701 et seq.), the department shall obtain a mortgagee's  
20 title policy in the amount of the loan. The department may not  
21 designate a specific title insurance company to provide the  
22 mortgagee title policy or require the borrower to provide the  
23 policy from a specific title insurance company, but may debar  
24 specific title companies from providing the required title policy  
25 based on good cause. The borrower shall select the title insurance  
26 company to close the loan and to provide the mortgagee title policy.

27 SECTION 21. Section 2306.359, Government Code, is amended

1 to read as follows:

2           Sec. 2306.359. ISSUANCE OF PRIVATE ACTIVITY BONDS. (a) In  
3 evaluating an application for an issuance of private activity  
4 bonds, the department shall score and rank the application using a  
5 point system based on criteria that are adopted by the department,  
6 including criteria:

7           (1) regarding:

8                   (A) the income levels of tenants of the  
9 development, consistent with the funding priorities provided by  
10 Section 1372.0321;

11                   (B) the rent levels of the units;

12                   (C) the level of community support for the  
13 application;

14                   (D) the period of guaranteed affordability for  
15 low income tenants;

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

17                   (F) the size, quality, and amenities of the  
18 units;

19                   (G) the services to be provided to tenants of the  
20 development;

21                   ~~(H) the commitment of development funding by~~  
22 ~~local political subdivisions that enables additional units for~~  
23 ~~individuals and families of very low income, and~~

24           (H) other criteria as developed by the board, ~~and~~

25                   ~~(2) imposing penalties on applicants who have~~  
26 ~~requested extensions of department deadlines relating to~~  
27 ~~developments supported by an issuance of private activity bonds~~

1 ~~made in the application round preceding the current round.~~

2 (b) The department shall make available on its website  
3 details of the scoring system used by the department to score  
4 applications.

5 (c) The department shall underwrite the applications by  
6 determining:

7 (1) that the general contractor's profit, overhead,  
8 and general requirements are within the maximum limit published by  
9 the department;

10 (2) that the developer fee for the proposed project  
11 does not exceed the maximum amount allowed by the department; and

12 (3) if applicable, the amount of tax credits available  
13 to the proposed development.

14 (d) In adopting criteria for underwriting applications  
15 under this section, the department shall attach additional weight  
16 to criteria that will determine the maximum amount that can be  
17 awarded that will:

18 (1) result in an issuance of private activity bonds  
19 for developments serving the lowest income tenants; and

20 (2) produce the greatest number of high-quality units  
21 committed to remaining affordable to qualified tenants for extended  
22 periods.

23 SECTION 22. Section 2306.514 Government Code, is amended to  
24 read as follows:

25 Section 2306.514. CONSTRUCTION REQUIREMENTS FOR SINGLE  
26 FAMILY AFFORDABLE HOUSING. (a) If a person is awarded state or  
27 federal funds by the department to construct single family

1 affordable housing for individuals and families of low and very low  
2 income, the affordable housing identified on the person's funding  
3 application must be constructed so that:

4 (1) at least one entrance door, whether located at the  
5 front, side, or back of the building:

6 (A) is on an accessible route served by a ramp or  
7 no-step entrance; and

8 (B) has at least a standard 36-inch door;

9 (2) on the first floor of the building:

10 (A) each interior door is at least a standard  
11 32-inch door, unless the door provides access only to a closet of  
12 less than 15 square feet in area;

13 (B) each hallway has a width of at least 36 inches  
14 and is level, with ramped or beveled changes at each door threshold;

15 (C) each bathroom wall is reinforced for  
16 potential installation of grab bars;

17 (D) each electrical panel or breaker box, light  
18 switch, or thermostat is not higher than 48 inches above the floor;  
19 and

20 (E) each electrical plug or other receptacle is  
21 at least 15 inches above the floor; and

22 ~~(3) each breaker box is located inside the building on~~  
23 ~~the first floor.~~

24 (b) A person who builds single family affordable housing to  
25 which this section applies may obtain a waiver from the department  
26 of the requirement described by Subsection (a)(1)(A) if the cost of  
27 grading the terrain to meet the requirement is prohibitively

1 expensive.

2 SECTION 23. Sections 2306.6712(a)-(d), Government Code,  
3 are amended to read as follows:

4 (a) If a proposed modification would materially and  
5 adversely alter a development approved for an allocation of a  
6 housing tax credit, the department shall require the applicant to  
7 file a formal, written amendment to the application on a form  
8 prescribed by the department.

9 (b) If the director determines that a proposed modification  
10 may materially and adversely alter a development, the [The]  
11 director shall require the department staff assigned to evaluate  
12 [underwrite] applications as described by Section 2306.6710(ii) to  
13 review [evaluate] the amendment and provide an analysis and written  
14 recommendation to the board. The appropriate monitor under Section  
15 2306.6719 shall also provide to the board an analysis and written  
16 recommendation regarding the amendment. If the director determines  
17 that a modification would not materially and adversely alter a  
18 development, the director may approve the modification without  
19 board action.

20 (c) The board must vote on whether to approve an [the]  
21 amendment proposing a modification that the director determines may  
22 materially and adversely alter a development or whether to require  
23 resolution of the matter through an alternative dispute resolution  
24 process under Section 2306.082. The board by vote may reject an  
25 amendment and, if appropriate, rescind the allocation of housing  
26 tax credits and reallocate the credits to other applicants on the  
27 waiting list required by Section 2306.6711 if the board determines



1 that the modification proposed in the amendment:

2 (1) would materially alter the development in a  
3 negative manner; or

4 (2) would have adversely affected the selection of the  
5 application in the application round.

6 (d) Material alteration of a development includes:

7 (1) a significant modification of the site plan;

8 (2) a modification of the number of units or bedroom  
9 mix of units;

10 (3) a substantive modification of the scope of tenant  
11 services;

12 (4) a change in the income levels of the tenants to be  
13 served by the development [~~a reduction of three percent or more in~~  
14 ~~the square footage of the units or common areas~~];

15 (5) any modification in the attributes of the  
16 development that would have affected the selection of the  
17 application in the application round [~~a significant modification of~~  
18 ~~the architectural design of the development~~]; and

19 (6) [~~a modification of the residential density of the~~  
20 ~~development of at least five percent, and~~

21 [~~(7)~~] any other modification considered significant  
22 by the board.

23 SECTION 24. The following provisions of the Government Code  
24 are repealed:

25 (1) Sections 2306.021 2306.062, 2306.0631, 2306.0661,  
26 2306.079, 2306.254, 2306.257 (b)-(d), 2306.260, 2306.802,  
27 2306.803, 2306.806;

- 1           (2) Subchapter L., Chapter 2306;
- 2           (3) Subchapter N, Chapter 2306;
- 3           (4) Subchapter O, Chapter 2306;
- 4           (5) Subchapter BB, Chapter 2306;
- 5           (6) Subchapter CC, Chapter 2306; and
- 6           (7) Subchapter EE, Chapter 2306.

7           SECTION 25. 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 26. The changes in law made by this Act relating to  
19 the evaluation of applications for financial assistance  
20 administered by the Texas Department of Housing and Community  
21 Affairs apply only to an application submitted on or after the  
22 effective date of this Act. An application submitted before the  
23 effective date of this Act is governed by the law in effect when the  
24 application was submitted, and the former law is continued in  
25 effect for that purpose.

26           SECTION 27. This Act takes effect September 1, 2007.