

By: Ellis

S.B. No. 1753

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the administration of the low income housing tax credit  
3 program.

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

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

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

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

12 ~~[(B)]~~ consistent with this chapter ~~[Section~~  
13 ~~2306.6710(e), gives preference in housing tax credit allocations to~~  
14 ~~developments that, as compared to the other developments.~~

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

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

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

1 qualified allocation plan and this subchapter.

2 SECTION 2. Section 2306.67022, Government Code, is amended  
3 to read as follows:

4 Sec. 2306.67022. QUALIFIED ALLOCATION PLAN; THRESHOLD  
5 CRITERIA; MANUAL. (a) The board annually shall adopt a qualified  
6 allocation plan, including sets of threshold criteria described by  
7 Subsection (b), and a corresponding manual to provide information  
8 regarding the administration of and eligibility for the low income  
9 housing tax credit program.

10 (b) The qualified allocation plan adopted by the board under  
11 Subsection (a) must include separate sets of threshold criteria for  
12 each of the following types of developments:

13 (1) at-risk developments;

14 (2) developments in which a qualified nonprofit  
15 organization owns an interest in the development and materially  
16 participates in the operation of the development;

17 (3) developments receiving federal financial  
18 assistance through the Texas Rural Development Office of the United  
19 States Department of Agriculture; and

20 (4) all other developments not described by  
21 Subdivision (1), (2), or (3).

22 (c) For a development located in a county with a median  
23 income that is higher than the statewide median income, each set of  
24 threshold criteria adopted under Subsection (a) must require the  
25 development to reserve:

26 (1) 80 percent or more of the units for households that  
27 have median incomes that are equal to or less than 50 percent of the

1 area median income adjusted for family size; or

2 (2) 10 percent or more of the units for households that  
3 have median incomes that are equal to or less than 30 percent of the  
4 area median income adjusted for family size.

5 (d) For a development located in a county with a median  
6 income that is equal to or less than the statewide median income, a  
7 set of threshold criteria adopted under Subsection (a) may not  
8 impose on an applicant requirements related to the income level of  
9 tenants in the proposed development other than those requirements  
10 necessary under 26 U.S.C. Section 42.

11 SECTION 3. Section 2306.6703, Government Code, is amended  
12 by adding Subsection (c) to read as follows:

13 (c) An application is ineligible for consideration under  
14 the low income housing tax credit program if the application is  
15 filed before the fifth anniversary of the most recent date, if any,  
16 that the applicant, including a principal of the applicant, a  
17 developer affiliated with the applicant, or another related party,  
18 has been removed from a loan document or a limited partnership  
19 agreement by a lender, equity provider, or limited partner due to  
20 failure to perform obligations under the loan document or limited  
21 partnership agreement, as applicable.

22 SECTION 4. Subchapter DD, Chapter 2306, Government Code, is  
23 amended by adding Section 2306.67031 to read as follows:

24 Sec. 2306.67031. CERTAIN APPLICATIONS AND COMBINATIONS OF  
25 APPLICATIONS PROHIBITED. (a) An applicant, including a principal  
26 of the applicant, a developer affiliated with the applicant, or  
27 another related party, whether acting alone or in concert with

1 another, may not, in a single application round, submit multiple  
2 applications in which the combined amount of housing tax credits  
3 requested exceeds twice the amount of credits allowed under Section  
4 2306.6711(b).

5 (b) Each of the applications is ineligible for  
6 consideration under the low income housing tax credit program  
7 unless before the application filing deadline one or more of the  
8 prohibited applications are withdrawn to conform to the  
9 requirements of Subsection (a).

10 SECTION 5. Section 2306.6704, Government Code, is amended  
11 by amending Subsections (c) and (d) and adding Subsection (e) to  
12 read as follows:

13 (c) The department shall reject and return to the applicant  
14 any application assessed by the department under this section that  
15 fails to satisfy the applicable set of threshold criteria required  
16 by the board in the qualified allocation plan.

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

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

22 SECTION 6. Section 2306.67041(a), Government Code, is  
23 amended to read as follows:

24 (a) The department and the Department of Information  
25 Resources shall cooperate to evaluate the feasibility of an on-line  
26 application system for the low income housing tax credit program to  
27 provide the following functions:

1           (1) filing of preapplications and applications  
2 on-line;

3           (2) posting of on-line preapplication or application  
4 status and the application log detailing the status of, and  
5 department's evaluations [~~and scores~~] pertaining to, those  
6 applications; and

7           (3) posting of comments from applicants and the public  
8 regarding a preapplication or application.

9           SECTION 7. Section 2306.6705, Government Code, is amended  
10 to read as follows:

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

14           (1) a description of:

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

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

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

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

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

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

27           (2) if syndication costs are included in the eligible

1 basis, a justification of the syndication costs for each cost  
2 category by an attorney or accountant specializing in tax matters;

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

8 (A) pay-in schedules; and

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

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

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

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

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

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

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

26 (B) the applicant is in the process of seeking  
27 the appropriate zoning and has signed and provided to the political

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

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

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

8 (B) a relocation plan outlining:

9 (i) relocation requirements; and

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

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

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

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

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

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

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

27 ~~[(C)]~~ the presiding officer of the governing body

1 of any municipality containing the development [~~and all elected~~  
2 ~~members of that body~~];

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

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

8 SECTION 8. Subchapter DD, Chapter 2306, Government Code, is  
9 amended by adding Section 2306.67071 to read as follows:

10 Sec. 2306.67071. ADDITIONAL APPLICATION REQUIREMENT:  
11 SPECIFICATION OF TYPE OF DEVELOPMENT. An application must specify  
12 the type of development provided by Section 2306.67022(b) that  
13 describes the proposed development.

14 SECTION 9. Section 2306.6709(b), Government Code, is  
15 amended to read as follows:

16 (b) The application log must contain at least the following  
17 information:

18 (1) the names of the applicant and related parties;

19 (2) the physical location of the development,  
20 including the relevant region of the state;

21 (3) the amount of housing tax credits requested for  
22 allocation by the department to the applicant;

23 (4) any set-aside category under which the application  
24 is filed;

25 (5) [~~the score of the application in each scoring~~  
26 ~~category adopted by the department under the qualified allocation~~  
27 ~~plan~~];

1           ~~(6)~~ any decision made by the department or board  
2 regarding the application, including ~~[the department's decision~~  
3 ~~regarding whether to underwrite the application and]~~ the board's  
4 decision regarding whether to allocate housing tax credits to the  
5 development;

6           (6) ~~(7)~~ the names of persons making the decisions  
7 described by Subdivision (5) ~~(6)~~, including the names of  
8 department staff making those decisions ~~[scoring and underwriting~~  
9 ~~the application]~~, to be recorded next to the description of the  
10 applicable decision;

11           (7) ~~(8)~~ the amount of housing tax credits allocated  
12 to the development; and

13           (8) ~~(9)~~ a dated record and summary of any contact  
14 between the department staff, the board, and the applicant or any  
15 related parties.

16           SECTION 10. The heading to Section 2306.6710, Government  
17 Code, is amended to read as follows:

18           Sec. 2306.6710. EVALUATION       ~~[AND UNDERWRITING]~~       OF  
19 APPLICATIONS.

20           SECTION 11. Sections 2306.6710(a) and (b), Government Code,  
21 are amended to read as follows:

22           (a) In evaluating an application, the department shall  
23 determine whether the application satisfies the applicable set of  
24 threshold criteria adopted ~~[required]~~ by the board in the qualified  
25 allocation plan under Section 2306.67022(a). The department shall  
26 reject and return to the applicant any application that fails to  
27 satisfy the applicable set of threshold criteria.

1 (b) If an application satisfies the threshold criteria, the  
2 application is eligible for the lottery selection procedure under  
3 Section 2306.6711 [~~department shall score and rank the application~~  
4 ~~using a point system that:~~

5 [~~(1) prioritizes in descending order criteria~~  
6 ~~regarding:~~

7 [~~(A) financial feasibility of the development~~  
8 ~~based on the supporting financial data required in the application~~  
9 ~~that will include a project underwriting pro forma from the~~  
10 ~~permanent or construction lender;~~

11 [~~(B) quantifiable community participation with~~  
12 ~~respect to the development, evaluated on the basis of written~~  
13 ~~statements from any neighborhood organizations on record with the~~  
14 ~~state or county in which the development is to be located and whose~~  
15 ~~boundaries contain the proposed development site;~~

16 [~~(C) the income levels of tenants of the~~  
17 ~~development;~~

18 [~~(D) the size and quality of the units;~~

19 [~~(E) the commitment of development funding by~~  
20 ~~local political subdivisions;~~

21 [~~(F) the level of community support for the~~  
22 ~~application, evaluated on the basis of written statements from~~  
23 ~~state elected officials;~~

24 [~~(G) the rent levels of the units;~~

25 [~~(H) the cost of the development by square foot;~~  
26 ~~and~~

27 [~~(I) the services to be provided to tenants of~~

1 ~~the development, and~~

2 ~~[(2) uses criteria imposing penalties on applicants or~~  
3 ~~affiliates who have requested extensions of department deadlines~~  
4 ~~relating to developments supported by housing tax credit~~  
5 ~~allocations made in the application round preceding the current~~  
6 ~~round or a developer or principal of the applicant that has been~~  
7 ~~removed by the lender, equity provider, or limited partners for its~~  
8 ~~failure to perform its obligations under the loan documents or~~  
9 ~~limited partnership agreement].~~

10 SECTION 12. Section 2306.6711, Government Code, is amended  
11 by amending Subsections (a), (b), and (c) and adding Subsections  
12 (a-1), (a-2), (a-3), (a-4), (b-1), and (b-2) to read as follows:

13 (a) The department [director] shall select applications to  
14 be allocated [provide the application scores to the board before  
15 the 30th day preceding the date the board begins to issue  
16 commitments for] housing tax credits through a lottery conducted at  
17 a board meeting that is open to the public [in the allocation  
18 round].

19 (a-1) The department by rule shall determine whether it is  
20 appropriate to conduct the selection lottery described by  
21 Subsection (a) for each type of development described by Section  
22 2306.67022(b), for each uniform state service region, or for the  
23 entire state.

24 (a-2) Regardless of the manner in which the selection  
25 lottery is conducted, the department shall allocate housing tax  
26 credits to developments as follows:

27 (1) all developments that satisfy the applicable set

1 of threshold criteria adopted under Section 2306.67022(a) and that  
2 also satisfy one or more of the preferences described by 26 U.S.C.  
3 Section 42(m)(1)(B)(ii); and

4 (2) after allocating tax credits under Subdivision  
5 (1), developments that satisfy only the applicable set of threshold  
6 criteria.

7 (a-3) If any housing tax credits remain after the department  
8 allocates tax credits under Subsection (a-2), the department shall  
9 conduct a second lottery in the same manner as the first lottery was  
10 conducted. Through the second lottery, the department shall  
11 allocate any remaining housing tax credits in the allocation order  
12 provided by Subsection (a-2).

13 (a-4) After the allocation of all housing tax credits under  
14 Subsections (a-2) and (a-3), the department shall conduct a third  
15 lottery in the same manner as the first two lotteries for the  
16 purpose of establishing a waiting list under Subsection (c) that is  
17 to be used in the event that applications selected in either of the  
18 first two lotteries become ineligible or otherwise fail to qualify  
19 for an allocation.

20 (b) Not later than the deadline specified in the qualified  
21 allocation plan, the board shall issue commitments for available  
22 housing tax credits based on the selection lotteries under  
23 Subsections (a)-(a-4) [~~application evaluation process provided by~~  
24 ~~Section 2306.6710~~]. The board may not allocate to an applicant  
25 housing tax credits in any unnecessary amount, as determined by the  
26 department [~~department's underwriting policy~~] and by federal law,  
27 and, except as provided by Subsection (b-1), [~~in any event~~] may not

1 allocate to any one person, in the person's capacity as an applicant  
2 or as a related party, [the applicant] housing tax credits in an  
3 amount greater than \$2.4 [~~\$2~~] million in a single application  
4 round. For purposes of this subsection, a housing tax credit  
5 allocated for a development that is financed with tax-exempt bonds  
6 may not be included in the \$2.4 million limitation described by this  
7 subsection.

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

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

19 (1) an entity that raises or provides equity for one or  
20 more developments, in that entity's capacity as an equity raiser or  
21 provider;

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

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

27 (A) the consultant:

1                   (i) is not a related party with respect to  
2 the applicant; and

3                   (ii) does not own an interest in the  
4 development; and

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

8           (c) Concurrently with the initial issuance of commitments  
9 for housing tax credits under Subsection (b), the board shall  
10 establish a waiting list of additional applications ranked by the  
11 results of the lottery conducted under Subsection (a-4) [~~score in~~  
12 ~~descending order of priority based on set-aside categories and~~  
13 ~~regional allocation goals]~~.

14           SECTION 13. Section 2306.6712(b), Government Code, is  
15 amended to read as follows:

16           (b) The director shall require [~~the~~] department staff  
17 [~~assigned to underwrite applications~~] to evaluate the amendment and  
18 provide an analysis and written recommendation to the board. The  
19 appropriate monitor under Section 2306.6719 shall also provide to  
20 the board an analysis and written recommendation regarding the  
21 amendment.

22           SECTION 14. Section 2306.6715(a), Government Code, is  
23 amended to read as follows:

24           (a) In a form prescribed by the department in the qualified  
25 allocation plan, an applicant may appeal the following decisions  
26 made by the department in the application evaluation process  
27 provided by Section 2306.6710:

1 (1) a determination regarding the application's  
2 satisfaction of the appropriate threshold [~~and underwriting~~]  
3 criteria; and

4 (2) [~~the scoring of the application, and~~  
5 [~~3~~] a recommendation as to the amount of housing tax  
6 credits to be allocated to the application.

7 SECTION 15. Sections 2306.6717(a) and (b), Government Code,  
8 are amended to read as follows:

9 (a) Subject to Section 2306.67041, the department shall  
10 make the following items available on the department's website:

11 (1) as soon as practicable, any proposed application  
12 submitted through the preapplication process established by this  
13 subchapter;

14 (2) before the 30th day preceding the date of the  
15 relevant board allocation decision, except as provided by  
16 Subdivision (3), the entire application, including all supporting  
17 documents and exhibits, the application log, [~~a scoring sheet~~  
18 ~~providing details of the application score,~~] and any other document  
19 relating to the processing of the application;

20 (3) not later than the third working day after the date  
21 of the relevant determination, the results of each stage of the  
22 application process, including the results of [~~the application~~  
23 ~~scoring and underwriting phases and~~] the allocation phase;

24 (4) before the 15th day preceding the date of board  
25 action on the amendment, notice of an amendment under Section  
26 2306.6712 and the recommendation of the director and monitor  
27 regarding the amendment; and

1           (5) an appeal filed with the department or board under  
2 Section 2306.6715 or 2306.6721 and any other document relating to  
3 the processing of the appeal.

4           (b) The department shall make available on the department's  
5 website information regarding the low income housing tax credit  
6 program, including notice regarding public hearings, meetings, the  
7 opening and closing dates for applications, submitted  
8 applications, and applications [~~approved for underwriting and~~  
9 recommended to the board, and shall provide that information to:

10           (1) locally affected community groups;

11           (2) local and state elected officials;

12           (3) local housing departments;

13           (4) any appropriate newspapers of general or limited  
14 circulation that serve the community in which the development is to  
15 be located;

16           (5) nonprofit and for-profit organizations;

17           (6) on-site property managers of occupied  
18 developments that are the subject of applications for posting in  
19 prominent locations in those developments; and

20           (7) any other interested persons and community groups  
21 that request the information.

22           SECTION 16. Section 2306.6718(d), Government Code, is  
23 amended to read as follows:

24           (d) If the department receives written notice from the mayor  
25 or county judge of an affected municipality or county opposing an  
26 application, the department must contact the mayor or county judge  
27 and offer to conduct a physical inspection of the development site

1 and consult with the mayor or county judge before the application is  
2 evaluated [~~scored~~].

3 SECTION 17. Section 2306.6723(b), Government Code, is  
4 amended to read as follows:

5 (b) The rural development agency shall assist in developing  
6 sets of [~~all~~] threshold[~~, scoring, and underwriting~~] criteria  
7 applied to applications eligible for the rural area set-aside. The  
8 criteria must be approved by that agency.

9 SECTION 18. The following provisions of the Government Code  
10 are repealed:

- 11 (1) Section 2306.565(i);
- 12 (2) Section 2306.6701;
- 13 (3) Sections 2306.6702(5) and (12);
- 14 (4) Sections 2306.6704(b) and (b-1);
- 15 (5) Sections 2306.6710(c), (d), (e), (f), and (g);
- 16 (6) Section 2306.6711(e);
- 17 (7) Section 2306.6712(e);
- 18 (8) Section 2306.6725; and
- 19 (9) Section 2306.6726.

20 SECTION 19. It is the intent of the legislature that the  
21 passage by the 80th Legislature, Regular Session, 2007, of another  
22 bill that amends Chapter 2306, Government Code, and the amendments  
23 made by this Act shall be harmonized, if possible, as provided by  
24 Section 311.025(b), Government Code, so that effect may be given to  
25 each. If the amendments made by this Act to Chapter 2306,  
26 Government Code, and the amendments made to Chapter 2306,  
27 Government Code, by any other bill are irreconcilable, it is the

1 intent of the legislature that this Act prevail, regardless of the  
2 relative dates of enactment of this Act and the other bill or bills,  
3 but only to the extent that any differences are irreconcilable.

4 SECTION 20. The changes in law made by this Act relating to  
5 the evaluation of applications for the allocation of low income  
6 housing tax credits by the Texas Department of Housing and  
7 Community Affairs apply only to an application submitted on or  
8 after the effective date of this Act. An application submitted  
9 before the effective date of this Act is governed by the law in  
10 effect when the application was submitted, and the former law is  
11 continued in effect for that purpose.

12 SECTION 21. This Act takes effect September 1, 2007.