

By: Ellis, et al.

S.B. No. 1908

Substitute the following for S.B. No. 1908:

By: Mallory Caraway

C.S.S.B. No. 1908

A BILL TO BE ENTITLED

AN ACT

relating to affordable housing.

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

SECTION 1. Chapter 2306, Government Code, is amended by adding Subchapter MM to read as follows:

SUBCHAPTER MM. TEXAS FIRST-TIME HOMEBUYER PROGRAM

Sec. 2306.1071. DEFINITIONS. In this subchapter:

(1) "First-time homebuyer" means a person who has not owned a home during the three years preceding the date on which an application under this subchapter is filed.

(2) "Home" means a dwelling in this state in which a first-time homebuyer intends to reside as the homebuyer's principal residence.

(3) "Mortgage lender" has the meaning assigned by Section 2306.004.

(4) "Program" means the Texas First-Time Homebuyer Program.

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

(b) The program may include down payment and closing cost assistance.

Sec. 2306.1073. ADMINISTRATION OF PROGRAM; RULES. (a) The

1 department shall administer the program.

2 (b) The board shall adopt rules governing:

3 (1) the administration of the program;

4 (2) the making of loans under the program;

5 (3) the criteria for approving participating mortgage
6 lenders;

7 (4) the use of insurance on the loans and the homes
8 financed under the program, as considered appropriate by the board
9 to provide additional security for the loans;

10 (5) the verification of occupancy of the home by the
11 homebuyer as the homebuyer's principal residence; and

12 (6) the terms of any contract made with any mortgage
13 lender for processing, originating, servicing, or administering
14 the loans.

15 Sec. 2306.1074. ELIGIBILITY. (a) To be eligible for a
16 mortgage loan under this subchapter, a homebuyer must:

17 (1) qualify as a first-time homebuyer under this
18 subchapter;

19 (2) have an income of not more than 115 percent of area
20 median family income or 140 percent of area median family income in
21 targeted areas; and

22 (3) meet any additional requirements or limitations
23 prescribed by the department.

24 (b) To be eligible for a loan under this subchapter to
25 assist a homebuyer with down payment and closing costs, a homebuyer
26 must:

27 (1) qualify as a first-time homebuyer under this

1 subchapter;

2 (2) have an income of not more than 80 percent of area
3 median family income; and

4 (3) meet any additional requirements or limitations
5 prescribed by the department.

6 (c) The department may contract with other agencies of the
7 state or with private entities to determine whether applicants
8 qualify as first-time homebuyers under this section or otherwise to
9 administer all or part of this section.

10 Sec. 2306.1075. FEES. The board of directors of the
11 department may set and collect from each applicant any fees the
12 board considers reasonable and necessary to cover the expenses of
13 administering the program.

14 Sec. 2306.1076. FUNDING. (a) The department shall ensure
15 that a loan under this section is structured in a way that complies
16 with any requirements associated with the source of the funds used
17 for the loan.

18 (b) In addition to funds set aside for the program under
19 Section 1372.023, the department may solicit and accept gifts and
20 grants for the purposes of this section.

21 SECTION 2. Section 2306.111(c), Government Code, as amended
22 by Chapters 1367 and 1448, Acts of the 77th Legislature, Regular
23 Session, 2001, is reenacted and amended to read as follows:

24 (c) In administering federal housing funds provided to the
25 state under the Cranston-Gonzalez National Affordable Housing Act
26 (42 U.S.C. Section 12701 et seq.), the department shall expend:

27 (1) [at least] 95 percent of these funds for the

1 benefit of non-participating small cities and rural areas that do
2 not qualify to receive funds under the Cranston-Gonzalez National
3 Affordable Housing Act directly from the United States Department
4 of Housing and Urban Development; and

5 (2) five percent of these [~~. All~~] funds [~~not set aside~~
6 ~~under this subsection shall be used~~] for the benefit of persons with
7 disabilities who live in any area of this state [~~areas other than~~
8 ~~non-participating areas~~].

9 SECTION 3. Section 2306.111, Government Code, is amended by
10 amending Subsections (d), (d-1), (e), (f), and (g) and adding
11 Subsections (d-2) and (d-3) to read as follows:

12 (d) The department shall allocate housing funds provided to
13 the state under the Cranston-Gonzalez National Affordable Housing
14 Act (42 U.S.C. Section 12701 et seq.), housing trust funds
15 administered by the department under Sections 2306.201-2306.206,
16 and commitments issued under the federal low income housing tax
17 credit program administered by the department under Subchapter DD
18 to all urban [~~urban/exurban~~] areas and rural areas of each uniform
19 state service region based on a formula developed by the department
20 under Section 2306.1115 [~~that is based on the need for housing~~
21 ~~assistance and the availability of housing resources in these~~
22 ~~urban/exurban areas and rural areas, provided that the allocations~~
23 ~~are consistent with applicable federal and state requirements and~~
24 ~~limitations. The department shall use the information contained in~~
25 ~~its annual state low income housing plan and shall use other~~
26 ~~appropriate data to develop the formula~~]. If the department
27 determines under the formula that an insufficient number of

1 eligible applications for assistance out of funds or credits
2 allocable under this subsection are submitted to the department
3 from a particular uniform state service region, the department
4 shall use the unused funds or credits allocated to that region for
5 all urban [~~urban/exurban~~] areas and rural areas in other uniform
6 state service regions based on identified need and financial
7 feasibility.

8 (d-1) In allocating low income housing tax credit
9 commitments under Subchapter DD, the department shall, before
10 applying the regional allocation formula prescribed by Section
11 2306.1115, set aside for at-risk developments, as defined by
12 Section 2306.6702, not less than the minimum amount of housing tax
13 credits required under Section 2306.6714. Other funds [~~Funds~~] or
14 credits are not required to be allocated according to the regional
15 allocation formula under Subsection (d) if:

16 (1) the funds or credits are reserved for
17 contract-for-deed conversions or for set-asides mandated by state
18 or federal law[+] and

19 [~~(2)~~] each contract-for-deed allocation or set-aside
20 allocation equals not more than 10 percent of the total allocation
21 of funds or credits for the applicable program;

22 (2) the funds or credits are allocated by the
23 department primarily to serve persons with disabilities; or

24 (3) the funds are housing trust funds administered by
25 the department under Sections 2306.201-2306.206 that are not
26 otherwise required to be set aside under state or federal law and do
27 not exceed \$3 million during each application cycle.

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

13 (d-3) In allocating low income tax credit commitments under
14 Subchapter DD, the department shall allocate to developments in
15 rural areas 20 percent or more of the housing tax credits in the
16 application cycle, with \$500,000 or more in housing tax credits
17 being reserved for each uniform state service region under this
18 subsection. Any amount of housing tax credits set aside for
19 developments in a rural area in a specific uniform state service
20 region under this subsection that remains after the initial
21 allocation of housing tax credits is available for allocation to
22 developments in any other rural area first, and then is available to
23 developments in urban areas of any uniform state service region.

24 (e) The department shall include in its annual low income
25 housing plan under Section 2306.0721:

26 (1) the formula developed by the department under
27 Section 2306.1115 [~~Subsection (d)~~]; and

1 (2) the allocation targets established under the
2 formula for the urban [~~urban/exurban~~] areas and rural areas of each
3 uniform state service region.

4 (f) The department shall include in its annual low income
5 housing report under Section 2306.072 the amounts of funds and
6 credits allocated to the urban [~~urban/exurban~~] areas and rural
7 areas of each uniform state service region in the preceding year for
8 each federal and state program affected by the requirements of
9 Subsection (d).

10 (g) For all urban [~~urban/exurban~~] areas and rural areas of
11 each uniform state service region, the department shall establish
12 funding priorities to ensure that:

13 (1) funds are awarded to project applicants who are
14 best able to meet recognized needs for affordable housing, as
15 determined by department rule;

16 (2) when practicable and when authorized under Section
17 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), the least
18 restrictive funding sources are used to serve the lowest income
19 residents; and

20 (3) funds are awarded based on a project applicant's
21 ability, when consistent with Section 42, Internal Revenue Code of
22 1986 (26 U.S.C. Section 42), practicable, and economically
23 feasible, to:

24 (A) provide the greatest number of quality
25 residential units;

26 (B) serve persons with the lowest percent area
27 median family income;

1 (C) extend the duration of the project to serve a
2 continuing public need;

3 (D) use other local funding sources to minimize
4 the amount of state subsidy needed to complete the project; and

5 (E) provide integrated, affordable housing for
6 individuals and families with different levels of income.

7 SECTION 4. Subchapter F, Chapter 2306, Government Code, is
8 amended by adding Section 2306.1115 to read as follows:

9 Sec. 2306.1115. REGIONAL ALLOCATION FORMULA. (a) To
10 allocate housing funds under Section 2306.111(d), the department
11 shall develop a formula that:

12 (1) includes as a factor the need for housing
13 assistance and the availability of housing resources in an urban
14 area or rural area;

15 (2) provides for allocations that are consistent with
16 applicable federal and state requirements and limitations; and

17 (3) includes other factors determined by the
18 department to be relevant to the equitable distribution of housing
19 funds under Section 2306.111(d).

20 (b) The department shall use information contained in its
21 annual state low income housing plan and other appropriate data to
22 develop the formula under this section.

23 SECTION 5. Section 2306.127, Government Code, is amended to
24 read as follows:

25 Sec. 2306.127. PRIORITY FOR CERTAIN COMMUNITIES. In a
26 manner consistent with the regional allocation formula described
27 under Section 2306.1115 [~~2306.111(d)~~], the department shall give

1 priority through its housing program scoring criteria to
2 communities that, at the time complete applications are submitted
3 under a housing program in relation to those communities, are
4 located wholly or partly in:

- 5 (1) a federally designated urban enterprise
6 community;
- 7 (2) an urban enhanced enterprise community; or
- 8 (3) an economically distressed area or colonia.

9 SECTION 6. Section 2306.6703, Government Code, is amended
10 to read as follows:

11 Sec. 2306.6703. INELIGIBILITY FOR CONSIDERATION. (a) An
12 application is ineligible for consideration under the low income
13 housing tax credit program if:

14 (1) at the time of application or at any time during
15 the two-year period preceding the date the application round
16 begins, the applicant or a related party is or has been:

- 17 (A) a member of the board; or
- 18 (B) the director, a deputy director, the director
19 of housing programs, the director of compliance, the director of
20 underwriting, or the low income housing tax credit program manager
21 employed by the department;

22 (2) the applicant proposes to replace in less than 15
23 years any private activity bond financing of the development
24 described by the application, unless:

- 25 (A) the applicant proposes to maintain for a
26 period of 30 years or more 100 percent of the development units
27 supported by housing tax credits as rent-restricted and exclusively

1 for occupancy by individuals and families earning not more than 50
2 percent of the area median income, adjusted for family size; and

3 (B) at least one-third of all the units in the
4 development are public housing units or Section 8 project-based
5 units;

6 (3) unless the applicant obtains approval of the
7 development from the governing body of the appropriate municipality
8 or county containing the development, the applicant proposes to
9 develop [~~construct~~] a new construction development that is located
10 one linear mile or less from a development that:

11 (A) serves the same type of household as the new
12 development [~~, regardless of whether the developments serve~~
13 ~~families, elderly individuals, or another type of household~~];

14 (B) has received an allocation of housing tax
15 credits for new construction at any time during the three-year
16 period preceding the date the application round begins; and

17 (C) has not been withdrawn or terminated from the
18 low income housing tax credit program; or

19 (4) the development is located in a municipality or,
20 if located outside a municipality, a county that has more than twice
21 the state average of units per capita supported by housing tax
22 credits or private activity bonds, unless the applicant:

23 (A) obtains [~~has obtained prior~~] approval of the
24 development from the governing body of the appropriate municipality
25 or county containing the development; and

26 (B) has included in the application a written
27 statement of support from that governing body referencing this

1 section and authorizing an allocation of housing tax credits for
2 the development.

3 (b) Subsections (a)(2), (3), and (4) do [~~Subsection (a)(3)~~
4 ~~does~~] not apply to a development:

5 (1) that is using:

6 (A) federal HOPE VI funds or other similar funds
7 received through the United States Department of Housing and Urban
8 Development to assist in the preservation, through same-site
9 reconstruction or rehabilitation, of distressed federally assisted
10 housing;

11 (B) locally approved funds received from a public
12 improvement district or a tax increment financing district;

13 (C) funds provided to the state under the
14 Cranston-Gonzalez National Affordable Housing Act (42 U.S.C.
15 Section 12701 et seq.); or

16 (D) funds provided to the state and participating
17 jurisdictions under the Housing and Community Development Act of
18 1974 (42 U.S.C. Section 5301 et seq.); or

19 (2) that is located in a county with a population of
20 less than one million[~~+~~

21 [~~(3) that is located outside of a metropolitan~~
22 ~~statistical area; or~~

23 [~~(4) that a local government where the project is to be~~
24 ~~located has by vote specifically allowed the construction of a new~~
25 ~~development located within one linear mile or less from a~~
26 ~~development under Subsection (a)].~~

27 SECTION 7. Section 2306.6711(f), Government Code, is

1 amended to read as follows:

2 (f) The board may allocate housing tax credits to
3 developments [~~more than one development~~] in a single community that
4 are or will be located one linear mile or less from each other, as
5 defined by department rule, in the same calendar year [~~only~~] if:

6 (1) the community is located in a county with a
7 population of one million or less;

8 (2) one or more of the allocations involves the
9 rehabilitation of existing developments and not more than one of
10 the allocations involves new construction; or

11 (3) the developments each serve a different type of
12 household from the other [~~the developments are or will be located~~
13 ~~more than one linear mile apart~~]. [~~This subsection applies only to~~
14 ~~communities contained within counties with populations exceeding~~
15 ~~one million.~~]

16 SECTION 8. Section 2306.6710, Government Code, is amended
17 by amending Subsection (b) and adding Subsection (h) to read as
18 follows:

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 will include a project underwriting pro forma from the
27 permanent or construction lender;

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

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

8 (D) the size and quality of the units;

9 (E) the commitment of development funding by
10 local political subdivisions;

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

16 [~~(G)~~] the rent levels of the units;

17 (G) [~~(H)~~] the cost of the development by square
18 foot; and

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

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

1 limited partnership agreement.

2 (h) The department shall presume that the applicant has made
3 a good faith effort to obtain community participation and shall
4 award the applicant the total number of points that may be awarded
5 under Subsection (b)(1)(B) if the application includes a statement
6 that a neighborhood organization described by Subsection (b)(1)(B)
7 does not exist that is submitted by:

8 (1) the presiding officer or authorized
9 representative of the governing body of the municipality in which
10 the development is to be located; or

11 (2) the clerk of the county in which the development is
12 to be located if the development is to be located outside a
13 municipality.

14 SECTION 9. Section 2306.004, Government Code, is amended by
15 amending Subdivisions (4), (7), and (14) and adding Subdivisions
16 (4-a), (12-a), (23-a), (23-b), (26-a), (28-a), (28-b), (35), and
17 (36) to read as follows:

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

20 (4-a) "Development funding" means:

21 (A) a loan or grant; or

22 (B) an in-kind contribution, including a
23 donation of real property, a fee waiver for a building permit or for
24 water or sewer service, or a similar contribution that:

25 (i) provides an economic benefit; and

26 (ii) results in a quantifiable cost
27 reduction for the applicable development.

1 (7) "Elderly individual" means an individual 62 ~~[60]~~
2 years of age or older or of an age specified by the applicable
3 federal program.

4 (12-a) "Grant" means financial assistance that is
5 awarded in the form of money to a housing sponsor for a specific
6 purpose and that is not required to be repaid. For purposes of this
7 chapter, a grant includes a forgivable loan.

8 (14) "Housing sponsor" means~~+~~
9 ~~[(A)] an individual, [including an individual or~~
10 ~~family of low and very low income or family of moderate income,]~~
11 joint venture, partnership, limited partnership, trust, firm,
12 corporation, limited liability company, other form of business
13 organization, or cooperative that is approved by the department as
14 qualified to own, construct, acquire, rehabilitate, operate,
15 manage, or maintain a housing development, subject to the
16 regulatory powers of the department and other terms and conditions
17 in this chapter~~, or~~

18 ~~[(B) in an economically depressed or blighted~~
19 ~~area, or in a federally assisted new community located within a home~~
20 ~~rule municipality, the term may include an individual or family~~
21 ~~whose income exceeds the moderate income level if at least 90~~
22 ~~percent of the total mortgage amount available under a mortgage~~
23 ~~revenue bond issue is designated for individuals and families of~~
24 ~~low income or families of moderate income].~~

25 (23-a) "Neighborhood organization" means an
26 organization that is composed of persons living near one another
27 within the organization's defined boundaries for the neighborhood

1 and that has a primary purpose of working to maintain or improve the
2 general welfare of the neighborhood. A neighborhood organization
3 includes a homeowners' association or a property owners'
4 association.

5 (23-b) "New construction" means any construction to a
6 development or a portion of a development that does not meet the
7 definition of rehabilitation under this section.

8 (26-a) "Rehabilitation" means the improvement or
9 modification of an existing residential development through an
10 alteration, addition, or enhancement. The term includes the
11 demolition of an existing residential development and the
12 reconstruction of any development units, but does not include the
13 improvement or modification of an existing residential development
14 for the purpose of an adaptive reuse of the development.

15 (28-a) "Rural area" means an area that is located:

16 (A) outside the boundaries of a primary
17 metropolitan statistical area or a metropolitan statistical area;

18 (B) within the boundaries of a primary
19 metropolitan statistical area or a metropolitan statistical area,
20 if the statistical area has a population of 25,000 or less and does
21 not share a boundary with an urban area; or

22 (C) in an area that is eligible for funding by the
23 Texas Rural Development Office of the United States Department of
24 Agriculture, other than an area that is located in a municipality
25 with a population of more than 50,000.

26 (28-b) "Rural development" means a development or
27 proposed development that is located in a rural area, other than

1 rural new construction developments with more than 80 units.

2 (35) "Uniform application and funding cycle" means an
3 application and funding cycle established under Section 2306.1111.

4 (36) "Urban area" means the area that is located
5 within the boundaries of a primary metropolitan statistical area or
6 a metropolitan statistical area other than an area described by
7 Subdivision (28-a)(B) or eligible for funding as described by
8 Subdivision (28-a)(C).

9 SECTION 10. Sections 2306.032(b) through (e), Government
10 Code, are amended to read as follows:

11 (b) The board shall keep ~~[complete]~~ minutes and complete
12 transcripts of board meetings. The department shall post the
13 transcripts on its website and shall otherwise maintain all
14 accounts, minutes, and other records related to the meetings ~~[shall~~
15 ~~be maintained by the department]~~.

16 (c) All materials provided to the board ~~[in the possession~~
17 ~~of the department]~~ that are relevant to a matter proposed for
18 discussion at a board meeting must be posted on the department's
19 website not later than the third day before the date of the
20 meeting ~~[, made available in hard-copy format at the department,~~
21 ~~filed with the secretary of state for publication by reference in~~
22 ~~the Texas Register, and disseminated by any other means required by~~
23 ~~this chapter or by Chapter 551]~~.

24 (d) Any materials made available to the board by the
25 department at a board meeting ~~[The materials described by~~
26 ~~Subsection (c)]~~ must be made available in hard copy format to the
27 members of the public in attendance at ~~[as required by Subsection~~

1 ~~(c) not later than the seventh day before the date of]~~ the meeting.
2 ~~[The board may not consider at the meeting any material that is not~~
3 ~~made available to the public by the date required by this~~
4 ~~subsection.]~~

5 (e) The board shall conduct its meetings in accordance with
6 Chapter 551, except as otherwise required by this chapter ~~[The~~
7 ~~agenda for a board meeting must state each project the staff is~~
8 ~~recommending for assistance by the department].~~

9 SECTION 11. Section 2306.039, Government Code, is amended
10 to read as follows:

11 Sec. 2306.039. OPEN MEETINGS AND OPEN RECORDS. (a) Except
12 as provided by Subsections ~~[Subsection]~~ (b) and (c), the department
13 and the Texas State Affordable Housing Corporation are subject to
14 Chapters 551 and 552.

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

27 (c) The department's internal auditor, fraud prevention

1 coordinator, or ethics advisor may meet in an executive session of
2 the board to discuss issues related to fraud, waste, or abuse.

3 SECTION 12. Subchapter B, Chapter 2306, Government Code, is
4 amended by adding Sections 2306.040 through 2306.0503 to read as
5 follows:

6 Sec. 2306.040. DEPARTMENT PARTICIPATION IN LEGISLATIVE
7 HEARING. On request, the department shall participate in any
8 public hearing conducted by a legislator to discuss a rule to be
9 adopted by the department.

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

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

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

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

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

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

23 (2) the history of previous violations;

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

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

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

27 (c) The board by rule or through procedures adopted by the

1 board and published in the Texas Register shall develop a
2 standardized penalty schedule based on the criteria listed in
3 Subsection (b).

4 Sec. 2306.043. REPORT AND NOTICE OF VIOLATION AND PENALTY.

5 (a) If the director determines that a violation occurred, the
6 director shall issue to the board a report stating:

7 (1) the facts on which the determination is based; and

8 (2) the director's recommendation on the imposition of
9 the penalty, including a recommendation on the amount of the
10 penalty.

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

14 (c) The notice must:

15 (1) include a brief summary of the alleged violation;

16 (2) state the amount of the recommended penalty; and

17 (3) inform the person of the person's right to a
18 hearing before the board on the occurrence of the violation, the
19 amount of the penalty, or both.

20 Sec. 2306.044. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
21 Not later than the 20th day after the date the person receives the
22 notice, the person in writing may:

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

25 (2) make a request for a hearing before the board on
26 the occurrence of the violation, the amount of the penalty, or both.

27 (b) If the person accepts the determination and recommended

1 penalty of the director, the board by order shall approve the
2 determination and impose the recommended penalty.

3 Sec. 2306.045. HEARING. (a) If the person requests a
4 hearing before the board or fails to respond in a timely manner to
5 the notice, the director shall set a hearing and give written notice
6 of the hearing to the person.

7 (b) The board shall hold the hearing and make findings of
8 fact and conclusions of law about the occurrence of the violation
9 and the amount of a proposed penalty.

10 Sec. 2306.046. DECISION BY BOARD. (a) Based on the
11 findings of fact and conclusions of law, the board by order may:

12 (1) find that a violation occurred and impose a
13 penalty; or

14 (2) find that a violation did not occur.

15 (b) The notice of the board's order given to the person must
16 include a statement of the right of the person to judicial review of
17 the order.

18 Sec. 2306.047. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
19 Not later than the 30th day after the date the board's order becomes
20 final, the person shall:

21 (1) pay the penalty; or

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

24 Sec. 2306.048. STAY OF ENFORCEMENT OF PENALTY. (a) Within
25 the 30-day period prescribed by Section 2306.047, a person who
26 files a petition for judicial review may:

27 (1) stay enforcement of the penalty by:

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

3 (B) giving the court a supersedeas bond approved
4 by the court that:

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

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

8 (2) request the court to stay enforcement of the
9 penalty by:

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

13 (B) sending a copy of the affidavit to the
14 director by certified mail.

15 (b) If the director receives a copy of an affidavit under
16 Subsection (a)(2), the director may file with the court, not later
17 than the fifth day after the date the copy is received, a contest to
18 the affidavit.

19 (c) The court shall hold a hearing on the facts alleged in
20 the affidavit as soon as practicable and shall stay the enforcement
21 of the penalty on finding that the alleged facts are true. The
22 person who files an affidavit has the burden of proving that the
23 person is financially unable to pay the penalty and to give a
24 supersedeas bond.

25 Sec. 2306.049. DECISION BY COURT. (a) Judicial review of a
26 board order imposing an administrative penalty is by trial de novo.

27 (b) If the court sustains the finding that a violation

1 occurred, the court may uphold or reduce the amount of the penalty
2 and order the person to pay the full or reduced amount of the
3 penalty.

4 (c) If the court does not sustain the finding that a
5 violation occurred, the court shall order that a penalty is not owed
6 and may award the person reasonable attorney's fees.

7 Sec. 2306.050. REMITTANCE OF PENALTY AND INTEREST. (a) If
8 the person paid the penalty and if the amount of the penalty is
9 reduced or the penalty is not upheld by the court, the court shall
10 order, when the court's judgment becomes final, that the
11 appropriate amount plus accrued interest be remitted to the person.

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

14 (c) The interest shall be paid for the period beginning on
15 the date the penalty is paid and ending on the date the penalty is
16 remitted.

17 Sec. 2306.0501. RELEASE OF BOND. (a) If the person gave a
18 supersedeas bond and the penalty is not upheld by the court, the
19 court shall order, when the court's judgment becomes final, the
20 release of the bond.

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

24 Sec. 2306.0502. COLLECTION OF PENALTY. (a) If the person
25 does not pay the penalty and the enforcement of the penalty is not
26 stayed, the penalty may be collected.

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

1 Sec. 2306.0503. ADMINISTRATIVE PROCEDURE. A proceeding to
2 impose the penalty is considered to be a contested case under
3 Chapter 2001.

4 SECTION 13. Section 2306.054, Government Code, is amended
5 by amending Subsection (a) and adding Subsection (c) to read as
6 follows:

7 (a) The governor or director may appoint special advisory
8 councils to:

9 (1) assist the department in reviewing [~~adopting~~]
10 basic policy; or

11 (2) offer advice on technical aspects of certain
12 programs.

13 (c) A special advisory council is subject to Chapter 2110,
14 including Section 2110.008(a) but not including Section
15 2110.008(b).

16 SECTION 14. Section 2306.057(a), Government Code, is
17 amended to read as follows:

18 (a) Before the board approves any project application
19 submitted under this chapter, the department, through the division
20 with responsibility for compliance matters, shall:

21 (1) assess:

22 (A) the compliance history in this state of the
23 applicant and any affiliate of the applicant with respect to all
24 applicable requirements; and

25 (B) the compliance issues associated with the
26 proposed project; and

27 (2) provide to the board a written report regarding

1 the results of the assessments described by Subdivision (1).

2 SECTION 15. Section 2306.069(a), Government Code, is
3 amended to read as follows:

4 (a) With the approval of the attorney general, the
5 department may hire appropriate [~~The department shall obtain and~~
6 ~~evaluate information regarding the affirmative action policies and~~
7 ~~practices of proposed outside legal counsel. The department must~~
8 ~~include the evaluation in a request to the attorney general for]~~
9 outside legal counsel.

10 SECTION 16. Section 2306.070, Government Code, is amended
11 to read as follows:

12 Sec. 2306.070. BUDGET. (a) In preparing the department's
13 legislative appropriations request, the department shall also
14 prepare:

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

18 (2) an operating budget for the housing finance
19 division; and

20 (3) an explanation of any projected increase or
21 decrease of three percent or more in fees estimated for the
22 operating budget as compared to the fees received in the most recent
23 budget year.

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

27 SECTION 17. Sections 2306.072(a) and (b), Government Code,

1 are amended to read as follows:

2 (a) Not later than March [~~December~~] 18 of each year, the
3 director shall prepare and submit to the board an annual report of
4 the department's housing activities for the preceding year.

5 (b) Not later than the 30th day after the date the board
6 receives and approves the report, the board shall submit the report
7 to the governor, lieutenant governor, speaker of the house of
8 representatives, and members of any legislative oversight
9 committee.

10 SECTION 18. Sections 2306.0721(a) and (b), Government Code,
11 are amended to read as follows:

12 (a) Not later than March [~~December~~] 18 of each year, the
13 director shall prepare and submit to the board an integrated state
14 low income housing plan for the next year.

15 (b) Not later than the 30th day after the date the board
16 receives and approves the plan, the board shall submit the plan to
17 the governor, lieutenant governor, and the speaker of the house of
18 representatives.

19 SECTION 19. Section 2306.0723, Government Code, is amended
20 to read as follows:

21 Sec. 2306.0723. REPORT CONSIDERED AS RULE [~~PUBLIC~~
22 ~~PARTICIPATION REQUIREMENTS~~]. [~~(a)~~] The department shall consider
23 the annual low income housing report to be a rule and in developing
24 the report shall follow rulemaking procedures required by Chapter
25 2001 [~~hold public hearings on the annual state low income housing~~
26 ~~plan and report before the director submits the report and the plan~~
27 ~~to the board. The department shall provide notice of the public~~

1 ~~hearings as required by Section 2306.0661. The published notice~~
2 ~~must include a summary of the report and plan. The department shall~~
3 ~~accept comments on the report and plan at the public hearings and~~
4 ~~for at least 30 days after the date of the publication of the notice~~
5 ~~of the hearings].~~

6 ~~[(b) In addition to any other necessary topics relating to~~
7 ~~the report and the plan, each public hearing required by Subsection~~
8 ~~(a) must address:~~

- 9 ~~[(1) infrastructure needs,~~
10 ~~[(2) home ownership programs,~~
11 ~~[(3) rental housing programs,~~
12 ~~[(4) housing repair programs, and~~
13 ~~[(5) the concerns of individuals with special needs,~~
14 ~~as defined by Section 2306.511.~~

15 ~~[(c) The board shall hold a public hearing on the state low~~
16 ~~income housing report and plan before the board submits the report~~
17 ~~and the plan to the governor, lieutenant governor, speaker of the~~
18 ~~house of representatives, and members of the legislature.~~

19 ~~[(d) The board shall include with the report and the plan~~
20 ~~the board submits to the governor, lieutenant governor, speaker of~~
21 ~~the house of representatives, members of the legislature, and~~
22 ~~members of the advisory board formed by the department to advise on~~
23 ~~the consolidated plan a written summary of public comments on the~~
24 ~~report and the plan.]~~

25 SECTION 20. Section 2306.082, Government Code, is amended
26 by amending Subsections (b) and (c) and adding Subsections (d),
27 (e), and (f) to read as follows:

1 (b) The department's procedures relating to alternative
2 dispute resolution must designate [~~conform, to the extent possible,~~
3 ~~to any model guidelines issued by~~] the State Office of
4 Administrative Hearings as the primary mediator and, to the extent
5 practicable, conform to any guidelines or rules issued by that
6 office [~~for the use of alternative dispute resolution by state~~
7 ~~agencies~~].

8 (c) The department shall designate a [~~trained~~] person
9 employed by or appointed to the office of the director but who is
10 not in the legal division to coordinate and process requests for the
11 alternative dispute resolution procedures. The person must receive
12 training from an independent source in alternative dispute
13 resolution not later than the 180th day after the date the person
14 was designated to coordinate and process requests for the
15 alternative dispute resolution procedures [+

16 [~~(1) coordinate the implementation of the policy~~
17 ~~adopted under Subsection (a),~~

18 [~~(2) serve as a resource for any training needed to~~
19 ~~implement the procedures for negotiated rulemaking or alternative~~
20 ~~dispute resolution, and~~

21 [~~(3) collect data concerning the effectiveness of~~
22 ~~those procedures, as implemented by the department~~].

23 (d) The department shall notify a person requesting the
24 alternative dispute resolution procedures that:

25 (1) an alternative dispute resolution decision is not
26 binding on the state; and

27 (2) the department will mediate in good faith.

1 (e) The alternative dispute resolution procedures may be
2 requested before the board makes a final decision.

3 (f) Notwithstanding any other provision of this section,
4 the alternative dispute resolution procedures may not be used to
5 unnecessarily delay a proceeding under this chapter.

6 SECTION 21. Section 2306.092, Government Code, is amended
7 to read as follows:

8 Sec. 2306.092. DUTIES REGARDING CERTAIN PROGRAMS CREATED
9 UNDER FEDERAL LAW. The department shall administer, as appropriate
10 under policies established by the board:

11 (1) state responsibilities for programs created under
12 the federal Economic Opportunity Act of 1964 (42 U.S.C. Section
13 2701 et seq.);

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

16 (3) other federal acts creating economic opportunity
17 programs assigned to the department.

18 SECTION 22. Section 2306.1111, Government Code, is amended
19 to read as follows:

20 Sec. 2306.1111. UNIFORM APPLICATION AND FUNDING CYCLES
21 [~~CYCLE~~]. (a) Notwithstanding any other state law and to the extent
22 consistent with federal law, the department shall establish [~~a~~]
23 uniform application and funding cycles [~~cycle~~] for all competitive
24 single-family and multifamily housing programs administered by the
25 department under this chapter, other than programs involving the
26 issuance of private activity bonds.

27 (b) Wherever possible, the department shall use uniform

1 threshold requirements for single-family and multifamily housing
2 program applications, including uniform threshold requirements
3 relating to market studies and environmental reports.

4 SECTION 23. Sections 2306.1112(b), (c), and (d), Government
5 Code, are amended to read as follows:

6 (b) The advisory committee must include representatives
7 from [is composed of the director, the administrator of each of the
8 department's programs, and one representative from each of] the
9 department's [~~planning,~~] underwriting[~~,~~] and compliance functions
10 and from the divisions responsible for administering federal
11 housing funds provided to the state under the Cranston-Gonzalez
12 National Affordable Housing Act (42 U.S.C. Section 12701 et seq.)
13 and for administering low income housing tax credits.

14 (c) [~~The advisory committee shall develop the funding~~
15 ~~priorities required by Section 2306.111(g) and shall make funding~~
16 ~~and allocation recommendations to the board based on the ability of~~
17 ~~applicants to meet those priorities.~~

18 [~~(d)~~] The advisory committee is not subject to Chapter 2110.

19 SECTION 24. Section 2306.1113, Government Code, is amended
20 by amending Subsections (a), (a-1), and (b) and adding Subsection
21 (c) to read as follows:

22 (a) During the period beginning on the date [~~a~~] project
23 applications are [application is] filed in an application cycle and
24 ending on the date the board makes a final decision with respect to
25 the [any] approval of any [that] application in that cycle, a member
26 of the board may not communicate with the following persons:

27 (1) an [the] applicant or a related party, as defined

1 by state law, including board rules, and federal law; and

2 (2) any person who is:

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

5 (i) a general partner or contractor; and

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

8 (B) employed as a consultant, lobbyist, or
9 attorney by an ~~[the]~~ applicant or a related party.

10 (a-1) Subject to Subsection (a-2), during the period
11 beginning on the date ~~[a]~~ project applications are ~~[application is]~~
12 filed in an application cycle and ending on the date the board makes
13 a final decision with respect to the ~~[any]~~ approval of any ~~[that]~~
14 application in that cycle, an employee of the department may
15 communicate about an ~~[the]~~ application with the following persons:

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

18 (2) any person who is:

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

21 (i) a general partner or contractor; and

22 (ii) a principal or affiliate of a general
23 partner or contractor; or

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

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) during [~~at~~] any board
2 meeting or public hearing held with respect to the application, but
3 not during a recess or other nonrecord portion of the meeting or
4 hearing.

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

10 SECTION 25. Section 2306.185(b), Government Code, is
11 amended to read as follows:

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

19 SECTION 26. Section 2306.229, Government Code, is amended
20 by adding Subsection (c) to read as follows:

21 (c) For each loan made for the development of multifamily
22 housing with funds provided to the state under the
23 Cranston-Gonzalez National Affordable Housing Act (42 U.S.C.
24 Section 12701 et seq.), the department shall obtain a mortgagee's
25 title policy in the amount of the loan. The department may not
26 designate a specific title insurance company to provide the
27 mortgagee title policy or require the borrower to provide the

1 policy from a specific title insurance company. The borrower shall
2 select the title insurance company to close the loan and to provide
3 the mortgagee title policy.

4 SECTION 27. Section 2306.359(a), Government Code, is
5 amended to read as follows:

6 (a) In evaluating an application for an issuance of private
7 activity bonds, the department shall score and rank the application
8 using a point system based on criteria that are adopted by the
9 department, including criteria[+]

10 [~~(1)~~] regarding:

11 (1) [~~(A)~~] the income levels of tenants of the
12 development, consistent with the funding priorities provided by
13 Section 1372.0321;

14 (2) [~~(B)~~] the rent levels of the units;

15 (3) [~~(C)~~] the level of community support for the
16 application;

17 (4) [~~(D)~~] the period of guaranteed affordability for
18 low income tenants;

19 (5) [~~(E)~~] the cost per unit of the development;

20 (6) [~~(F)~~] the size, quality, and amenities of the
21 units;

22 (7) [~~(G)~~] the services to be provided to tenants of
23 the development; and

24 (8) [~~(H)~~] ~~the commitment of development funding by~~
25 ~~local political subdivisions that enables additional units for~~
26 ~~individuals and families of very low income, and~~

27 [~~(I)~~] other criteria as developed by the board[+]

1 and

2 ~~[(2) imposing penalties on applicants who have~~
3 ~~requested extensions of department deadlines relating to~~
4 ~~developments supported by an issuance of private activity bonds~~
5 ~~made in the application round preceding the current round].~~

6 SECTION 28. Section 2306.514(a), Government Code, is
7 amended to read as follows:

8 (a) if a person is awarded state or federal funds by the
9 department to construct single family affordable housing for
10 individuals and families of low and very low income, the affordable
11 housing identified on the person's funding application must be
12 constructed so that:

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

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

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

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

19 (A) each interior door is at least a standard
20 32-inch door, unless the door provides access only to a closet of
21 less than 15 square feet in area;

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

24 (C) each bathroom wall is reinforced for
25 potential installation of grab bars;

26 (D) each electrical panel ~~[or breaker box]~~, light
27 switch, or thermostat is not higher than 48 inches above the floor;

1 and

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

4 (3) if the applicable building code or codes do not
5 prescribe another location for the breaker boxes, each breaker box
6 is located not higher than 48 inches above the floor inside the
7 building on the first floor.

8 SECTION 29. Subchapter DD, Chapter 2306, Government Code,
9 is amended by adding Section 2306.6735 to read as follows:

10 Sec. 2306.6735. REQUIRED LEASE AGREEMENT PROVISIONS. A
11 lease agreement with a tenant in a development supported with a
12 housing tax credit allocation must:

13 (1) include any applicable federal or state standards
14 identified by department rule that relate to the termination or
15 nonrenewal of the lease agreement; and

16 (2) be consistent with state and federal law.

17 SECTION 30. Subchapter DD, Chapter 2306, Government Code,
18 is amended by adding Section 2306.67171 to read as follows:

19 Sec. 2306.67171. ELECTRONIC MAIL NOTIFICATION SERVICE. (a)
20 The department shall maintain an electronic mail notification
21 service to which any person in this state may electronically
22 subscribe to receive information concerning the status of
23 pre-applications and applications under this subchapter.

24 (b) The electronic mail notification service maintained
25 under Subsection (a) must:

26 (1) allow a subscriber to request for a zip code
27 notification of:

1 (A) the filing of any pre-application or
2 application concerning a development that is or will be located in
3 the zip code;

4 (B) the posting of the board materials for board
5 approval of a list of approved applications or the issuance of final
6 allocation commitments for applications described by paragraph
7 (A); and

8 (C) any public hearing to be held concerning an
9 application or pre-application described by Paragraph (A); and

10 (2) respond to a subscriber via electronic mail not
11 later than the later of:

12 (A) the 14th day after the date the department
13 receives notice of an event described by Subdivision (1) or;

14 (B) if applicable, the date or dates specified by
15 Section 2306.6717(a).

16 (c) The department may include in an electronic mail
17 notification sent to a subscriber any applicable information
18 described by Section 2306.6717.

19 SECTION 31. (a) The Texas Department of Housing and
20 Community Affairs shall adopt the rules required by Section
21 2306.1073, Government Code, as added by this Act, not later than
22 December 1, 2007.

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

26 SECTION 32. The changes in law made by this Act relating to
27 the evaluation of applications for financial assistance

1 administered by the Texas Department of Housing and Community
2 Affairs apply only to an application submitted on or after the
3 effective date of this Act. An application submitted before the
4 effective date of this Act is governed by the law in effect when the
5 application was submitted, and the former law is continued in
6 effect for that purpose.

7 SECTION 33. The change in law made by this Act applies only
8 to an application for a low income housing tax credit filed on or
9 after the effective date of this Act. An application filed before
10 the effective date of this Act is governed by the law in effect on
11 the date the application was filed, and the former law is continued
12 in effect for that purpose.

13 SECTION 34. The following provisions of the Government Code
14 are repealed:

15 (1) Sections 2306.021, 2306.062, 2306.0631,
16 2306.0661, 2306.0721(h), 2306.079, 2306.081(e), 2306.254,
17 2306.257(b), (c), and (d), and 2306.806;

18 (2) Subchapter N, Chapter 2306;

19 (3) Subchapter O, Chapter 2306;

20 (4) Subchapter BB, Chapter 2306;

21 (5) Subchapter CC, Chapter 2306;

22 (6) Subchapter EE, Chapter 2306; and

23 (7) Subsection (g), Section 2306.6710, Government
24 Code, is repealed.

25 SECTION 35. It is the intent of the legislature that the
26 passage by the 80th Legislature, Regular Session, 2007, of another
27 bill that amends Chapter 2306, Government Code, and the amendments

1 made by this Act shall be harmonized, if possible, as provided by
2 Section 311.025(b), Government Code, so that effect may be given to
3 each. If the amendments made by this Act to Chapter 2306,
4 Government Code, and the amendments made to Chapter 2306,
5 Government Code, by any other bill are irreconcilable, it is the
6 intent of the legislature that this Act prevail, regardless of the
7 relative dates of enactment of this Act and the other bill or bills,
8 but only to the extent that any differences are irreconcilable.

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