

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

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-a), (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 agency.

(4-a) "Development funding" means:

(A) a loan or grant; or

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

(i) provides an economic benefit; and

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

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

(12-a) "Grant" means financial assistance that is awarded in the form of money to a housing sponsor for a specific purpose and that is not required to be repaid. For purposes of this

1 chapter, a grant includes a forgivable loan.

2 (14) "Housing sponsor" means[+]

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

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

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

26 (23-b) "New construction" means any construction to a  
27 development or a portion of a development that does not meet the

1 definition of rehabilitation under this section.

2 (26-a) "Rehabilitation" means the improvement or  
3 modification of an existing residential development through an  
4 alteration, addition, or enhancement. The term includes the  
5 demolition of an existing residential development and the  
6 reconstruction of any development units, but does not include the  
7 improvement or modification of an existing residential development  
8 for the purpose of an adaptive reuse of the development.

9 (28-a) "Rural area" means an area that is located:

10 (A) outside the boundaries of a primary  
11 metropolitan statistical area or a metropolitan statistical area;

12 (B) within the boundaries of a primary  
13 metropolitan statistical area or a metropolitan statistical area,  
14 if the statistical area has a population of 25,000 or less and does  
15 not share a boundary with an urban area; or

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

20 (28-b) "Rural development" means a development or  
21 proposed development that is located in a rural area, other than  
22 rural new construction developments with more than 80 units.

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

25 (36) "Urban area" means the area that is located  
26 within the boundaries of a primary metropolitan statistical area or  
27 a metropolitan statistical area other than an area described by

1 Subdivision (28-a)(B) or eligible for funding as described by  
2 Subdivision (28-a)(C).

3 SECTION 2. Sections 2306.032(b) through (e), Government  
4 Code, are amended to read as follows:

5 (b) The board shall keep ~~[complete]~~ minutes and complete  
6 transcripts of board meetings. The department shall post the  
7 transcripts on its website and shall otherwise maintain all  
8 accounts, minutes, and other records related to the meetings ~~[shall~~  
9 ~~be maintained by the department]~~.

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

18 (d) Any materials made available to the board by the  
19 department at a board meeting ~~[The materials described by~~  
20 ~~Subsection (c)]~~ must be made available in hard copy format to the  
21 members of the public in attendance at ~~[as required by Subsection~~  
22 ~~(c) not later than the seventh day before the date of]~~ the meeting.  
23 ~~[The board may not consider at the meeting any material that is not~~  
24 ~~made available to the public by the date required by this~~  
25 ~~subsection.]~~

26 (e) The board shall conduct its meetings in accordance with  
27 Chapter 551, except as otherwise required by this chapter ~~[The~~

1 ~~agenda for a board meeting must state each project the staff is~~  
2 ~~recommending for assistance by the department].~~

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

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

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

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

24 SECTION 4. Subchapter B, Chapter 2306, Government Code, is  
25 amended by adding Sections 2306.040 through 2306.0503 to read as  
26 follows:

27 Sec. 2306.040. DEPARTMENT PARTICIPATION IN LEGISLATIVE

1 HEARING. On request, the department shall participate in any  
2 public hearing conducted by a legislator to discuss a rule to be  
3 adopted by the department.

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

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

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

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

13 (A) the nature, circumstance, extent, and  
14 gravity of any prohibited act; and

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

17 (2) the history of previous violations;

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

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

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

21 (c) The board by rule or through procedures adopted by the  
22 board and published in the Texas Register shall develop a  
23 standardized penalty schedule based on the criteria listed in  
24 Subsection (b).

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

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

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

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

8           (c) The notice must:

9           (1) include a brief summary of the alleged violation;  
10           (2) state the amount of the recommended penalty; and  
11           (3) inform the person of the person's right to a  
12 hearing before the board on the occurrence of the violation, the  
13 amount of the penalty, or both.

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

17           (1) accept the determination and recommended penalty  
18 of the director; or

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

21           (b) If the person accepts the determination and recommended  
22 penalty of the director, the board by order shall approve the  
23 determination and impose the recommended penalty.

24           Sec. 2306.045. HEARING. (a) If the person requests a  
25 hearing before the board or fails to respond in a timely manner to  
26 the notice, the director shall set a hearing and give written notice  
27 of the hearing to the person.

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

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

6                   (1) find that a violation occurred and impose a  
7 penalty; or

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

9           (b) The notice of the board's order given to the person must  
10 include a statement of the right of the person to judicial review of  
11 the order.

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

15                   (1) pay the penalty; or

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

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

21                   (1) stay enforcement of the penalty by:

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

24                           (B) giving the court a supersedeas bond approved  
25 by the court that:

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

27                                   (ii) is effective until all judicial review



1 of the board's order is final; or

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

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

7 (B) sending a copy of the affidavit to the  
8 director by certified mail.

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

13 (c) The court shall hold a hearing on the facts alleged in  
14 the affidavit as soon as practicable and shall stay the enforcement  
15 of the penalty on finding that the alleged facts are true. The  
16 person who files an affidavit has the burden of proving that the  
17 person is financially unable to pay the penalty and to give a  
18 supersedeas bond.

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

21 (b) If the court sustains the finding that a violation  
22 occurred, the court may uphold or reduce the amount of the penalty  
23 and order the person to pay the full or reduced amount of the  
24 penalty.

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

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

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

8       (c) The interest shall be paid for the period beginning on  
9 the date the penalty is paid and ending on the date the penalty is  
10 remitted.

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

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

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

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

22       Sec. 2306.0503. ADMINISTRATIVE PROCEDURE. A proceeding to  
23 impose the penalty is considered to be a contested case under  
24 Chapter 2001.

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

1 (a) The governor or director may appoint special advisory  
2 councils to:

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

5 (2) offer advice on technical aspects of certain  
6 programs.

7 (c) A special advisory council is subject to Chapter 2110,  
8 including Section 2110.008(a) but not including Section  
9 2110.008(b).

10 SECTION 6. Section 2306.057(a), Government Code, is amended  
11 to read as follows:

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

15 (1) assess:

16 (A) the compliance history in this state of the  
17 applicant and any affiliate of the applicant with respect to all  
18 applicable requirements; and

19 (B) the compliance issues associated with the  
20 proposed project; and

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

23 SECTION 7. Section 2306.069(a), Government Code, is amended  
24 to read as follows:

25 (a) With the approval of the attorney general, the  
26 department may hire appropriate [~~The department shall obtain and~~  
27 ~~evaluate information regarding the affirmative action policies and~~

1 ~~practices of proposed outside legal counsel. The department must~~  
2 ~~include the evaluation in a request to the attorney general for]~~  
3 outside legal counsel.

4 SECTION 8. Section 2306.070, Government Code, is amended to  
5 read as follows:

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

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

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

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

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

21 SECTION 9. Sections 2306.072(a) and (b), Government Code,  
22 are amended to read as follows:

23 (a) Not later than March [~~December~~] 18 of each year, the  
24 director shall prepare and submit to the board an annual report of  
25 the department's 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 SECTION 10. Sections 2306.0721(a) and (b), Government Code,  
5 are amended to read as follows:

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

9 (b) Not later than the 30th day after the date the board  
10 receives and approves the plan, the board shall submit the plan to  
11 the governor, lieutenant governor, and the speaker of the house of  
12 representatives.

13 SECTION 11. Section 2306.0723, Government Code, is amended  
14 to read as follows:

15 Sec. 2306.0723. REPORT CONSIDERED AS RULE [~~PUBLIC~~  
16 ~~PARTICIPATION REQUIREMENTS~~]. [~~(a)~~] The department shall consider  
17 the annual low income housing report to be a rule and in developing  
18 the report shall follow rulemaking procedures required by Chapter  
19 2001 [~~hold public hearings on the annual state low income housing~~  
20 ~~plan and report before the director submits the report and the plan~~  
21 ~~to the board. The department shall provide notice of the public~~  
22 ~~hearings as required by Section 2306.0661. The published notice~~  
23 ~~must include a summary of the report and plan. The department shall~~  
24 ~~accept comments on the report and plan at the public hearings and~~  
25 ~~for at least 30 days after the date of the publication of the notice~~  
26 ~~of the hearings].~~

27 [~~(b)~~ ~~In addition to any other necessary topics relating to~~

1 ~~the report and the plan, each public hearing required by Subsection~~  
2 ~~(a) must address:~~

3           ~~[(1) infrastructure needs,~~  
4           ~~[(2) home ownership programs,~~  
5           ~~[(3) rental housing programs,~~  
6           ~~[(4) housing repair programs, and~~  
7           ~~[(5) the concerns of individuals with special needs,~~  
8 ~~as defined by Section 2306.511.~~

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

13           ~~[(d) The board shall include with the report and the plan~~  
14 ~~the board submits to the governor, lieutenant governor, speaker of~~  
15 ~~the house of representatives, members of the legislature, and~~  
16 ~~members of the advisory board formed by the department to advise on~~  
17 ~~the consolidated plan a written summary of public comments on the~~  
18 ~~report and the plan.]~~

19           SECTION 12. Section 2306.082, Government Code, is amended  
20 by amending Subsections (b) and (c) and adding Subsections (d),  
21 (e), and (f) to read as follows:

22           (b) The department's procedures relating to alternative  
23 dispute resolution must designate ~~[conform, to the extent possible,~~  
24 ~~to any model guidelines issued by]~~ the State Office of  
25 Administrative Hearings as the primary mediator and, to the extent  
26 practicable, conform to any guidelines or rules issued by that  
27 office ~~[for the use of alternative dispute resolution by state~~

1 ~~agencies~~].

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

10 [~~(1) coordinate the implementation of the policy~~  
11 ~~adopted under Subsection (a),~~

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

15 [~~(3) collect data concerning the effectiveness of~~  
16 ~~these procedures, as implemented by the department].~~

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

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

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

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

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

27 SECTION 13. Section 2306.092, Government Code, is amended

1 to read as follows:

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

5 (1) state responsibilities for programs created under  
6 the federal Economic Opportunity Act of 1964 (42 U.S.C. Section  
7 2701 et seq.);

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

10 (3) other federal acts creating economic opportunity  
11 programs assigned to the department.

12 SECTION 14. Section 2306.1111, Government Code, is amended  
13 to read as follows:

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

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

25 SECTION 15. Sections 2306.1112(b), (c), and (d), Government  
26 Code, are amended to read as follows:

27 (b) The advisory committee must include representatives



1 ~~from [is composed of the director, the administrator of each of the~~  
2 ~~department's programs, and one representative from each of]~~ the  
3 department's ~~[planning,~~ underwriting~~]~~ and compliance functions  
4 and from the divisions responsible for administering federal  
5 housing funds provided to the state under the Cranston-Gonzalez  
6 National Affordable Housing Act (42 U.S.C. Section 12701 et seq.)  
7 and for administering low income housing tax credits.

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

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

13 SECTION 16. Section 2306.1113, Government Code, is amended  
14 by amending Subsections (a), (a-1), and (b) and adding Subsection  
15 (c) to read as follows:

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

21 (1) an [the] applicant or a related party, as defined  
22 by state law, including board rules, and federal law; and

23 (2) any person who is:

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

26 (i) a general partner or contractor; and

27 (ii) a principal or affiliate of a general

1 partner or contractor; or

2 (B) employed as a consultant, lobbyist, or  
3 attorney by an ~~the~~ applicant or a related party.

4 (a-1) Subject to Subsection (a-2), during the period  
5 beginning on the date ~~a~~ project applications are ~~application is~~  
6 filed in an application cycle and ending on the date the board makes  
7 a final decision with respect to the ~~any~~ approval of any ~~that~~  
8 application in that cycle, an employee of the department may  
9 communicate about an ~~the~~ application with the following persons:

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

12 (2) any person who is:

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

15 (i) a general partner or contractor; and

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

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

20 (b) Notwithstanding Subsection (a) or (a-1), a board member  
21 or department employee may communicate without restriction with a  
22 person listed in Subsection (a) or (a-1) during ~~at~~ any board  
23 meeting or public hearing held with respect to the application, but  
24 not during a recess or other nonrecord portion of the meeting or  
25 hearing.

26 (c) Subsection (a) does not prohibit the board from  
27 participating in social events at which a person with whom

1 communications are prohibited may or will be present, provided that  
2 all matters related to applications to be considered by the board  
3 will not be discussed.

4 SECTION 17. Section 2306.185(b), Government Code, is  
5 amended to read as follows:

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

13 SECTION 18. Section 2306.229, Government Code, is amended  
14 by adding Subsection (c) to read as follows:

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

25 SECTION 19. Section 2306.359(a), Government Code, is  
26 amended to read as follows:

27 (a) In evaluating an application for an issuance of private

1 activity bonds, the department shall score and rank the application  
2 using a point system based on criteria that are adopted by the  
3 department, including criteria[+

4 ~~(1)~~ regarding:

5 (1) ~~(A)~~ the income levels of tenants of the  
6 development, consistent with the funding priorities provided by  
7 Section 1372.0321;

8 (2) ~~(B)~~ the rent levels of the units;

9 (3) ~~(C)~~ the level of community support for the  
10 application;

11 (4) ~~(D)~~ the period of guaranteed affordability for  
12 low income tenants;

13 (5) ~~(E)~~ the cost per unit of the development;

14 (6) ~~(F)~~ the size, quality, and amenities of the  
15 units;

16 (7) ~~(G)~~ the services to be provided to tenants of  
17 the development; and

18 (8) ~~(H) the commitment of development funding by~~  
19 ~~local political subdivisions that enables additional units for~~  
20 ~~individuals and families of very low income, and~~

21 ~~(I)~~ other criteria as developed by the board[+  
22 and

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

27 SECTION 20. Section 2306.514(a), Government Code, is

1 amended to read as follows:

2 (a) If a person is awarded state or federal funds by the  
3 department to construct single family affordable housing for  
4 individuals and families of low and very low income, the affordable  
5 housing identified on the person's funding application must be  
6 constructed so that:

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

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

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

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

13 (A) each interior door is at least a standard  
14 32-inch door, unless the door provides access only to a closet of  
15 less than 15 square feet in area;

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

18 (C) each bathroom wall is reinforced for  
19 potential installation of grab bars;

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

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

25 (3) if the applicable building code or codes do not  
26 prescribe another location for the breaker boxes, each breaker box  
27 is located not higher than 48 inches above the floor inside the

1 building on the first floor.

2 SECTION 21. Subchapter DD, Chapter 2306, Government Code,  
3 is amended by adding Section 2306.6735 to read as follows:

4 Sec. 2306.6735. REQUIRED LEASE AGREEMENT PROVISIONS. A  
5 lease agreement with a tenant in a development supported with a  
6 housing tax credit allocation must:

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

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

11 SECTION 22. Subchapter DD, Chapter 2306, Government Code,  
12 is amended by adding Section 2306.67171 to read as follows:

13 Sec. 2306.67171. ELECTRONIC MAIL NOTIFICATION SERVICE. (a)  
14 The department shall maintain an electronic mail notification  
15 service to which any person in this state may electronically  
16 subscribe to receive information concerning the status of  
17 preapplications and applications under this subchapter.

18 (b) The electronic mail notification service maintained  
19 under Subsection (a) must:

20 (1) allow a subscriber to request for a zip code  
21 notification of:

22 (A) the filing of any preapplication or  
23 application concerning a development that is or will be located in  
24 the zip code;

25 (B) any change in the status of an application or  
26 preapplication described by Paragraph (A); and

27 (C) any public hearing to be held concerning an

1 application or preapplication described by Paragraph (A); and

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

4 (A) the third business day after the date the  
5 department receives notice of an event described by Subdivision  
6 (1); or

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

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

12 SECTION 23. The Texas Department of Housing and Community  
13 Affairs shall have the electronic mail notification service  
14 required to be maintained under Section 2306.67171, Government  
15 Code, as added by this Act, fully functional and able to receive  
16 subscription requests and respond appropriately to those requests  
17 not later than January 1, 2008.

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

20 (1) Sections 2306.021, 2306.062, 2306.0631,  
21 2306.0661, 2306.0721(h), 2306.079, 2306.081(e), 2306.254,  
22 2306.257(b), (c), and (d), and 2306.806;

23 (2) Subchapter N, Chapter 2306;

24 (3) Subchapter O, Chapter 2306;

25 (4) Subchapter BB, Chapter 2306;

26 (5) Subchapter CC, Chapter 2306; and

27 (6) Subchapter EE, Chapter 2306.

1           SECTION 25. It is the intent of the legislature that the  
2 passage by the 80th Legislature, Regular Session, 2007, of another  
3 bill that amends Chapter 2306, Government Code, and the amendments  
4 made by this Act shall be harmonized, if possible, as provided by  
5 Section 311.025(b), Government Code, so that effect may be given to  
6 each. If the amendments made by this Act to Chapter 2306,  
7 Government Code, and the amendments made to Chapter 2306,  
8 Government Code, by any other bill are irreconcilable, it is the  
9 intent of the legislature that this Act prevail, regardless of the  
10 relative dates of enactment of this Act and the other bill or bills,  
11 but only to the extent that any differences are irreconcilable.

12           SECTION 26. The changes in law made by this Act relating to  
13 the evaluation of applications for financial assistance  
14 administered by the Texas Department of Housing and Community  
15 Affairs apply only to an application submitted on or after the  
16 effective date of this Act. An application submitted before the  
17 effective date of this Act is governed by the law in effect when the  
18 application was submitted, and the former law is continued in  
19 effect for that purpose.

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



FLOOR AMENDMENT NO. 1

ADOPTED

BY: Ryan W. N.

*Haley Spaw*  
Secretary of the Senate

*Ryan W. N.*

1 Amend H. B. 3873 (Senate Committee Printing) by striking  
2 SECTION 24, adding the following SECTIONS, and renumbering  
3 subsequent SECTIONS accordingly:

4 SECTION \_\_\_\_ Section 2306.111(c), Government code, as  
5 amended by Chapters 1367 and 1448, Acts of the 77th Legislature,  
6 Regular Session, 2001, is reenacted and amended to read as  
7 follows:

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

12 (1) ~~[at least]~~ 95 percent of these funds for the  
13 benefit of non-participating small cities and rural areas that  
14 do not qualify to receive funds under the Cranston-Gonzalez  
15 National Affordable Housing Act directly from the United States  
16 Department of Housing and Urban Development; and

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

21 SECTION \_\_\_\_ Section 2306.111, Government Code, is amended  
22 by amending Subsections (d-1):

23 (d-1) Funds or credits are not required to be allocated  
24 according to the regional allocation formula under Subsection  
25 (d) if:

26 (1) the funds or credits are reserved for contract-  
27 for-deed conversions or for set-asides mandated by state or  
28 federal law; and

29 (2) each contract-for-deed allocation or set-aside  
30 allocation equals not more than 10 percent of the total

1  
*25*

1 allocation of funds or credits for the applicable program;

2 (3) the funds or credits are allocated by the department  
3 primarily to serve persons with disabilities.

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

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

24 SECTION \_\_\_\_ The following provisions of the Government  
25 Code are repealed:

26 (1) Sections 2306.021, 2306.062, 2306.0631,  
27 2306.0661, 2306.0721(h), 2306.079, 2306.081(e), 2306.254,  
28 2306.257(b), (c), and (d), and 2306.806;

29 (2) Subchapter N, Chapter 2306;

30 (3) Subchapter BB, Chapter 2306;

31 (4) Subchapter CC, Chapter 2306; and

32 (5) Subchapter EE, Chapter 2306.

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 17, 2007**

**TO:** Honorable Royce West, Chair, Senate Committee on Intergovernmental Relations

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3873** by Menendez (Relating to the administration of the Texas Department of Housing and Community Affairs; providing a penalty.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3873, As Engrossed: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>APPROPRIATED RECEIPTS</i> 666	Probable Revenue Gain/ (Loss) from <i>APPROPRIATED RECEIPTS</i> 666	Change in Number of State Employees from FY 2007
2008	(\$107,877)	\$107,877	1.0
2009	(\$67,256)	\$67,256	1.0
2010	(\$67,256)	\$67,256	1.0
2011	(\$77,756)	\$77,756	1.0
2012	(\$67,256)	\$67,256	1.0

**Fiscal Analysis**

The bill would amend the Government Code relating to the administration of the Texas Department of Housing and Community Affairs (TDHCA). The bill would impose a penalty for certain violations and remove the requirement for TDHCA to hold a hearing on the State Low Income Housing Plan in each of the state's 13 uniform state planning districts.

The bill would require the TDHCA to maintain an electronic mail notification service to which any person may electronically subscribe to receive information concerning the status of preapplications and applications for the housing tax credit program.



The bill would require TDHCA to have the electronic mail notification system fully functional no later than January 1, 2008. This bill would take effect September 1, 2007.

### **Methodology**

Based on information provided by TDHCA, the analysis assumes that TDHCA would be required to purchase and customize a list management software package at an estimated cost of \$42,000 in fiscal year 2008; purchase server hardware and software to house the email notification system at an estimated cost of \$10,500 in fiscal year 2008 and \$10,500 in fiscal year 2011; and there would be an ongoing cost of \$6,300 in each fiscal year beginning in 2008 for vendor maintenance of the system.

The analysis assumes that TDHCA would be required to hire 1.0 FTE to populate and maintain the database with current application status, ensure notifications are sent within the required timeframe, and provide additional information to subscribers as needed. Based on the analysis of TDHCA, it is assumed that establishing and maintaining this email notification system would necessitate additional resources at a cost of \$175,133 through 2009.

TDHCA also estimates costs for staff of \$30,000 for 1.0 FTE in fiscal year 2008 and \$40,000 for each fiscal year from 2009 through fiscal year 2012. Other operating expenses, professional services, and equipment are estimated at \$69,390 in fiscal year 2008, \$15,940 in fiscal year 2009, \$15,940 in fiscal year 2010, \$26,440 in 2011, and \$15,940 in fiscal year 2012. Estimated costs also include \$8,487 in fiscal year 2008 and \$11,316 in each fiscal year from 2009 through fiscal year 2012 for associated benefits.

This analysis assumes that any increased costs resulting from this bill would be offset by an increase in Housing Tax Credit Program application fee-generated revenue.

### **Technology**

There would be a technology cost to TDHCA of \$60,000 in fiscal year 2008, \$6,300 in fiscal year 2009, \$6,300 in fiscal year 2010, \$16,800 in fiscal year 2011, and \$6,300 in fiscal year 2012.

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 332 Department of Housing and Community Affairs

**LBB Staff:** JOB, DB, AH, MW



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 2, 2007**

**TO:** Honorable Kevin Bailey, Chair, House Committee on Urban Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3873** by Menendez (Relating to the administration of the Texas Department of Housing and Community Affairs; providing a penalty. ), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code relating to the administration of the Texas Department of Housing and Community Affairs (TDHCA). The bill would impose a penalty for certain violations and remove the requirement for TDHCA to hold a hearing on the State Low Income Housing Plan in each of the state's 13 uniform state planning districts.

Based on information provided from TDHCA, it is assumed that costs related to the duties and responsibilities associated with implementing the provisions of the bill could be covered by utilizing existing resources.

This bill would take effect September 1, 2007.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 332 Department of Housing and Community Affairs

**LBB Staff:** JOB, DB, AH





**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 1, 2007**

**TO:** Honorable Kevin Bailey, Chair, House Committee on Urban Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3873** by Menendez (Relating to the administration of the Texas Department of Housing and Community Affairs; providing a penalty.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code relating to the administration of the Department of Housing and Community Affairs (TDHCA). The bill would impose a penalty for certain violations and remove the requirement for TDHCA to hold a hearing on the State Low Income Housing Plan in each of the state's 13 uniform state planning districts.

Based on information provided from TDHCA, it is assumed that costs related to the duties and responsibilities associated with implementing the provisions of the bill could be covered by utilizing existing resources.

This bill would take effect September 1, 2007.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 332 Department of Housing and Community Affairs

**LBB Staff:** JOB, DB, AH