

By: Davis of Dallas

H.B. No. 3171

Substitute the following for H.B. No. 3171:

By: Gutierrez

C.S.H.B. No. 3171

A BILL TO BE ENTITLED

AN ACT

relating to the duties and programs of the Texas Department of  
Housing and Community Affairs.

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

SECTION 1. Section 2306.001, Government Code, is amended to  
read as follows:

Sec. 2306.001. PURPOSES. The purposes of the department  
are to:

(1) assist local governments in:

(A) providing essential public services for  
their residents; and

(B) overcoming financial, social, and  
environmental problems;

(2) provide for the housing needs of individuals and  
families of low, very low, and extremely low income and families of  
moderate income;

(3) contribute to the preservation, development, and  
redevelopment of neighborhoods and communities, including  
cooperation in the preservation of government-assisted housing  
occupied by individuals and families of very low and extremely low  
income;

(4) assist the governor and the legislature in  
coordinating federal and state programs affecting local  
government;

1 (5) inform state officials and the public of the needs  
2 of local government;

3 (6) serve as the lead agency for:

4 (A) addressing at the state level the problem of  
5 homelessness in this state;

6 (B) coordinating interagency efforts to address  
7 homelessness; and

8 (C) addressing at the state level and  
9 coordinating interagency efforts to address any problem associated  
10 with homelessness, including hunger; ~~and~~

11 (7) serve as a source of information to the public  
12 regarding all affordable housing resources and community support  
13 services in the state; and

14 (8) administer programs to achieve the purposes  
15 described by this section and implement procedures to improve the  
16 efficiency of those programs and to maximize federal funding.

17 SECTION 2. Section 2306.041, Government Code, is amended to  
18 read as follows:

19 Sec. 2306.041. IMPOSITION OF PENALTY. The board shall  
20 ~~may~~ impose an administrative penalty on a person who violates  
21 this chapter or a rule or order adopted under this chapter.

22 SECTION 3. Subchapter D, Chapter 2306, Government Code, is  
23 amended by adding Section 2306.085 to read as follows:

24 Sec. 2306.085. GENERAL ENFORCEMENT AUTHORITY; STUDY. (a)  
25 The department shall develop and implement procedures to ensure  
26 that all programs administered by the department comply with the  
27 requirements of this chapter and applicable federal laws.

1       (b) The department shall conduct a study to determine  
2 whether the creation of new programs or expansion of existing  
3 services would improve the department's ability to perform the  
4 duties assigned by this chapter.

5       SECTION 4. Subchapter E, Chapter 2306, Government Code, is  
6 amended by adding Section 2306.095 to read as follows:

7       Sec. 2306.095. FINANCIAL ASSISTANCE FOR LOCAL INITIATIVES  
8 REGARDING THE HOMELESS. (a) The department shall provide  
9 financial assistance to political subdivisions, housing finance  
10 corporations, for-profit corporations, and nonprofit organizations  
11 that provide services for individuals and families who are  
12 homeless.

13       (b) Assistance provided under this section must be used only  
14 to support local initiatives regarding homeless individuals and  
15 families.

16       (c) The department shall seek any federal funding available  
17 for the purposes of the program.

18       (d) The department may adopt rules to administer this  
19 section.

20       SECTION 5. Section 2306.111(d-1), Government Code, is  
21 amended to read as follows:

22       (d-1) In allocating low income housing tax credit  
23 commitments under Subchapter DD, the department shall, before  
24 applying the regional allocation formula prescribed by Section  
25 2306.1115, set aside for at-risk developments, as defined by  
26 Section 2306.6702, not less than the minimum amount of housing tax  
27 credits required under Section 2306.6714. Funds or credits are

1 also not required to be allocated according to the regional  
2 allocation formula under Subsection (d) if:

3 (1) the funds or credits are reserved for  
4 contract-for-deed conversions or for set-asides mandated by state  
5 or federal law, including the nonprofit set-aside mandated by  
6 Section 42(h)(5), Internal Revenue Code of 1986 (26 U.S.C. Section  
7 42(h)(5)), and each contract-for-deed allocation or set-aside  
8 allocation equals not more than 10 percent of the total allocation  
9 of funds or credits for the applicable program;

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

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

16 SECTION 6. Subchapter F, Chapter 2306, Government Code, is  
17 amended by adding Section 2306.122 to read as follows:

18 Sec. 2306.122. ASSISTANCE FROM AMERICAN RECOVERY AND  
19 REINVESTMENT ACT OF 2009. (a) To the extent permitted by federal  
20 law, in administering money provided to the department under the  
21 American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5),  
22 the department shall secure the interests of the state through  
23 bonds, retention of ownership interests in the affected properties,  
24 or restrictive covenants or liens filed in real property records  
25 for the affected properties.

26 (b) The interests of the state must be secured with respect  
27 to the use of federal money described by Subsection (a) until the

1 department and the state do not have any specified liability to  
2 repay or recapture that money.

3 SECTION 7. Section 2306.6703(a), Government Code, is  
4 amended to read as follows:

5 (a) An application is ineligible for consideration under  
6 the low income housing tax credit program if:

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

10 (A) a member of the board; or

11 (B) the director, a deputy director, the director  
12 of housing programs, the director of compliance, the director of  
13 underwriting, or the low income housing tax credit program manager  
14 employed by the department;

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

18 (A) at least one-third of all the units in the  
19 development are public housing units or Section 8 project-based  
20 units and the applicant proposes to maintain for a period of 30  
21 years or more 100 percent of the [~~development~~] units supported by  
22 housing tax credits as rent-restricted and exclusively for  
23 occupancy by individuals and families earning not more than 50  
24 percent of the area median income, adjusted for family size[~~, and~~

25 [~~(B) at least one-third of all the units in the~~  
26 ~~development are public housing units or Section 8 project-based~~  
27 ~~units];~~

1                   (B) the applicable private activity bonds will be  
2 redeemed only in an amount consistent with their proportionate  
3 amortization; or

4                   (C) if the redemption of the applicable private  
5 activity bonds will occur in the first five years of the operation  
6 of the development and will reduce the amount of bonds outstanding  
7 to less than 50 percent of the cost of the real property plus  
8 depreciable basis:

9                   (i) the Bond Review Board determines that  
10 there will be money available to fund all other multifamily  
11 developments financed by the bonds without requiring any reduction  
12 in the financing for those developments;

13                   (ii) the applicable private activity bonds  
14 will be redeemed according to underwriting criteria established by  
15 the department; and

16                   (iii) the applicable private activity bonds  
17 will be redeemed only in an amount necessary to ensure the financial  
18 feasibility of the development described by the application;

19                   (3) the applicant proposes to construct a new  
20 development that is located one linear mile or less from a  
21 development that:

22                   (A) serves the same type of household as the new  
23 development, regardless of whether the developments serve  
24 families, elderly individuals, or another type of household;

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

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

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

7 (A) has obtained prior approval of the  
8 development from the governing body of the appropriate municipality  
9 or county containing the development; and

10 (B) has included in the application a written  
11 statement of support from that governing body referencing this  
12 section and authorizing an allocation of housing tax credits for  
13 the development.

14 SECTION 8. Section 2306.6711, Government Code, is amended  
15 by amending Subsection (b) and adding Subsection (g) to read as  
16 follows:

17 (b) Not later than the deadline specified in the qualified  
18 allocation plan, the board shall issue commitments for available  
19 housing tax credits based on the application evaluation process  
20 provided by Section 2306.6710. The board may not allocate to an  
21 applicant housing tax credits in any unnecessary amount, as  
22 determined by the department's underwriting policy and by federal  
23 law, and in any event may not, except as permitted by Subsection  
24 (g), allocate to the applicant housing tax credits in an amount  
25 greater than \$3 [~~\$2~~] million in a single application round.

26 (g) Beginning in 2012, on January 1 of each even-numbered  
27 year, the department may adjust the maximum amount of the

1 allocation prescribed by Subsection (b) by an amount equal to the  
2 amount prescribed by that subsection multiplied by the percentage  
3 change during the preceding state fiscal biennium in the Consumer  
4 Price Index for All Urban Consumers (CPI-U), U.S. City Average,  
5 published monthly by the United States Bureau of Labor Statistics,  
6 or its successor in function. The department shall publish the new  
7 amount in the qualified allocation plan.

8 SECTION 9. Subchapter DD, Chapter 2306, Government Code, is  
9 amended by adding Sections 2306.6736 and 2306.6737 to read as  
10 follows:

11 Sec. 2306.6736. LOW INCOME HOUSING TAX CREDITS FINANCED  
12 UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009. (a) Except  
13 as provided by Subsection (b), a reference in this chapter to the  
14 administration of the low income housing tax credit program applies  
15 to federally administered money:

16 (1) received by the department under the American  
17 Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5), or any  
18 similar federal legislation that is enacted on or after January 1,  
19 2009; and

20 (2) that is required to be allocated by the department  
21 in the same manner and subject to the same limitations as  
22 allocations of housing tax credits.

23 (b) Notwithstanding any other provision of this chapter,  
24 including Sections 2306.1111 and 2306.6724, the department may  
25 establish a separate application procedure for money described by  
26 Subsection (a), the application period of which must begin on the  
27 date the department begins accepting applications for the money and



1 must continue until all the available money is allocated.

2 (c) This section expires August 31, 2011.

3 Sec. 2306.6737. PROHIBITED PRACTICES. (a) Notwithstanding  
4 any other law, a development owner of a development supported with a  
5 housing tax credit allocation may not:

6 (1) lock out or threaten to lock out any person  
7 residing in the development except by judicial process unless the  
8 exclusion results from:

9 (A) a necessity to perform bona fide repairs or  
10 construction work; or

11 (B) an emergency; or

12 (2) seize or threaten to seize the personal property  
13 of any person residing in the development except by judicial  
14 process unless the resident has abandoned the premises.

15 (b) Each development owner shall:

16 (1) include a conspicuous provision in the lease  
17 agreement prohibiting the owner from engaging in a practice  
18 described by Subsection (a); and

19 (2) remove in the manner specified by department rule  
20 any provisions in the lease agreement that are contrary to  
21 Subsection (a).

22 SECTION 10. The Texas Department of Housing and Community  
23 Affairs shall adopt rules as necessary to implement and enforce  
24 Section 2306.6737, Government Code, as added by this Act, not later  
25 than November 1, 2009.

26 SECTION 11. The changes in law made by this Act in amending  
27 Sections 2306.111(d-1), 2306.6703(a), and 2306.6711, Government

1 Code, and adding Section 2306.6736, Government Code, apply only to  
2 an application for financial assistance that is submitted to the  
3 Texas Department of Housing and Community Affairs during an  
4 application cycle that begins on or after the effective date of this  
5 Act. An application that was submitted during an application cycle  
6 that began before the effective date of this Act is governed by the  
7 law in effect at the time the application cycle began, and the  
8 former law is continued in effect for that purpose.

9 SECTION 12. This Act takes effect September 1, 2009.