

By: Talton

H.B. No. 1167

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the provision of housing in Texas and the continuation  
3 and functions of the Texas Department of Housing and Community  
4 Affairs and to other matters relating to housing or community  
5 development.

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

7 PART 1. General Provisions

8 SECTION 1.01. Section 2306.001, Texas Government Code, is  
9 amended to read as follows:

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

12 (1) assist [~~local governments~~] in:

13 (A) providing essential [~~public~~] housing  
14 services for Texans of modest incomes [~~their residents~~]; and

15 (B) overcoming financial, social, and  
16 environmental problems as they relate to community housing needs;

17 (2) assist Texans in achieving an improved quality of  
18 life through the development of better communities by providing the  
19 financing necessary for housing for individuals and families of  
20 modest means while acknowledging the importance of preserving the  
21 existing character of established neighborhoods. [~~provide for the~~  
22 housing needs of individuals and families of low, very low, and  
23 extremely low income and families of moderate income];

24 (3) contribute to the preservation, development, and

1 redevelopment of neighborhoods and communities, including  
2 assisting [~~cooperation~~] in the preservation of government-assisted  
3 housing [~~occupied by individuals and families of very low and~~  
4 ~~extremely low income~~];

5 (4) assist the governor and the legislature in  
6 coordinating federal and state housing programs [~~affecting local~~  
7 ~~government~~];

8 (5) inform state officials and the public of the  
9 housing needs of [~~local government~~] the state;

10 (6) serve as the lead agency for:

11 (A) addressing at the state level the problem of  
12 homelessness in this state;

13 (B) coordinating interagency efforts to address  
14 homelessness; and

15 (C) addressing at the state level and  
16 coordinating interagency efforts to address any problem associated  
17 with homelessness [~~, including hunger~~]; and

18 (7) serve as a source of information to the public  
19 regarding state [~~all~~] affordable housing resources [~~and community~~  
20 ~~support services in the state~~] available to local communities.

21 SECTION 1.02. Section 2306.002, Texas Government Code, is  
22 amended to read as follows:

23 Sec. 2306.002. POLICY. (a) The legislature finds that:

24 (1) every resident of this state should have a decent,  
25 safe, and affordable living environment;

26 (2) government at all levels should be involved in  
27 assisting individuals and families of low income in obtaining a

1 decent, safe, and affordable living environment; ~~and~~

2 (3) the development and diversification of the  
3 economy, the elimination of unemployment or underemployment, and  
4 the development or expansion of commerce in this state should be  
5 encouraged; and

6 (4) that there exists within all regions of this state  
7 a shortage of sanitary and safe residential housing at prices or  
8 rentals which persons and families of low income and families of  
9 moderate income can afford;

10 (5) that this shortage has contributed to and will  
11 contribute to the creation and persistence of substandard living  
12 conditions that is inimical to the health, welfare, and prosperity  
13 of the residents and communities of all regions of this state; and

14 (6) that the minimization of administrative costs and  
15 requirements and the simplification of the financing system will  
16 maximize the available resources for affordable housing.

17 (b) The highest priority of the department is to provide  
18 assistance in order that ~~[to]~~ individuals and families of low and  
19 very low income ~~[who are not assisted by private enterprise or other~~  
20 ~~governmental programs so that they]~~ may obtain affordable housing  
21 or other services and programs offered by the department.

22 (c) Pursuant to its goals under Chapter 2306, Texas  
23 Government Code, the department shall not approve, promulgate, nor  
24 otherwise publish any rule that:

25 (1) establishes standards or parameters that exceed,  
26 or deviate in any manner, any federal program requirements with  
27 regard to state administration of any federal housing program; or

1           (2) imposes, or has the effect of imposing, direct  
2 compliance requirements or costs on local governments, or program  
3 applicants, that are not expressly required by federal law, federal  
4 regulations or state statute.

5           SECTION 1.03. Section 2306.004, Texas Government Code, is  
6 amended to read as follows:

7           Sec. 2306.004. DEFINITIONS. In this chapter:

8           (1) "Board" means the governing board of the  
9 department.

10           (2) "Bond" means an evidence of indebtedness or other  
11 obligation, regardless of the source of payment, issued by the  
12 department under Subchapter P, including a bond, note, or bond or  
13 revenue anticipation note, regardless of whether the obligation is  
14 general or special, negotiable or nonnegotiable, in bearer or  
15 registered form, in certified or book-entry form, in temporary or  
16 permanent form, or with or without interest coupons.

17           (3) "Contract for Deed" means a seller-financed  
18 contract for the conveyance of real property under which:

19           (A) legal title does not pass to the purchaser  
20 until the consideration of the contract is fully paid to the seller;  
21 and

22           (B) the seller's remedy for nonpayment is  
23 rescission or forfeiture or acceleration of any remaining payments  
24 rather than judicial or nonjudicial foreclosure.

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

27           (5) "Director" means the executive director of the

1 department.

2 (6) "Economically depressed or blighted area" means an  
3 area:

4 (A) that is a qualified census tract as defined  
5 by Section 143(j), Internal Revenue Code of 1986 (26 U.S.C. Section  
6 143(j)) or has been determined by the housing finance division to be  
7 an area of chronic economic distress under Section 143, Internal  
8 Revenue Code of 1986 (26 U.S.C. Section 143);

9 (B) established in a municipality that has a  
10 substantial number of substandard, slum, deteriorated, or  
11 deteriorating structures and that suffers from a high relative rate  
12 of unemployment; or

13 (C) that has been designated as a reinvestment  
14 zone under Chapter 311, Tax Code.

15 (7) "Economic submarket" means a group of borrowers  
16 who have common home mortgage loan market eligibility  
17 characteristics, including income level, credit history or credit  
18 score, and employment characteristics, that are similar to Standard  
19 and Poor's credit underwriting criteria.

20 (8) "Elderly individual" means an individual 60 years  
21 of age or older or of an age specified by the applicable federal  
22 program.

23 (9) "Family of moderate income" means a family:

24 (A) that is determined by the board to require  
25 assistance, taking into account:

26 (i) the amount of the total income  
27 available for housing needs of the individuals and families;

1 (ii) the size of the family;  
2 (iii) the cost and condition of available  
3 housing facilities;  
4 (iv) the ability of the individuals and  
5 families to compete successfully in the private housing market and  
6 to pay the amounts required by private enterprise for sanitary,  
7 decent, and safe housing; and

8 (v) standards established for various  
9 federal programs determining eligibility based on income; and

10 (B) that does not qualify as a family of low  
11 income.

12 (10) ~~(9)~~ "Federal government" means the United States  
13 of America and includes any corporate or other instrumentality of  
14 the United States of America, including the Resolution Trust  
15 Corporation.

16 (11) ~~(10)~~ "Federal mortgage" means a mortgage loan for  
17 residential housing:

18 (A) that is made by the federal government; or

19 (B) for which a commitment to make has been given  
20 by the federal government.

21 (12) ~~(11)~~ "Federally assisted new communities" means  
22 federally assisted areas that receive or will receive assistance in  
23 the form of loan guarantees under Title X of the National Housing  
24 Act (12 U.S.C. Section 1701 et seq.), and a portion of that  
25 federally assisted area has received grants under Section 107(a)(1)  
26 of the Housing and Community Development Act of 1974, as amended (42  
27 U.S.C. Section 5301 et seq.).

1            (13) ~~(12)~~ "Federally insured mortgage" means a  
2 mortgage loan for residential housing that:

3            (A) is insured or guaranteed by the federal  
4 government; or

5            (B) the federal government has committed to  
6 insure or guarantee.

7            (14) "Geographic submarket" means a geographic region  
8 in the state, including a county, census tract, or municipality,  
9 that shares similar levels of access to home mortgage credit from  
10 the private home mortgage lending industry, as determined by the  
11 department based on home mortgage lending data published by federal  
12 and state banking regulatory agencies.

13            (15) "Historically underserved urban area" are the  
14 communities that are located in either (a), (b), ( c ), or (d)  
15 below:

16            (a) In State Uniform Service Region 3, a  
17 community located in Collin, Dallas, Denton, Ellis, Hood, Hunt,  
18 Kaufman, Johnson, Parker, Rockwall, or Tarrant counties that (1) is  
19 not located within the city limits of Arlington, Texas, Dallas,  
20 Texas, or Fort Worth, Texas, and (2) does not meet the definition of  
21 a rural area; or

22            (b) In State Uniform Service Region 6, a  
23 community located in Chambers, Fort Bend, Harris, Liberty,  
24 Montgomery or Waller counties that (1) is not located within the  
25 city limits of Houston, Texas, and (2) does not meet the definition  
26 of a rural area; or

27            (c) In State Uniform Service Region 7, a

1 community located in Bastrop, Caldwell, Hays, Travis or Williamson  
2 counties that (1) is not located within the city limits of Austin,  
3 Texas, and (2) does not meet the definition of a rural area; or

4 (d) In State Uniform Service Region 9, a  
5 community located in Atascosa, Bexar, Comal, Guadalupe or Wilson  
6 counties that (1) is not located within the city limits of San  
7 Antonio, Texas, and (2) does not meet the definition of a rural  
8 area.

9 (e) The counties identified by subsections (a)  
10 through (d) of this section shall be adjusted to exactly conform  
11 with the definition or identification of metropolitan statistical  
12 areas, as periodically revised by the appropriate federal agency,  
13 for State Uniform Service Regions 3, 6, 7 and 9, respectively.

14 (16) ~~(13)~~ "Housing development" means property or  
15 work or a project, building, structure, facility, or undertaking,  
16 whether existing, new construction, remodeling, improvement, or  
17 rehabilitation, that meets or is designed to meet minimum property  
18 standards required by the department and that is financed under the  
19 provisions of this chapter for the primary purpose of providing  
20 sanitary, decent, and safe dwelling accommodations for rent, lease,  
21 use, or purchase by individuals and families of low and very low  
22 income and families of moderate income in need of housing. The term  
23 includes:

24 (A) buildings, structures, land, equipment,  
25 facilities, or other real or personal properties that are  
26 necessary, convenient, or desirable appurtenances, including  
27 streets, water, sewers, utilities, parks, site preparation,



1 landscaping, stores, offices, and other nonhousing facilities,  
2 such as administrative, community, and recreational facilities the  
3 department determines to be necessary, convenient, or desirable  
4 appurtenances; and

5 (B) single and multifamily dwellings [~~in rural~~  
6 ~~and urban areas~~].

7 (17) ~~(14)~~ "Housing sponsor" means:

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

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

24 (18) ~~(15)~~ "Individuals and families of low income"  
25 means individuals and families earning not more than 80 percent of  
26 the area median income or applicable federal poverty line, as  
27 determined under Section 2306.123 or Section 2306.1231.

1           (19) ~~(16)~~ "Individuals and families of very low  
2 income" means individuals and families earning not more than 60  
3 percent of the area median income or applicable federal poverty  
4 line, as determined under Section 2306.123 or Section 2306.1231.

5           (20) ~~(17)~~ "Individuals and families of extremely low  
6 income" means individuals and families earning not more than 30  
7 percent of the area median income or applicable federal poverty  
8 line, as determined under Section 2306.123 or Section 2306.1231.

9           (21) ~~(18)~~ "Land development" means:

10                   (A) acquiring land for residential housing  
11 construction; and

12                   (B) making, installing, or constructing  
13 nonresidential improvements that the department determines are  
14 necessary or desirable for a housing development to be financed by  
15 the department, including:

16                           (i) waterlines and water supply  
17 installations;

18                           (ii) sewer lines and sewage disposal  
19 installations;

20                           (iii) steam, gas, and electric lines and  
21 installations; and

22                           (iv) roads, streets, curbs, gutters, and  
23 sidewalks, whether on or off the site.

24           (22) ~~(19)~~ "Local government" means a county,  
25 municipality, special district, or any other political subdivision  
26 of the state, a public, nonprofit housing finance corporation  
27 created under Chapter 394, Local Government Code, or a combination

1 of those entities.

2 (23) ~~(20)~~ "Mortgage" means an obligation, including a  
3 mortgage, mortgage deed, bond, note, deed of trust, or other  
4 instrument, that is a lien:

5 (A) on real property; or

6 (B) on a leasehold under a lease having a  
7 remaining term that, at the time the lien is acquired, does not  
8 expire until after the maturity date of the obligation secured by  
9 the lien.

10 (24) ~~(21)~~ "Mortgage lender" means a bank, trust  
11 company, savings bank, mortgage company, mortgage banker, credit  
12 union, national banking association, savings and loan association,  
13 life insurance company, or other financial institution authorized  
14 to transact business in this state and approved as a mortgage lender  
15 by the department.

16 (25) ~~(22)~~ "Mortgage loan" means an obligation secured  
17 by a mortgage.

18 (26) ~~(23)~~ "Municipality" includes only a municipality  
19 in this state.

20 (27) "Person with disability" means a person that  
21 meets the criteria of either (a) or (b) below and (c) of the  
22 following:

23 (a) The person has an inability to engage in any  
24 substantial gainful activity, but with the use of auxiliary  
25 apparatus can otherwise participate in gainful activity, by reason  
26 of any medically determinable physical or mental impairment, where  
27 the disability:

1 (i) Has lasted or can be expected to last  
2 for a continuous period of not less than 12 months, or which can be  
3 expected to result in death, and;

4 (ii) substantially impedes his or her  
5 ability to live independently; and

6 (iii) is of such a nature that the  
7 disability could be improved by more suitable housing conditions.

8 (b) The person has a severe, chronic disability  
9 which:

10 (i) is attributable to a mental or physical  
11 impairment or combination of mental or physical impairment; and

12 (ii) was manifested before age 22; and

13 (iii) is likely to continue indefinitely;  
14 and

15 (iv) results in substantial functional  
16 limitations in three or more of the following areas of major life  
17 activity:

18 (a) self-care;

19 (b) receptive and expressive  
20 language;

21 (c) learning;

22 (d) mobility;

23 (e) self-direction;

24 (f) capacity for independent living;

25 (g) economic self-sufficiency.

26 (c) "Person with disability" does not include the  
27 current condition of addiction to alcohol, a drug, an illegal

1 substance, or a federally controlled substance.

2 (28) "Neighborhood Association" means an organization  
3 of persons living near one another within the organization's  
4 defined boundaries and that has a primary purpose of working to  
5 maintain or improve the general welfare of the neighborhood.  
6 Neighborhood associations include homeowners associations and  
7 property owners associations. Neighborhood associations do not  
8 include broader based community organizations; organizations that  
9 have no members other than board members; chambers of commerce;  
10 community development corporations; school related organizations;  
11 Lions, Rotary, Kiwanis, and similar organizations; Habitat for  
12 Humanity; Boys and Girls Clubs; charities; public housing  
13 authorities; or any governmental entity.

14 (29) ~~(24)~~ "Public agency" means the department or any  
15 agency, board, authority, department, commission, political  
16 subdivision, municipal corporation, district, public corporation,  
17 body politic, or instrumentality of this state, including a county,  
18 municipality, housing authority, state-supported institution of  
19 higher education, school district, junior college, other district  
20 or authority, or other type of governmental entity of this state.

21 (30) ~~(25)~~ "Real estate owned contractor" means a  
22 person required to meet the obligations of a contract with the  
23 department for managing and marketing foreclosed property.

24 (31) ~~(26)~~ "Real property" means land, including  
25 improvements and fixtures on the land, property of any nature  
26 appurtenant to the land or used in connection with the land, and a  
27 legal or equitable estate, interest, or right in land, including

1 leasehold interests, terms for years, and a judgment, mortgage, or  
2 other lien.

3 (32) ~~(27)~~ "Reserve fund" means any reserve fund  
4 established by the department.

5 (33) ~~(28)~~ "Residential housing" means a specific work  
6 or improvement undertaken primarily to provide dwelling  
7 accommodations, including the acquisition, construction,  
8 reconstruction, remodeling, improvement, or rehabilitation of land  
9 and buildings and improvements to the buildings for residential  
10 housing and other incidental or appurtenant nonhousing facilities.

11 (34) "Rural area" means an area that is located:

12 (A) outside the boundaries of a primary  
13 metropolitan statistical area or a metropolitan statistical area;  
14 or

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

19 (C) in an area that is eligible for funding by the  
20 Rural Housing Service of the United States Department of  
21 Agriculture.

22 (35) "Rural development" means a development or  
23 proposed development that is contained within a Rural area as  
24 defined in this section.

25 (36) ~~(29)~~ "Servicer" means a person required to meet  
26 contractual obligations with the housing finance division or with a  
27 mortgage lender relating to a loan financed under Subchapter J,

1 including:

2 (A) purchasing mortgage certificates backed by  
3 mortgage loans;

4 (B) collecting principal and interest from the  
5 borrower;

6 (C) sending principal and interest payments to  
7 the division;

8 (D) preparing periodic reports;

9 (E) notifying the primary mortgage and pool  
10 insurers of delinquent and foreclosed loans; and

11 (F) filing insurance claims on foreclosed  
12 property.

13 (37) ~~(30)~~ "State low income housing plan" means the  
14 comprehensive and integrated plan for the state assessment of  
15 housing needs and allocation of housing resources.

16 (38) "Subprime loan" means a loan that is originated  
17 by a lender designated as a subprime lender on the subprime lender  
18 list maintained by the United States Department of Housing and  
19 Urban Development or identified as a lender primarily engaged in  
20 subprime lending under Section 2306.143.

21 (39) "Urban area" means the area or communities within  
22 the boundaries of a primary metropolitan statistical area or a  
23 metropolitan statistical area.

24 ~~(37) "Economic submarket" means a group of borrowers~~  
25 ~~who have common home mortgage loan market eligibility~~  
26 ~~characteristics, including income level, credit history or credit~~  
27 ~~score, and employment characteristics, that are similar to Standard~~

1 ~~and Poor's credit underwriting criteria.~~

2 ~~(38) "Geographic submarket" means a geographic region~~  
3 ~~in the state, including a county, census tract, or municipality,~~  
4 ~~that shares similar levels of access to home mortgage credit from~~  
5 ~~the private home mortgage lending industry, as determined by the~~  
6 ~~department based on home mortgage lending data published by federal~~  
7 ~~and state banking regulatory agencies.~~

8 ~~(39) "Rural county" means a county that is outside the~~  
9 ~~boundaries of a primary metropolitan statistical area or a~~  
10 ~~metropolitan statistical area.~~

11 ~~(40) "Subprime loan" means a loan that is originated~~  
12 ~~by a lender designated as a subprime lender on the subprime lender~~  
13 ~~list maintained by the United States Department of Housing and~~  
14 ~~Urban Development or identified as a lender primarily engaged in~~  
15 ~~subprime lending under Section 2306.143.~~

16 SECTION 1.04. Section 2306.008, Texas Government Code, is  
17 amended to read as follows:

18 Sec. 2306.008. Preservation of Affordable Housing. (a)  
19 The department shall support in the manner described by Subsection  
20 (b) the preservation of affordable housing for individuals with  
21 special needs, as defined by Section 2306.511, and individuals and  
22 families of low income at any location considered necessary by the  
23 department.

24 (b) The department shall support the preservation of  
25 affordable housing under this chapter [~~section~~] by:

26 (1) making low interest financing and grants available  
27 to private for-profit and nonprofit buyers who seek to acquire,



1 preserve, and rehabilitate affordable housing; and

2 (2) prioritizing available funding and financing  
3 resources for affordable housing preservation activities.

4 SECTION 1.05 Section 2306.022, Texas Government Code, is  
5 amended as follows:

6 Sec. 2306.022. APPLICATION OF SUNSET ACT. The Texas  
7 Department of Housing and Community Affairs is subject to Chapter  
8 325 (Texas Sunset Act). Unless continued in existence as provided  
9 by that chapter, the department is abolished and this chapter  
10 expires September 1, 2009~~[11]~~.

11 SECTION 1.06 Sections 2306.027, 2306.028, 2306.032, and  
12 2306.0321, Texas Government Code, are amended to read as follows:

13 Sec. 2306.027. ELIGIBILITY. (a) The governor shall  
14 appoint to the board public members who have a demonstrated  
15 interest in issues related to housing and community support  
16 services. A person appointed to the board must be a registered  
17 voter in the state and may not hold another public office. The  
18 Governor shall endeavor to appoint at least one member of the Board  
19 a person with experience with neighborhood associations or  
20 homeowners' associations.

21 (b) Appointments to the board shall be made without regard  
22 to the race, color, disability, sex, religion, age, or national  
23 origin of the appointees and shall be made in a manner that produces  
24 representation on the board of the different geographical regions  
25 of this state. The Governor shall endeavor to appoint members  
26 [Appointments] to the board that [must broadly] reflect the  
27 geographic, economic, cultural, and social diversity of the state

1 including ethnic minorities, persons with disabilities, and women.

2 (c) A person may not be a member of the board if the person  
3 or the person's spouse:

4 (1) is employed by or participates in the management  
5 of a business entity or other organization regulated by or  
6 receiving money from the department;

7 (2) owns or controls, directly or indirectly, [~~more~~  
8 ~~than a 10 percent~~] any interest in a business entity or other  
9 organization regulated by or receiving money from the department;  
10 or

11 (3) uses or receives [~~a substantial~~] any amount of  
12 tangible goods, services, or money from the department other than  
13 compensation or reimbursement authorized by law for board  
14 membership, attendance, or expenses.

15 (d) As a condition of eligibility each board member shall  
16 publicly disclose, and periodically update, any ownership interest  
17 or involvement with any multifamily development or low income  
18 housing tax credit development located either within or without the  
19 state.

20 Sec. 2306.028. TRAINING. (a) A person who is appointed to  
21 and qualifies for office as a member of the board may not vote,  
22 deliberate, or be counted as a member in attendance at a meeting of  
23 the board until the person completes a department training program  
24 and an industry training program, if one is available at no cost to  
25 the department, that complies with this section.

26 (b) The department training program must provide the person  
27 with information regarding:

1           (1) the legislation that created the department and  
2 the board;

3           (2) the programs operated by the department;

4           (3) the role and functions of the department and  
5 board, including the role and functions of the department and board  
6 in the administration of the appeals and alternative dispute  
7 resolution process as described in this act;

8           (4) the rules of the department, with an emphasis on  
9 the rules that relate to disciplinary and investigatory authority;

10          (5) the current budget for the department;

11          (6) the results of the most recent formal audit of the  
12 department;

13          (7) the requirements of:

14               (A) the open meetings law, Chapter 551;

15               (B) the public information law, Chapter 552;

16               (C) the administrative procedure law, Chapter  
17 2001; and

18               (D) other laws relating to public officials,  
19 including conflict-of-interest laws;

20          (8) the requirements of:

21               (A) state and federal fair housing laws,  
22 including Chapter 301, Property Code, Title VIII of the Civil  
23 Rights Act of 1968 (42 U.S.C. Section 3601 et seq.), and the Fair  
24 Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.);

25               (B) the Civil Rights Act of 1964 (42 U.S.C.  
26 Section 2000a et seq.);

27               (C) the Americans with Disabilities Act of 1990

1 (42 U.S.C. Section 12101 et seq.); and

2 (D) the Rehabilitation Act of 1973 (29 U.S.C.  
3 Section 701 et seq.); ~~and~~

4 (9) any applicable ethics policies adopted by the  
5 department or the Texas Ethics Commission.

6 (c) The industry training program must be presented by an  
7 organization that regularly conducts seminars or training in the  
8 field of banking, real estate, housing development, or housing  
9 construction, and provide the person with information regarding the  
10 single family and multifamily bond program and the federal housing  
11 programs administered by the department. In the event that the  
12 department is unable to obtain an industry training at no cost to  
13 the department, then the industry training requirement shall be  
14 deferred until such time as such industry training is available at  
15 no cost to the department.

16 (d) A person appointed to the board is entitled to  
17 reimbursement, as provided by the General Appropriations Act, for  
18 the travel expenses incurred in attending the training program[s]  
19 regardless of whether the attendance at the program[s] occurs  
20 before or after the person qualifies for office.

21 Sec. 2306.032. BOARD MEETINGS. (a) The board may hold  
22 meetings when called by the presiding officer, the director, or  
23 three of the members.

24 (b) The board shall keep complete minutes of board meetings.  
25 The accounts, minutes, and other records, including meeting  
26 transcripts and transcript tapes, shall be maintained in their  
27 entirety by the department.

1 (c) All materials in the possession of the department that  
2 are relevant to a matter proposed for discussion at a board meeting  
3 must be posted on the department's website, including the verbatim  
4 transcript from the previous board meeting, made available in  
5 hard-copy format at the department, filed with the secretary of  
6 state for publication by reference in the Texas Register, and  
7 disseminated by any other means required by this chapter or by  
8 Chapter 551.

9 (d) The materials described by Subsection (c), if pertinent  
10 to an awards decision, must be made available to the public as  
11 required by Subsection (c) not later than the seventh day before the  
12 date of the meeting. Any other materials described by Subsection  
13 (c) must be made available to the public as required by Subsection  
14 (c) not later than the third day before the date of the meeting. The  
15 board may not consider at the meeting any material that is not made  
16 available to the public by the date required by this subsection.

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

19 (f) For each item on the board's agenda at the meeting, the  
20 board shall provide for public comment after the presentation made  
21 by department staff and the motions made by the board on that topic.

22 (g) The board shall adopt rules that give the public a  
23 reasonable amount of time for testimony at meetings.

24 Sec. 2306.0321. APPEAL OF BOARD AND DEPARTMENT DECISIONS.

25 (a) In accordance with Section 2306.082, Texas Government Code,  
26 [¶] the board shall adopt rules outlining a formal process for  
27 appealing board and department decisions utilizing the alternative

1 dispute resolution process in a timely and meaningful manner.

2 (b) The rules must specify the requirements for appealing a  
3 board or department decision, including:

4 (1) the persons eligible to appeal;

5 (2) the grounds for an appeal;

6 (3) the process for filing an appeal, including the  
7 information that must be submitted with an appeal;

8 (4) a reasonable period in which an appeal must be  
9 filed, heard, and decided;

10 (5) the process by which an appeal is heard and a  
11 decision is made;

12 (6) the possible outcomes of an appeal; and

13 (7) the process by which notification of a decision  
14 and the basis for a timely decision is given.

15 (c) In the event that a decision of the board or department  
16 regarding a low income housing tax credit application is reversed  
17 by either an appeal or alternative dispute resolution, and such  
18 decision that was reversed prevented the applicant from receiving  
19 an allocation of low income housing tax credits, the department  
20 shall rectify its incorrect decision by awarding the applicant a  
21 forward commitment of tax credits.

22 SECTION 1.07. Section 2306.036, Texas Government Code, is  
23 amended to read as follows:

24 Sec. 2306.036. Employment of Director. (a) With the  
25 approval of the governor, the board shall employ a director to serve  
26 at the pleasure of the board.

27 (b) ~~[After the election of a governor who did not approve~~

1 ~~the director's employment under Subsection (a), that]~~ The governor  
2 may remove the director and require the board to employ a new  
3 director in accordance with Subsection (a). ~~The governor must act~~  
4 ~~under this subsection before the 90th day after the date the~~  
5 ~~governor takes office.~~

6 SECTION 1.08. Section 2306.039, Texas Government Code, is  
7 amended to read as follows:

8 Sec. 2306.039. Open Meetings and Open Records

9 (a) Except as provided by Subsection (b), the department and  
10 the Texas State Affordable Housing Corporation are subject to  
11 Chapters 551 and 552.

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

24 SECTION 1.09. Section 2306.070, Texas Government Code, is  
25 amended to read as follows:

26 Section 2306.070. Budget. In preparing the department's  
27 legislative appropriations request, the department shall also

1 prepare an operating budget for the housing finance division. The  
2 department shall submit the operating budget to the Legislative  
3 Budget Board, the Senate Finance Committee, and the House  
4 Appropriations Committee. As a supplement to the Budget Request,  
5 the department shall submit a report detailing the fees received,  
6 on a cash basis, for each activity administered by the department  
7 for each of the three previous years and an explanation of any  
8 projected increase or decrease in fees estimated for the budget  
9 that exceeds by three percent the fees received in the most recent  
10 budget year.

11 SECTION 1.10. Sections 2306.072, 2306.0721, and 2306.0722,  
12 Texas Government Code, are amended to read:

13 Sec. 2306.072. ANNUAL LOW INCOME HOUSING REPORT. (a) Not  
14 later than December 18 of each year, the director shall prepare and  
15 submit to the board an annual report of the department's housing  
16 activities for the preceding year.

17 (b) Not later than the 30th day after the date the board  
18 receives the report, the board shall submit the report to the  
19 governor, lieutenant governor, speaker of the house of  
20 representatives, and members of any legislative oversight  
21 committee.

22 (c) The report must include:

23 (1) a complete operating and financial statement of  
24 the department;

25 (2) a comprehensive statement of the activities of the  
26 department during the preceding year to address the needs  
27 identified in the state low income housing plan prepared as



1 required by Section 2306.0721, ~~including:~~

2 ~~(A) a statistical and narrative analysis of the~~  
3 ~~department's performance in addressing the housing needs of~~  
4 ~~individuals and families of low and very low income;~~

5 ~~(B) the ethnic and racial composition of~~  
6 ~~individuals and families applying for and receiving assistance from~~  
7 ~~each housing-related program operated by the department; and~~

8 ~~(C) the department's progress in meeting the~~  
9 ~~goals established in the previous housing plan;~~

10 ~~(3) an explanation of the efforts made by the~~  
11 ~~department to ensure the participation of individuals of low income~~  
12 ~~and their community-based institutions in department programs that~~  
13 ~~affect them;~~

14 ~~(4) a statement of the evidence that the department~~  
15 ~~has made an affirmative effort to ensure the involvement of~~  
16 ~~individuals of low income and their community-based institutions in~~  
17 ~~the allocation of funds and the planning process;~~

18 ~~(5) a statistical analysis, delineated according to~~  
19 ~~each ethnic and racial group served by the department, that~~  
20 ~~indicates the progress made by the department in implementing the~~  
21 ~~state low income housing plan in each of the uniform state service~~  
22 ~~regions;~~

23 ~~(6) an analysis, based on information provided by the~~  
24 ~~fair housing sponsor reports required under Section 2306.0724 and~~  
25 ~~other available data, of fair housing opportunities in each housing~~  
26 ~~development that receives financial assistance from the department~~  
27 ~~that includes the following information for each housing~~

1 ~~development that contains 20 or more living units:~~

2 ~~(A) the street address and municipality or county~~  
3 ~~in which the property is located;~~

4 ~~(B) the telephone number of the property~~  
5 ~~management or leasing agent;~~

6 ~~(C) the total number of units, reported by~~  
7 ~~bedroom size;~~

8 ~~(D) the total number of units, reported by~~  
9 ~~bedroom size, designed for individuals who are physically~~  
10 ~~challenged or who have special needs and the number of these~~  
11 ~~individuals served annually;~~

12 ~~(E) the rent for each type of rental unit,~~  
13 ~~reported by bedroom size;~~

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

15 ~~(G) the number of units occupied by individuals~~  
16 ~~receiving government-supported housing assistance and the type of~~  
17 ~~assistance received;~~

18 ~~(H) the number of units occupied by individuals~~  
19 ~~and families of extremely low income, very low income, low income,~~  
20 ~~moderate income, and other levels of income;~~

21 ~~(I) a statement as to whether the department has~~  
22 ~~been notified of a violation of the fair housing law that has been~~  
23 ~~filed with the United States Department of Housing and Urban~~  
24 ~~Development, the Commission on Human Rights, or the United States~~  
25 ~~Department of Justice; and~~

26 ~~(J) a statement as to whether the development has~~  
27 ~~any instances of material noncompliance with bond indentures or~~

1 ~~deed restrictions discovered through the normal monitoring~~  
2 ~~activities and procedures that include meeting occupancy~~  
3 ~~requirements or rent restrictions imposed by deed restriction or~~  
4 ~~financing agreements;~~

5           (3) ~~(7)~~ a report on the geographic distribution of low  
6 income housing tax credits, the amount of unused low income housing  
7 tax credits, and the amount of low income housing tax credits  
8 received from the federal pool of unused funds from other states;  
9 ~~and~~

10           ~~(8) a statistical analysis, based on information~~  
11 ~~provided by the fair housing sponsor reports required by Section~~  
12 ~~2306.0724 and other available data, of average rents reported by~~  
13 ~~county.~~

14           (d) Repealed by Acts 2003, 78th Leg., ch. 330, Sec. 31(1).  
15 Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.  
16 Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(a), eff. Sept. 1,  
17 1995; Acts 1997, 75th Leg., ch. 980, Sec. 13, eff. Sept. 1, 1997;  
18 Acts 2001, 77th Leg., ch. 226, Sec. 1, eff. Sept. 1, 2001; Acts  
19 2001, 77th Leg., ch. 1367, Sec. 4.01, eff. Sept. 1, 2001; Acts  
20 2003, 78th Leg., ch. 330, Sec. 31(1), eff. Sept. 1, 2003.

21           Sec. 2306.0721. LOW INCOME HOUSING PLAN. (a) Not later  
22 than December 18 of each year, the director shall prepare and submit  
23 to the board an integrated state low income housing plan for the  
24 next year.

25           (b) Not later than the 30th day after the date the board  
26 receives the plan, the board shall submit the plan to the governor,  
27 lieutenant governor, and the speaker of the house of

1 representatives.

2 (c) The plan must include:

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

5 (A) individuals and families of moderate, low,  
6 very low, and extremely low income;

7 (B) individuals with special needs; and

8 (C) homeless individuals;

9 (2) a proposal to use all available housing resources  
10 to address the housing needs of the populations described by  
11 Subdivision (1) by establishing funding levels for all  
12 housing-related programs;

13 (3) an estimate of the number of federally assisted  
14 housing units available for individuals and families of low and  
15 very low income and individuals with special needs in each uniform  
16 state service region;

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

19 (5) the formula for allocating housing resources  
20 described in Section 2306.111 of this Chapter and the allocation  
21 targets established under the formula for allocating housing  
22 resources;

23 (6) ~~(5)~~ a resource allocation plan that targets all  
24 available housing resources to individuals and families of low and  
25 very low income and individuals with special needs in each uniform  
26 state service region;

27 (7) ~~(6)~~ a description of the department's efforts to

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

6 (8) ~~(7)~~ strategies to provide housing for individuals  
7 and families with special needs in each uniform state service  
8 region;

9 (9) ~~(8)~~ a description of the amount of funds and  
10 housing tax credits allocated to the urban and rural areas of each  
11 uniform state service region in the preceding year for each federal  
12 and state housing or community service program. ~~a description of~~  
13 ~~the department's efforts to encourage in each uniform state service~~  
14 ~~region the construction of housing units that incorporate energy~~  
15 ~~efficient construction and appliances;~~

16 (10) ~~(9)~~ an estimate and analysis of the housing  
17 supply in each uniform state service region;

18 (11) ~~(10)~~ an inventory of all publicly and, where  
19 possible, privately funded housing resources, including public  
20 housing authorities, housing finance corporations, community  
21 housing development organizations, and community action agencies;

22 (12) ~~(11)~~ strategies for meeting rural and  
23 historically underserved urban areas housing needs;

24 (13) ~~(12)~~ a biennial action plan for colonias that:

25 (A) addresses current policy goals for colonia  
26 programs, strategies to meet the policy goals, and the projected  
27 outcomes with respect to the policy goals; and

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

6 (14) ~~(13)~~ a summary of public comments received at a  
7 hearing under this chapter or from another source that concern the  
8 demand for colonia resident services described by Subdivision (12);  
9 and

10 (15) ~~(14)~~ any other housing-related information that  
11 the state is required to include in the one-year action plan of the  
12 consolidated plan submitted annually to the United States  
13 Department of Housing and Urban Development.

14 (d) The priorities and policies in another plan adopted by  
15 the department must be consistent to the extent practical with the  
16 priorities and policies established in the state low income housing  
17 plan.

18 (e) To the extent consistent with federal law, the  
19 preparation and publication of the state low income housing plan  
20 shall be consistent with the filing and publication deadlines  
21 required of the department for the consolidated plan.

22 (f) The director may subdivide the uniform state service  
23 regions as necessary for purposes of the state low income housing  
24 plan.

25 (g) The department shall include the plan developed by the  
26 Texas State Affordable Housing Corporation under Section 2306.566  
27 in the department's resource allocation plan under Subsection

1 (c)(5).

2 (h) The department shall consider and incorporate the  
3 specific results of the programs of the Texas State Affordable  
4 Housing Corporation in the department's estimate and analysis of  
5 the housing supply in each uniform state service region under  
6 Subsection (c)(9).

7 Sec. 2306.0722. PREPARATION OF PLAN AND REPORT. (a) Before  
8 preparing the annual low income housing report under Section  
9 2306.072 and the state low income housing plan under Section  
10 2306.0721, the department shall meet with [~~regional planning~~  
11 ~~commissions created under Chapter 391, Local Government Code,~~]  
12 representatives of groups with an interest in low income housing,  
13 nonprofit housing organizations, managers, owners, and developers  
14 of affordable housing, local government officials, residents of low  
15 income housing, and members of the Colonia Resident Advisory  
16 Committee. The department shall obtain the comments and  
17 suggestions of the representatives, officials, residents, and  
18 members about the prioritization and allocation of the department's  
19 resources in regard to housing.

20 (b) In preparing the annual report under Section 2306.072  
21 and the state low income housing plan under Section 2306.0721, the  
22 director shall:

23 (1) coordinate local, state, and federal housing  
24 resources, including tax exempt housing bond financing and low  
25 income housing tax credits;

26 (2) set priorities for the available housing resources  
27 to assist [~~help~~] the neediest individuals consistent with the

1 requirements of this chapter;

2 (3) evaluate the success of publicly financed  
3 ~~[supported]~~ housing programs;

4 (4) survey and identify the unmet housing needs of  
5 individuals the department is required to assist;

6 (5) ensure that housing programs benefit an individual  
7 without regard to the individual's race, ethnicity, sex, or  
8 national origin;

9 (6) develop housing opportunities for individuals and  
10 families of low and very low income and individuals with special  
11 housing needs;

12 (7) develop housing programs through an open, fair,  
13 and public process;

14 (8) set priorities for assistance in a manner that is  
15 appropriate and consistent with the housing needs of the  
16 populations described by Section 2306.0721(c)(1);

17 (9) incorporate recommendations that are consistent  
18 with the consolidated plan submitted annually by the state to the  
19 United States Department of Housing and Urban Development;

20 (10) identify the organizations and individuals  
21 consulted by the department in preparing the annual report and  
22 state low income housing plan and summarize and incorporate  
23 comments and suggestions provided under Subsection (a) as the board  
24 determines to be appropriate;

25 (11) develop a plan to respond to changes in federal  
26 funding and programs for the provision of affordable housing;

27 (12) use the following standardized categories to



1 describe the income of program applicants and beneficiaries:

2 (A) 0 to 30 percent of area median income  
3 adjusted for family size;

4 (B) more than 30 to 60 percent of area median  
5 income adjusted for family size;

6 (C) more than 60 to 80 percent of area median  
7 income adjusted for family size;

8 (D) more than 80 to 115 percent of area median  
9 income adjusted for family size; or

10 (E) more than 115 percent of area median income  
11 adjusted for family size;

12 (13) use the most recent census data combined with  
13 existing data from local housing and community service providers in  
14 the state, including public housing authorities, housing finance  
15 corporations, community housing development organizations, and  
16 community action agencies; and

17 (14) provide the needs assessment information  
18 compiled for the report and plan to the Texas State Affordable  
19 Housing Corporation.

20 SECTION 1.11. Section 2306.081, Texas Government Code, is  
21 amended to read as follows:

22 Sec. 2306.081. PROJECT COMPLIANCE; DATABASE. (a) The  
23 department, through the division with responsibility for  
24 compliance matters, shall periodically monitor for compliance with  
25 all applicable requirements [~~the entire construction phase~~]  
26 associated with any project under this chapter. The monitoring  
27 level for each project must be based on the amount of financial risk

1 directly related to the applicable lienhold interest of the  
2 department associated with the project or the minimum level of any  
3 federally required compliance review.

4 ~~[(b) After completion of a project's construction phase,~~  
5 ~~the department shall periodically review the performance of the~~  
6 ~~project to confirm the accuracy of the department's initial~~  
7 ~~compliance evaluation during the construction phase.]~~

8 ~~(c) The department shall use the division responsible for~~  
9 ~~credit underwriting matters and the division responsible for~~  
10 ~~compliance matters to determine the amount of risk associated with~~  
11 ~~each project.]~~

12 (b) ~~[(a)]~~ The department shall create an easily accessible  
13 database that contains all project compliance information  
14 developed under this chapter, including project compliance  
15 information provided to the department by the Texas State  
16 Affordable Housing Corporation.

17 (c) ~~[(e)]~~ The department shall allow the Texas State  
18 Affordable Housing Corporation timely access to the information in  
19 the database.

20 SECTION 1.12. Section 2306.082, Texas Government Code, is  
21 amended to read as follows:

22 Sec. 2306.082. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE  
23 RESOLUTION. (a) The department shall ~~[develop and]~~ implement ~~[a~~  
24 ~~policy to encourage the use of]~~:

25 (1) negotiated rulemaking procedures under Chapter  
26 2008 for the adoption of department rules; and

27 (2) appropriate alternative dispute resolution

1 procedures under Chapter 2009, with the exception that the process  
2 shall be binding, to assist in the timely resolution of internal and  
3 external disputes under the department's jurisdiction.

4 (b) The department's procedures relating to alternative  
5 dispute resolution must conform [~~, to the extent possible,~~] to any  
6 model guidelines issued by the State Office of Administrative  
7 Hearings for the use of alternative dispute resolution by state  
8 agencies.

9 (c) The department shall designate a trained person to:

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 those  
16 procedures, as implemented by the department.

17 SECTION 1.13. Amend Section 2306.093, Texas Government Code  
18 to read as follows:

19 Sec. 2306.093. HOUSING ASSISTANCE GOAL. In administering  
20 the programs described in Sections 2306.094 and 2306.097 of this  
21 Chapter, the department [~~By action of the board the community~~  
22 ~~affairs division~~] shall have a goal to apply a minimum of 25 percent  
23 of the division's total housing-related funds toward housing  
24 assistance for individuals and families of very low income.

25 SECTION 1.14 Amend Section 2306.111, Texas Government Code,  
26 to read as follows:

27 Sec. 2306.111. HOUSING FUNDS. (a) The department, through

1 the housing finance division, shall administer all federal housing  
2 funds provided to the state under the Cranston-Gonzalez National  
3 Affordable Housing Act (42 U.S.C. Section 12704 et seq.) or any  
4 other affordable housing program.

5 (b) In administering federal housing funds provided to the  
6 state under the Cranston-Gonzalez National Affordable Housing Act  
7 (42 U.S.C. Section 12704 et seq.), the department shall be required  
8 to have an application acceptance period for multifamily housing  
9 sponsors that runs concurrently with the application period for the  
10 federal housing tax credit program and the housing trust fund  
11 program. [~~The housing finance division shall adopt a goal to apply~~  
12 ~~an aggregate minimum of 25 percent of the division's total housing~~  
13 ~~funds toward housing assistance for individuals and families of~~  
14 ~~extremely low and very low income.~~]

15 (c) In administering federal housing funds provided to the  
16 state under the Cranston-Gonzalez National Affordable Housing Act  
17 (42 U.S.C. Section 12701 et seq.), the department shall expend [~~at~~  
18 ~~least 95]~~ 100 percent of these funds for the benefit of:

19 (1) non-participating small cities and rural areas  
20 that do not qualify to receive funds under the Cranston-Gonzalez  
21 National Affordable Housing Act directly from the United States  
22 Department of Housing and Urban Development; or,

23 (2) the preservation of existing affordable housing  
24 that receives financing from the United States Department of  
25 Agriculture. By rule, the department shall set-aside 5% of the  
26 funds available under this subsection for the benefit of persons  
27 with disabilities who live in small cities and rural areas that do

1 not qualify to receive funds under the Cranston-Gonzalez National  
2 Affordable Housing Act directly from the United States Department  
3 of Housing and Urban Development. The department shall annually  
4 expend \$10 million of the funds available under this subsection for  
5 multifamily production or rehabilitation in an application cycle  
6 that is open to all eligible applicants under Section 2306.111(b-1)  
7 and (b-2). If the department does not receive sufficient feasible  
8 applications for housing for persons with disabilities or  
9 multifamily production or rehabilitation within the first four  
10 months of the application cycle, then the funds shall be available  
11 for other purposes authorized under the Cranston-Gonzalez National  
12 Affordable Act. [All funds not set aside under this subsection  
13 shall be used for the benefit of persons with disabilities who live  
14 in areas other than small cities and rural areas.]

15 ~~(c) In administering federal housing funds provided to the~~  
16 ~~state under the Cranston-Gonzalez National Affordable Housing Act~~  
17 ~~(42 U.S.C. Section 12701 et seq.), the department shall expend [at~~  
18 ~~least 95] 100 percent of these funds for the benefit of~~  
19 ~~non-participating areas that do not qualify to receive funds under~~  
20 ~~the Cranston-Gonzalez National Affordable Housing Act directly~~  
21 ~~from the United States Department of Housing and Urban Development.~~  
22 ~~[All funds not set aside under this subsection shall be used for the~~  
23 ~~benefit of persons with disabilities who live in areas other than~~  
24 ~~small cities and rural areas.]~~

25 (c-1) The following entities are eligible to apply for  
26 set-aside funds under Subsection (c):

27 (1) nonprofit providers of affordable housing,

1 including community housing development organizations; and

2 (2) for-profit providers of affordable housing.

3 (c-2) In allocating set-aside funds under Subsection (c),  
4 the department shall [~~may~~] not give preference to nonprofit  
5 providers of affordable housing, except as required by federal law.

6 (d) The department shall allocate housing funds provided to  
7 the state under the Cranston-Gonzalez National Affordable Housing  
8 Act (42 U.S.C. Section 12701 et seq.), housing trust funds  
9 administered by the department under Sections 2306.201-2306.206,  
10 and commitments issued under the federal low income housing tax  
11 credit program administered by the department under Subchapter DD  
12 to all [~~urban/exurban areas~~] urban and rural areas, consistent with  
13 Section 2306.004, Texas Government Code, of each uniform state  
14 service region based on a formula developed by the department that  
15 is based on the need for housing assistance and the availability of  
16 housing resources in those [~~urban/exurban areas~~] urban and rural  
17 areas, provided that the allocations are consistent with applicable  
18 federal and state requirements and limitations. The department  
19 shall use the information contained in its annual state low income  
20 housing plan and shall use other appropriate data to develop the  
21 formula. In determining the availability of housing resources for  
22 its multifamily production programs, the department shall consider  
23 the dollar amount of: (1) multifamily tax exempt bonds, (2) HOME  
24 funds utilized for multifamily production or rehabilitation, and  
25 (3) financing provided by or through a governmental entity for  
26 multifamily production or rehabilitation, but excluding financing  
27 involved in the transfer of ownership of an existing development.

1 If the department determines under the formula that an insufficient  
2 number of eligible applications for assistance out of funds or  
3 credits allocable under this subsection are submitted to the  
4 department from a particular uniform state service region, the  
5 department shall use the unused funds or credits allocated to that  
6 region for all [~~urban/exurban areas~~] urban and rural areas in other  
7 uniform state service regions based on identified need and  
8 financial feasibility. If the department determines that there is  
9 less than \$5 million in available housing trust funds in a calendar  
10 year to allocate pursuant to Section 2306.201-2306.206 of this  
11 Chapter, then the department shall be authorized to allocate the  
12 housing trust funds based on the 13 state uniform service regions  
13 without suballocating the funds between urban and rural areas;  
14 provided, however, that the department will make the first award in  
15 each region to the highest scoring rural application.

16 (d-1) Funds or credits are not required to be allocated  
17 according to the regional allocation formula under Subsection (d)  
18 if:

19 (1) the funds or credits are reserved for  
20 contract-for-deed conversions or for set-asides mandated by state  
21 or federal law; and

22 (2) each contract-for-deed allocation or set-aside  
23 allocation equals not more than 10 percent of the total allocation  
24 of funds or credits for the applicable program.

25 (d-2) In administering the federal low income housing tax  
26 credit program, the department shall further subdivide the urban  
27 allocation in any State Uniform Service Region where there is

1 located a historically underserved urban area, as defined in  
2 Section 2306.004, based on the population ratio that the total of  
3 the historically underserved urban areas bears to the population of  
4 the urban area.

5 (d-3) Prior to the application of the regional allocation  
6 formula, and notwithstanding this section 2306.111, for calendar  
7 years 2006 and 2007, the department shall allocate an additional \$2  
8 million per year to Uniform State Service Region 9, an additional \$1  
9 million per year to Uniform State Service Region 13, and an  
10 additional \$750,000 per year to Uniform State Service Region 11 to  
11 alleviate the underfunding for these Regions in prior years. The  
12 department may utilize forward commitments in 2005 or 2006 to  
13 satisfy the provisions of this subsection.

14 (d-4) In allocating federal housing low income housing tax  
15 credit commitments under Subchapter DD of this chapter, the  
16 department shall utilize 5% of each region's allocation to  
17 developments which are financed through the Rural Housing Service  
18 of the United States Department of Agriculture and that do not  
19 exceed 48 units if new construction or of any size if rehabilitation  
20 is involved. Any funds allocated to developments that satisfy this  
21 subsection and that involve rehabilitation shall reduce the funds  
22 set-aside for At-Risk developments.

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

25 (1) the formula developed by the department under  
26 Subsection (d); and

27 (2) the allocation targets established under the



1 formula for the [~~urban/exurban areas~~] urban, historically  
2 underserved urban areas, if applicable, 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/exurban areas~~] urban, historically  
7 underserved urban areas, if applicable, and rural areas of each  
8 uniform state service region in the preceding year for each federal  
9 and state program affected by the requirements of Subsection (d).

10 [~~(g) For all urban/exurban areas and rural areas of each~~  
11 ~~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           (g) [~~(h)~~] The department by rule shall adopt a policy  
8 providing for the reallocation of financial assistance  
9 administered by the department, including financial assistance  
10 related to bonds issued by the department, if the department's  
11 obligation with respect to that assistance is prematurely  
12 terminated.

13           (h) [~~(i)~~] The director shall designate an employee of the  
14 department to act as the information officer and as a liaison with  
15 the public regarding each application seeking an allocation of  
16 housing funds described by this section.

17           (i) The department shall adopt a goal to apply an aggregate  
18 minimum of 25 percent of the division's total housing funds toward  
19 housing assistance for individuals and families of extremely low  
20 and very low income, unless it is not possible to obtain operating  
21 subsidies necessary to meet such goal.

22           SECTION 1.15. Section 2306.1111, Texas Government Code, is  
23 amended to read as follows:

24           Sec. 2306.1111. UNIFORM APPLICATION AND FUNDING CYCLE. (a)  
25 Notwithstanding any other state law and to the extent consistent  
26 with federal law, the department shall establish a uniform  
27 application and funding cycle for all single-family and multifamily

1 housing programs administered by the department under this chapter.  
2 The department shall have a uniform application cycle for  
3 multifamily applications for funding under the housing funds  
4 provided to the state under the Cranston-Gonzalez National  
5 Affordable Housing Act (42 U.S.C. Section 12701 et seq.), housing  
6 trust funds administered by the department under Section  
7 2306.201-2306.206, and commitments issued under the federal low  
8 income housing tax credit program administered by the department  
9 under Subchapter DD. In the event that the department does not  
10 receive sufficient feasible applications during the uniform  
11 application period for multifamily housing funds provided to the  
12 state under the Cranston-Gonzalez National Affordable Housing Act  
13 (42 U.S.C. Section 12701 et seq.) or housing trust funds  
14 administered by the department under Section 2306.201-2306.206,  
15 then the department may consider additional applications. During  
16 the first four months of any application period for multifamily  
17 housing funding under the Cranston-Gonzalez National Affordable  
18 Housing Act (42 U.S.C. Section 12701 et seq.) or housing trust funds  
19 administered by the department under Section 2306.201-2306.206,  
20 the department shall not consider any applications requesting a  
21 grant of funds.

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

26 SECTION 1.16. Amend Section 2306.1113, Texas Government  
27 Code, to read as follows:

1           Sec. 2306.1113. EX PARTE COMMUNICATIONS. (a) During the  
2 period beginning on the date a project application is filed and  
3 ending on the date the board makes a final decision with respect to  
4 any approval of that application, a member of the board may not  
5 communicate regarding a project application, except with regard to  
6 an application that has been included into the alternative dispute  
7 resolution process described by Section 2306.082 of this chapter,  
8 with the following persons:

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

11           (2) any person who is:

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

14                   (i) a general partner or contractor; and

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

17           (B) employed as a lobbyist by the applicant or a  
18 related party.

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

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

26           (2) any person who is:

27           (A) active in the construction, rehabilitation,

1 ownership, or control of the proposed project, including:

2 (i) a general partner or contractor; and

3 (ii) a principal or affiliate of a general  
4 partner or contractor; or

5 (B) employed as a lobbyist by the applicant or a  
6 related party.

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

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

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

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

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

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

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

22 (D) a summary of any action taken as a result of  
23 the communication.

24 (b) Notwithstanding Subsection (a) or (a-1), a board member  
25 or department employee may communicate without restriction with a  
26 person listed in Subsection (a) or (a-1) at any board meeting or  
27 public hearing held with respect to the application.

1        (c) The department shall not adopt any rules that expand the  
2 scope of Section 2306.1113(a) to any person other than a board  
3 member or that would otherwise restrict communications with any  
4 person within the department.

5            SECTION 1.17. Amend Section 2306.1114, Texas Government  
6 Code, to read as follows:

7            Sec. 2306.1114. NOTICE OF RECEIPT OF APPLICATION OR  
8 PROPOSED APPLICATION. (a) Not later than the 14th day after the  
9 date an application or a proposed application for housing funds  
10 described by Section 2306.111 has been filed, the department shall  
11 directly provide written notice of the filing of the application or  
12 proposed application to the following persons:

13            (1) the United States representative who represents  
14 the community containing the development described in the  
15 application;

16            (2) members of the legislature who represent the  
17 community containing the development described in the application;

18            (3) the presiding officer of the governing body of the  
19 political subdivision containing the development described in the  
20 application;

21            (4) any member of the governing body of a political  
22 subdivision who represents the area containing the development  
23 described in the application;

24            (5) the superintendent and the presiding officer of  
25 the board of trustees of the school district containing the  
26 development described in the application; and

27            (6) any neighborhood [~~organizations~~] associations on

1 record with the [~~state or county~~] department in which the  
2 development described in the application is to be located and whose  
3 boundaries contain the proposed development site.

4 (b) The notice provided under Subsection (a) must include  
5 the following information:

6 (1) the relevant dates affecting the application,  
7 including:

8 (A) the date on which the application was filed;

9 (B) the date or dates on which any hearings on the  
10 application will be held; and

11 (C) the date by which a decision on the  
12 application will be made;

13 (2) a summary of relevant facts associated with the  
14 development;

15 (3) a summary of any public benefits provided as a  
16 result of the development, including rent subsidies and tenant  
17 services; and

18 (4) the name and contact information of the employee  
19 of the department designated by the director to act as the  
20 information officer and liaison with the public regarding the  
21 application.

22 SECTION 1.18. Section 2306.127, Texas Government Code, is  
23 amended to read as follows:

24 Sec. 2306.127. PRIORITY FOR CERTAIN COMMUNITIES. In a  
25 manner consistent with the regional allocation formula described  
26 under Section 2306.111(d) for programs other than the federal  
27 housing tax credit program administered under Subchapter DD, the

1 department shall give priority through its housing program scoring  
2 criteria to communities that are located wholly or partly in:

3 (1) a federally designated urban enterprise  
4 community;

5 (2) an urban enhanced enterprise community; or

6 (3) an economically distressed area or colonia.

7 SECTION 1.19. Section 2306.147, Texas Government Code, is  
8 amended to read as follows:

9 Sec. 2306.147. FEES AND PENALTIES. (a) The board shall  
10 have the specific duty and power to establish a schedule of fees and  
11 penalties relating to the operation of the housing finance division  
12 and authorized by this chapter, including application, processing,  
13 loan commitment, origination, servicing, and administrative fees.  
14 The fees imposed on the housing tax credit program administered by  
15 the department under Subchapter DD shall not exceed the costs of  
16 administering such program.

17 (b) The department shall waive grant application fees for  
18 nonprofit organizations that offer expanded services such as child  
19 care, nutrition programs, job training assistance, health  
20 services, or human services.

21 SECTION 1.20. Amend Section 2306.148, Texas Government  
22 Code, to read as follows:

23 Sec. 2306.148. UNDERWRITING STANDARDS. The board shall  
24 have the specific duty and power to adopt underwriting standards  
25 for loans made or financed by the housing finance division under its  
26 single family and multifamily bond programs.

27 SECTION 1.21. Amend Section 2306.150, Texas Government



1 Code, to read as follows:

2 Sec. 2306.150. Property Standards. The board shall have  
3 the specific duty and power to adopt minimum property standards for  
4 housing developments financed or acquired with bond proceeds under  
5 this chapter.

6 SECTION 1.22. Amend Section 2306.171, Texas Government  
7 Code, to read as follows:

8 Sec. 2306.171. GENERAL DUTIES OF DEPARTMENT RELATING TO  
9 PURPOSES OF HOUSING FINANCE DIVISION. The department shall:

10 (1) develop policies and programs designed to increase  
11 the number of individuals and families of [~~extremely low,~~ very  
12 low, [~~and~~ low income, and families of moderate income that  
13 participate in the housing finance division's programs;

14 (2) work with municipalities, counties, public  
15 agencies, housing sponsors, and nonprofit and for profit  
16 corporations to provide:

17 (A) information on division programs; and

18 (B) technical assistance to municipalities,  
19 counties, and nonprofit corporations;

20 (3) encourage private for profit and nonprofit  
21 corporations and state organizations to match the division's funds  
22 to assist in providing affordable housing to individuals and  
23 families of low and very low income and families of moderate income;

24 (4) develop policies and procedures to increase the  
25 number of individuals and families of extremely low income that  
26 benefit from the housing finance division's programs by attempting  
27 to match the division's financing assistance with any rental

1 assistance operating subsidies that may be available from other  
2 governmental sources [~~provide matching funds to municipalities,~~  
3 ~~counties, public agencies, housing sponsors, and nonprofit~~  
4 ~~developers who qualify under the division's programs~~]; and

5 (5) administer the state's allocation of federal funds  
6 provided under the rental rehabilitation grant program authorized  
7 by Section 17, Title I, of the United States Housing Act of 1937 (42  
8 U.S.C. Section 1437o).

9 SECTION 1.23. Amend Section 2306.174, Texas Government  
10 Code, to read as follows:

11 Sec. 2306.174. Acquisition and Disposition of Property.  
12 The department may:

13 (1) acquire, own, rent, lease, accept, hold, or dispose of  
14 any real, personal, or mixed property, or any interest in property,  
15 including a right or easement, in performing its duties and  
16 exercising its powers under this chapter, by purchase, exchange,  
17 gift, assignment, transfer, foreclosure, sale, lease, or  
18 otherwise;

19 (2) hold, manage, operate, or improve real, personal,  
20 or mixed property, except that:

21 (A) the department is restricted in acquiring  
22 property under Section 2306.251 unless it is required to foreclose  
23 on a delinquent loan and elects to acquire the property at  
24 foreclosure;

25 (B) the department shall make a diligent effort  
26 for a period of up to six months to sell a housing development  
27 acquired through foreclosure to a purchaser who will be required to

1 pay ad valorem taxes on the housing development or, if such a  
2 purchaser cannot be found, to another purchaser; and

3 (C) the department shall sell a housing  
4 development acquired through foreclosure not later than the second  
5 [~~third~~] anniversary of the date of acquisition unless the board  
6 adopts a resolution stating that a purchaser cannot be found after  
7 diligent search by the housing finance division, in which case the  
8 department shall continue to try to find a purchaser and shall sell  
9 the housing development when a purchaser is found; and

10 (3) lease or rent land or a dwelling, house,  
11 accommodation, building, structure, or facility from a private  
12 party to carry out the housing finance division's purposes.

13 SECTION 1.24. Amend Section 2306.183 to read as follows:

14 Sec. 2306.183. NEEDS OF QUALIFYING INDIVIDUALS AND FAMILIES  
15 IN RURAL AREAS, HISTORICALLY UNDERSERVED URBAN AREAS, AND SMALL  
16 MUNICIPALITIES. The department may adopt a target strategy to  
17 ensure that the credit and housing needs of qualifying individuals  
18 and families who reside in rural areas, historically underserved  
19 urban areas, and small municipalities are equitably served by the  
20 housing finance division.

21 SECTION 1.25. Amend Section 2306.185 to read as follows:

22 Sec. 2306.185. LONG-TERM AFFORDABILITY AND SAFETY OF  
23 MULTIFAMILY RENTAL HOUSING DEVELOPMENTS. (a) The department shall  
24 adopt policies and procedures to ensure that, for a multifamily  
25 rental housing development funded through loans, grants, or tax  
26 credits under this chapter, the owner of the development:

27 (1) maintains rents equal to or below the maximum

1 allowable amount according to the maximum allowable for the  
2 specific housing program; [~~keeps the rents affordable for low~~  
3 ~~income tenants for the longest period that is economically~~  
4 ~~feasible;~~] and

5 (2) provides regular maintenance to keep the  
6 development sanitary, decent, and safe and otherwise complies, if  
7 applicable, with the requirements of Section 2306.186.

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

14 (c) The department shall require that a recipient of funding  
15 maintains the affordability of the multifamily housing development  
16 for the targeted income levels appropriate for the type of housing  
17 program for the greater of:

18 (1) the minimum affordability period under the  
19 respective federal or state program providing the financing; or

20 (2) [~~households of extremely low, very low, low, and~~  
21 ~~moderate incomes for the greater of a 30-year period from the date~~  
22 ~~the recipient takes legal possession of the housing or~~] the  
23 remaining term of the existing federal government assistance. ~~In~~  
24 ~~addition, the agreement between the department and the recipient~~  
25 ~~shall require the renewal of rental subsidies if available and if~~  
26 ~~the subsidies are sufficient to maintain the economic viability of~~  
27 ~~the multifamily development.~~

1 (d) The development restrictions provided by Subsection (a)  
2 and Section 2306.269 are enforceable by the department [~~by~~  
3 ~~tenants of the development, or by private parties~~] against the  
4 initial owner or any subsequent owner. The department shall  
5 require a land use restriction agreement providing for enforcement  
6 of the restrictions by the department [~~a tenant, or a private~~  
7 ~~party~~] that includes the right to recover reasonable attorney's  
8 fees if the party seeking enforcement of the restriction is  
9 successful or the property owner if the enforcement action is  
10 unsuccessful.

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

14 (1) a loan ~~or grant~~ in an amount greater than 33  
15 percent of the market value of the development on the date the  
16 recipient completed the construction of the development;

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

20 (3) a low income housing tax credit that provides more  
21 than 33 percent of the total development cost of the development; or

22 (4) a grant

23 ~~(f) An owner of the housing development who intends to sell,~~  
24 ~~lease, prepay the loan insured by the United States Department of~~  
25 ~~Housing and Urban Development, opt out of a housing assistance~~  
26 ~~payments contract under Section 8, United States Housing Act of~~  
27 ~~1937 (42 U.S.C. Section 1437f), or otherwise dispose of the~~

1 ~~development shall agree to provide notice to the department at~~  
2 ~~least 12 months before the date of any attempt to dispose of the~~  
3 ~~development, prepay the loan, or opt out of the Section 8 contract~~  
4 ~~to enable the department to attempt to locate a buyer who will~~  
5 ~~conform to the development restrictions provided by this section.~~

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

7 (f) ~~(h)~~ The department shall monitor a development owner's  
8 compliance with this section.

9 SECTION 1.26. Amend Section 2306.186, Texas Government  
10 Code, to read as follows:

11 Sec. 2306.186. MANDATORY DEPOSITS TO FUND NECESSARY  
12 REPAIRS. (a) In this section:

13 (1) "Bank ~~trustee~~" means a bank authorized to do  
14 business in this state, ~~with the power to act as trustee.~~

15 ~~(2) "Department assistance" means any state or federal~~  
16 ~~assistance administered by or through the department, including low~~  
17 ~~income housing tax credits.~~

18 (2) ~~(3)~~ "First lien lender" means a lender whose lien  
19 has first priority.

20 (3) ~~(4)~~ "Reserve account" means an individual account:

21 (A) created to fund any necessary repairs for a  
22 multifamily rental housing development; and

23 (B) maintained by a first lien lender or bank  
24 ~~trustee.~~

25 (b) If the department is the first lien lender with respect  
26 to the multifamily rental housing development, each owner who  
27 receives a mortgage loan from the department ~~assistance~~ for a

1 multifamily rental housing development that contains 100 ~~25~~ or more  
2 rental units shall deposit annually into a reserve account:

3 (1) for the year 2004:

4 (A) not less than \$150 per unit per year for units  
5 one to five years old; and

6 (B) not less than \$200 per unit per year for units  
7 six or more years old; and

8 (2) for each year following the year 2004, the amounts  
9 per unit per year as described by Subdivision (1).

10 (c) A land use restriction agreement or restrictive  
11 covenant between the owner and the department must require the  
12 owner to begin making annual deposits to the reserve account on the  
13 date that occupancy of the multifamily rental housing development  
14 stabilizes or the date that permanent financing for the development  
15 is completely in place, whichever occurs later, and shall continue  
16 making deposits until the earliest of the following dates:

17 (1) the date of any ~~involuntary~~ change in ownership of  
18 the development;

19 (2) the date on which the owner suffers a total  
20 casualty loss with respect to the development or the date on which  
21 the development becomes functionally obsolete, if the development  
22 cannot be or is not restored;

23 (3) the date on which the development is demolished;

24 (4) the date on which the development ceases to be used  
25 as multifamily rental property; or

26 (5) the end of the affordability period specified by  
27 the land use restriction agreement or restrictive covenant.

1           (d) The department shall be prohibited from imposing any  
2 requirements regarding the preparation of a property condition  
3 assessment or the creation, maintenance or funding of a reserve  
4 account on any multifamily rental housing development if the  
5 department is not the first lien lender of multifamily rental  
6 housing development. ~~With respect to multifamily rental~~  
7 ~~developments, if the establishment of a reserve fund for repairs~~  
8 ~~has not been required by the first lien lender, the development~~  
9 ~~owner shall set aside the repair reserve amount as a reserve for~~  
10 ~~capital improvements. The reserve must be established for each~~  
11 ~~unit in the development, regardless of the amount of rent charged~~  
12 ~~for the unit.~~

13           (e) Beginning with the 11th year after the awarding of any  
14 mortgage loan financial assistance for the development by the  
15 department that results in the department being the first lien  
16 lender, the owner of a multifamily rental housing development shall  
17 contract for a third-party physical needs assessment ~~at appropriate~~  
18 ~~intervals that are consistent with lender requirements with respect~~  
19 ~~to the development~~ to determine compliance with local health,  
20 safety, and building codes. ~~If the first lien lender does not~~  
21 ~~require a third-party physical needs assessment or~~ If ~~if~~ the  
22 department is the first lien lender, the owner shall contract with a  
23 third party to conduct a physical needs assessment at least once  
24 during each five-year period beginning with the 11th year after the  
25 awarding of any mortgage loan that results in the department being  
26 the first lien lender financial assistance for the development by  
27 ~~the department.~~ The owner of the development shall submit to the



1 department copies of the most recent third-party physical needs  
2 assessment conducted on the development, any response by the owner  
3 to the assessment, any repairs made in response to the assessment,  
4 and information on any necessary changes to the required reserve  
5 based on the assessment. The provisions of this section  
6 2306.186(e) does not apply to a development for which an owner is  
7 required to maintain a reserve account under any other provision of  
8 federal or state law. To the extent that the department has  
9 previously imposed the requirements on any property that is  
10 required to maintain a reserve account under any other provisions  
11 of federal or state law, the department shall prepare an amendment  
12 to the land use restriction agreement or restrictive covenant  
13 removing such requirement.

14 ~~(f) The department may complete necessary repairs if the~~  
15 ~~owner fails to complete the repairs as required by Subsection (e).~~  
16 ~~Payment for those repairs must be made directly by the owner of the~~  
17 ~~development or through a reserve account established for the~~  
18 ~~development under this section.~~

19 ~~(g) If notified of the development owner's failure to comply~~  
20 ~~with a local health, safety, or building code, the department may~~  
21 ~~enter on the property and complete any repairs necessary to correct~~  
22 ~~a violation of that code, as identified in the applicable violation~~  
23 ~~report, and may pay for those repairs through a reserve account~~  
24 ~~established for the development under this section.~~

25 ~~(h) The duties of the owner of a multifamily rental housing~~  
26 ~~development under this section cease on the date of a voluntary~~  
27 ~~change in ownership of the development, but the subsequent owner of~~

1 ~~the development is subject to the deposit, inspection, and~~  
2 ~~notification requirements of Subsections (b), (c), (d), and (e).~~

3 ~~(i) The first lien lender shall maintain the reserve~~  
4 ~~account. In the event there is no longer a first lien lender, then~~  
5 ~~Subsections (b) and (d) no longer apply.~~

6 ~~(j) The department shall adopt rules that:~~

7 ~~(1) establish requirements and standards regarding:~~

8 ~~(A) for first lien lenders and banks trustees:~~

9 ~~(i) maintenance of reserve accounts and~~  
10 ~~reasonable costs of that maintenance;~~

11 ~~(ii) asset management;~~

12 ~~(iii) transfer of money in reserve accounts~~  
13 ~~to the department to fund necessary repairs; and~~

14 ~~(iv) oversight of reserve accounts and the~~  
15 ~~provision of financial data and other information to the~~  
16 ~~department; and~~

17 ~~(B) for owners, inspections of the multifamily~~  
18 ~~rental housing developments and identification of necessary~~  
19 ~~repairs, including requirements and standards regarding~~  
20 ~~construction, rehabilitation, and occupancy that may enable~~  
21 ~~quicker identification of those repairs;~~

22 ~~(2) identify circumstances in which money in the~~  
23 ~~reserve accounts may:~~

24 ~~(A) be used for expenses other than necessary~~  
25 ~~repairs, including property taxes or insurance; and~~

26 ~~(B) fall below mandatory deposit levels without~~  
27 ~~resulting in department action;~~

1           ~~(3) define the scope of department oversight of~~  
2 ~~reserve accounts and the repair process;~~

3           ~~(4) provide the consequences of any failure to make a~~  
4 ~~required deposit, including a definition of good cause, if any, for~~  
5 ~~a failure to make a required deposit;~~

6           ~~(5) specify or create processes and standards to be~~  
7 ~~used by the department to obtain repairs for developments;~~

8           ~~(6) define for purposes of Subsection (c) the date on~~  
9 ~~which occupancy of a development is considered to have stabilized~~  
10 ~~and the date on which permanent financing is considered to be~~  
11 ~~completely in place; and~~

12           ~~(7) provide for appointment of a bank trustee as~~  
13 ~~necessary under this section.~~

14           ~~(k) The department shall assess an administrative penalty~~  
15 ~~on development owners who fail to contract for the third-party~~  
16 ~~physical needs assessment and make the identified repairs as~~  
17 ~~required by this section. The department may assess the~~  
18 ~~administrative penalty in the same manner as an administrative~~  
19 ~~penalty assessed under Section 2306.6023. The penalty is computed~~  
20 ~~by multiplying \$200 by the number of dwelling units in the~~  
21 ~~development and must be paid to the department. The office of the~~  
22 ~~attorney general shall assist the department in the collection of~~  
23 ~~the penalty and the enforcement of this subsection.~~

24           (f) (1) None of the requirements of this section pertaining  
25 to reserve accounts or property condition assessments ~~This section~~  
26 ~~does not~~ apply to a development for which an owner is required to  
27 maintain a reserve account under any other provision of federal or

1 state law.

2 SECTION 1.27. Amend Sections 2306.202, and 2306.203, Texas  
3 Government Code, to read as follows:

4 Sec. 2306.202. USE OF HOUSING TRUST FUND. (a) The  
5 department, through the housing finance division, shall use the  
6 housing trust fund to provide loans, grants, or other comparable  
7 forms of assistance to local units of government, public housing  
8 authorities, for-profit organizations, nonprofit organizations,  
9 and income-eligible individuals, families, and households to  
10 finance, acquire, rehabilitate, and develop decent, safe, and  
11 sanitary housing. In order to enhance the self-sufficiency of the  
12 housing trust fund, the department shall structure its award system  
13 to encourage loans over grants by having two application periods,  
14 to be organized as follows:

15 (1) an initial loan application cycle that shall be  
16 open concurrently with housing tax credit application filing  
17 period; and

18 (2) an application period for grants shall only be  
19 held in the event that there are any available funding not utilized  
20 for loans [~~In each biennium the first \$2.6 million available~~  
21 ~~through the housing trust fund for loans, grants, or other~~  
22 ~~comparable forms of assistance shall be set aside and made~~  
23 ~~available exclusively for local units of government, public housing~~  
24 ~~authorities, and nonprofit organizations. Any additional funds may~~  
25 ~~also be made available to for-profit organizations so long as at~~  
26 ~~least 45 percent of available funds in excess of the first \$2.6~~  
27 ~~million shall be made available to nonprofit organizations for the~~

1 ~~purpose of acquiring, rehabilitating, and developing decent, safe,~~  
2 ~~and sanitary housing. The remaining portion shall be competed for~~  
3 ~~by nonprofit organizations, for-profit organizations, and other~~  
4 ~~eligible entities.] Notwithstanding any other section of this~~  
5 ~~chapter, but subject to the limitations in Section 2306.251(c), the~~  
6 ~~department may also use the fund to acquire property to endow the~~  
7 ~~fund.~~

8 (b) Use of the fund is limited to providing:

9 (1) assistance for individuals and families of low and  
10 very low income;

11 (2) ~~technical~~ assistance to housing sponsors for the  
12 purpose of and capacity building to nonprofit organizations engaged  
13 ~~in~~ developing housing for individuals and families of low and very  
14 low income; and

15 (3) security for repayment of revenue bonds issued to  
16 finance housing for individuals and families of low and very low  
17 income.

18 Sec. 2306.203. RULES REGARDING ADMINISTRATION OF HOUSING  
19 TRUST FUND. The board shall adopt rules to administer the housing  
20 trust fund, including rules providing:

21 (1) that the division give priority to programs that  
22 maximize federal resources;

23 (2) for a process to set priorities for use of the  
24 fund, including the distribution of fund resources under a  
25 competitive application ~~request for a proposal~~ process developed  
26 and approved by the board;

27 (3) that the criteria used to rank proposals [~~will~~]

1 shall only include the following in descending order of priority:

2 (A) the extent to which individuals and families  
3 of low and very low income are served by the development; ~~leveraging~~  
4 ~~of federal resources;~~

5 (B) cost-effectiveness of a proposed development  
6 as determined by the amount of funding per person, based upon a  
7 calculation of 1.5 persons per bedroom, with the greater points  
8 being awarded for the lowest amount of funding per person served;  
9 and

10 (C) leveraging of federal resources with greater  
11 points being awarded for a greater percentage of total housing  
12 development cost being provided by federal funds [~~extent to which~~  
13 ~~individuals and families of very low income are served by the~~  
14 ~~development];~~

15 (D) leveraging of private funding sources with  
16 greater points awarded for larger amount of private funds per  
17 person served, based upon a calculation of 1.5 persons per bedroom;

18 (E) support for the development from the State  
19 Representative and State Senator for the districts where the  
20 development is to be located;

21 (F) priority to developments that are requesting  
22 a loan of housing trust funds rather than a grant; and

23 (G) other criteria established by department  
24 that are not inconsistent with the priorities established above

25 (4) that funds may not be made available to a  
26 development that permanently and involuntarily displaces  
27 individuals and families of low income;

1           (5) that the board attempt to allocate funds to  
2 achieve a broad geographical distribution with:

3           (A) special emphasis on equitably serving rural  
4 and nonmetropolitan areas; and

5           (B) consideration of the number and percentage of  
6 income-qualified families in different geographical areas; and

7           (6) that multifamily housing developed or  
8 rehabilitated through the fund remain affordable to  
9 income-qualified households for the term of the loan, or, if the  
10 department's funding is a grant, for at least 30 ~~20~~ years.

11           SECTION 1.28. Amend Section 2306.205, Texas Government  
12 Code, to read as follows:

13           Sec. 2306.205. Transfer of Money to Housing Trust Fund. (a)  
14 Except as provided by Subsections (c), (d), and (e), not later than  
15 January 10 of each year the housing finance division shall transfer  
16 to the housing trust fund an amount, as determined by the audit  
17 report prepared under Section 2306.204, equal to one-half of the  
18 housing finance division's unencumbered fund balances in excess of  
19 two percent of the division's total bonded indebtedness that is not  
20 rated on its own merits in the highest long-term debt rating  
21 category by one or more nationally recognized rating agencies.

22           (b) The department shall determine the unencumbered fund  
23 balance under Subsection (a) according to the debt rating criteria  
24 established for housing finance agencies by one or more nationally  
25 recognized rating agencies.

26           (c) If, at the time an annual audit required by Section  
27 2306.204 is concluded, the housing finance division's unencumbered

1 fund balances exceed four percent of its total bonded indebtedness  
2 that is not rated on its own merits in the highest long-term debt  
3 rating category, the department shall transfer not later than  
4 January 10 of the next year all amounts in excess of that four  
5 percent.

6 (d) If, at the time an annual audit required by Section  
7 2306.204 is concluded, a nationally recognized rating agency has  
8 recommended that the housing finance division maintain  
9 unencumbered fund balances in excess of the amount permitted by  
10 Subsection (a) to achieve or maintain a rating of at least Aa/A+ on  
11 all or a portion of the bonded indebtedness of the housing finance  
12 division that is issued under an open indenture or an open flow of  
13 funds, the department shall transfer not later than January 10 of  
14 the next year all amounts in excess of the amount required by the  
15 rating agency to be held as unencumbered fund balances.

16 (e) If, at the time an annual audit required by Section  
17 2306.204 is concluded, a nationally recognized rating agency has  
18 recommended that the housing finance division increase the amount  
19 of its unencumbered fund balances to achieve or maintain a  
20 financially sound condition or to prevent a decrease in the  
21 long-term debt rating maintained on all or a portion of the housing  
22 finance division's bonded indebtedness, the housing finance  
23 division may not make further annual transfers to the housing trust  
24 fund until all requirements and conditions of the rating agency  
25 have been met.

26 (f) In addition to the money transferred into the housing  
27 trust fund under this section, and subject to Subsection (e), the



1 department shall transfer into the fund the amount of any  
2 origination fee, asset oversight fee, and servicing fee ~~the~~  
3 ~~department or~~ the Texas State Affordable Housing Corporation  
4 receives in relation to the administration of its 501(c)(3) bond  
5 program established pursuant to Section 2306.358 that exceeds the  
6 amount needed by the ~~department or~~ the Texas State Affordable  
7 Housing Corporation to pay its operating and overhead costs and  
8 fund reserves, including an insurance reserve or credit enhancement  
9 reserve established by the board in administering the program.

10 SECTION 1.29. Amend Section 2306.227, Texas Government  
11 Code, to read as follows:

12 Sec. 2306.227. Prepayment of Mortgage Loans. A mortgage  
13 loan made under this chapter may be prepaid at any time prior to  
14 maturity [~~after the period of years and under the terms and~~  
15 ~~conditions determined by the board~~].

16 SECTION 1.30. Amend Section 2306.229, Texas Government  
17 Code, by adding Subsection (c) to read as follows:

18 Sec. 2306.229. Documents Supporting Mortgage Loans. (a) A  
19 mortgage loan shall be evidenced by a mortgage or deed of trust note  
20 or bond and by a mortgage that creates a lien on the housing  
21 development and on all real property that constitutes the site of or  
22 that relates to the housing development.

23 (b) A note or bond and a mortgage or deed of trust:

24 (1) must contain provisions satisfactory to the  
25 department;

26 (2) must be in a form satisfactory to the department;

27 and

1           (3) may contain exculpatory provisions relieving the  
2 borrower or its principal from personal liability if the department  
3 agrees.

4           (c) For all loans made for multifamily housing development  
5 with funds provided to the state under the Cranston-Gonzalez  
6 National Affordable Housing Act ( 42 U.S.C. Section 12701 et seq.),  
7 the department shall obtain a mortgagee's title policy in the  
8 amount of the loan; provided, however, that the department shall  
9 not designate or require the Borrower to provide the mortgagee  
10 title policy from any specific title insurance company. The  
11 borrower of the funds providing the mortgagee title policy shall  
12 select the title insurance company to close the loan and to provide  
13 the mortgagee title policy.

14           SECTION 1.31. Amend Section 2306.252 to read as follows:

15           Sec. 2306.252. HOUSING RESOURCE CENTER. (a) The board  
16 shall establish a housing resource center in the housing finance  
17 division.

18           (b) The [~~department, through the~~] housing resource center,  
19 shall:

20           (1) provide educational material prepared in plain  
21 language to the public ~~housing advocates, housing sponsors,~~  
22 ~~borrowers, and tenants;~~

23           (2) [~~provide technical assistance to nonprofit~~  
24 ~~housing sponsors,~~

25           [~~3~~] assist in the development of housing policy,  
26 including the annual state low income housing plan and report and  
27 the consolidated plan. [~~and~~

1           ~~[(4) provide, in cooperation with the state energy~~  
2 ~~conservation office, the Texas Commission on Environmental~~  
3 ~~Quality, and other governmental entities, information on the use of~~  
4 ~~sustainable and energy efficient housing construction products and~~  
5 ~~assist local governments, and nonprofits in identifying~~  
6 ~~information on sustainable and energy efficient housing~~  
7 ~~construction and energy efficient resources and techniques.]~~

8           (c) The housing resource center is intended to assist  
9 individuals, local organizations, and local governments in  
10 providing for the housing needs of individuals and families in  
11 their communities by providing information available to the center  
12 to housing contractors, for-profit and nonprofit housing sponsors,  
13 community-based organizations, and local governments on:

- 14           (1) local housing needs;
- 15           (2) housing programs;
- 16           (3) available funding sources; and
- 17           (4) programs that affect the creation, improvement, or  
18 preservation of housing affordable to individuals and families of  
19 low and very low income.

20           (d) The center shall serve as a housing and community  
21 services clearinghouse to provide information to the public, local  
22 communities, housing providers, and other interested parties  
23 regarding:

- 24           (1) the performance of each department program;
- 25           (2) the number of people served;
- 26           (3) the income of people served;
- 27           (4) the funding amounts distributed;

- 1 (5) allocation decisions;
- 2 (6) regional impact of department programs; and
- 3 (7) any other relevant information.

4 (e) The center shall compile the department's reports into  
5 an integrated format and shall compile and maintain a list of all  
6 affordable housing resources in the state, organized by community.

7 (f) The information required under Subsections (d) and (e)  
8 must be readily available in:

- 9 (1) a hard-copy format; and
- 10 (2) a user-friendly format on the department's  
11 website.

12 (g) The center shall provide information regarding the  
13 department's housing and community affairs programs to the Texas  
14 Information and Referral Network for inclusion in the statewide  
15 information and referral network as required by Section 531.0312.

16 SECTION 1.32. Amend Section 2306.253 (d)(1), Texas  
17 Government Code, to read as follows:

18 Sec. 2306.253. (d) In order to implement this section, the  
19 department may use money available to the department for housing  
20 purposes that the department is not prohibited from spending on the  
21 homebuyer education program, including:

- 22 (1) any fees charged by the department for  
23 organizations or individuals to attend any homebuyer education  
24 programs [~~the amount of administrative or service fees the~~  
25 ~~department receives from the issuance or refunding of bonds that~~  
26 ~~exceeds the amount the department needs to pay its overhead costs in~~  
27 ~~administering its bond programs]; and~~

1           (2) money the department receives from other entities  
2 by gift or grant under a contract.

3           SECTION 1.33. Amend Section 2306.254, Texas Government  
4 Code, to read as follows:

5           Sec. 2306.254. Tenant Services Program. (a) In this  
6 section, "tenant services" means social services, including child  
7 care, transportation, and basic adult education, that are provided  
8 to individuals residing in low income housing under Title IV-A,  
9 Social Security Act (42 U.S.C. Section 601 et seq.), and other  
10 similar services.

11           (b) The department may encourage, but shall not require,  
12 ~~[shall structure the requirements for]~~ the provision of tenant  
13 services in any multifamily development ~~[so that tenant services~~  
14 ~~provided through housing programs are coordinated with similar~~  
15 ~~services provided through state workforce development and welfare~~  
16 ~~programs]~~. The department shall encourage ~~[emphasize]~~ tenant  
17 services that are provided at no cost by third parties or are  
18 eligible for additional federal matching funds through workforce  
19 development or welfare-related programs.

20           (c) The department shall designate a department employee as  
21 the tenant services program coordinator. The coordinator shall  
22 serve as a liaison to the Texas Workforce Commission, the Texas  
23 Department of Human Services, the Department of Protective and  
24 Regulatory Services, and the Legislative Budget Board on matters  
25 relating to the coordination of tenant services programs.

26           (d) The coordinator shall meet in Austin at least quarterly  
27 with representatives of the Texas Workforce Commission, the Texas

1 Department of Human Services, the Department of Protective and  
2 Regulatory Services, and the Legislative Budget Board to:

3 (1) update coordination of tenant services with  
4 workforce development and welfare-related programs; and

5 (2) discuss funding sources for tenant services  
6 programs[ ~~and~~

7 [~~(3) report on the status of tenant services programs,~~  
8 ~~including reporting on the number of clients and types of services~~  
9 ~~offered.~~

10 (e) Not later than December 1 preceding a regular session of  
11 the legislature, the department shall file with the appropriate  
12 state agencies and legislative committees a report discussing the  
13 results of the department's program under this section.

14 SECTION 1.34. Amend Section 2306.257, Texas Government  
15 Code, to read as follows:

16 Sec. 2306.257. Applicant Compliance With State and Federal  
17 Laws Prohibiting Discrimination: Certification and Monitoring (a)  
18 The department may provide assistance through a housing program  
19 under this chapter only to an applicant who certifies the  
20 applicant's compliance with any applicable state and federal fair  
21 housing laws[~~+~~

22 [~~(1) state and federal fair housing laws, including~~  
23 ~~Chapter 301, Property Code, Title VIII of the Civil Rights Act of~~  
24 ~~1968 (42 U.S.C. Section 3601 et seq.), and the Fair Housing~~  
25 ~~Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.),~~

26 [~~(2) the Civil Rights Act of 1964 (42 U.S.C. Section~~  
27 ~~2000a et seq.),~~

1           ~~[(3) the Americans with Disabilities Act of 1990 (42~~  
2 ~~U.S.C. Section 12101 et seq.); and~~

3           ~~[(4) the Rehabilitation Act of 1973 (29 U.S.C. Section~~  
4 ~~701 et seq.)].~~

5           ~~[(b) In conjunction with the state Commission on Human~~  
6 ~~Rights, the department shall adopt rules governing the~~  
7 ~~certification process described by this section, including rules~~  
8 ~~establishing:~~

9                   ~~[(1) procedures for certifying compliance;~~

10                   ~~[(2) methods for measuring continued compliance; and~~

11                   ~~[(3) different degrees of sanctions for noncompliance~~  
12 ~~and reasonable periods for correcting noncompliance.~~

13           ~~[(c) Sanctions imposed under Subsection (b)(3) may:~~

14                   ~~[(1) include a public reprimand, termination of~~  
15 ~~assistance, and a bar on future eligibility for assistance through~~  
16 ~~a housing program under this chapter; and~~

17                   ~~[(2) be imposed in addition to any action taken by the~~  
18 ~~state Commission on Human Rights.~~

19           ~~[(d) The department shall promptly notify the state~~  
20 ~~Commission on Human Rights if the department determines that a~~  
21 ~~program participant may have failed to comply with the laws listed~~  
22 ~~by Subsection (a)].~~

23           SECTION 1.35. Amend Section 2306.259, Texas Government  
24 Code, to read as follows:

25           Sec. 2306.259. AFFORDABLE HOUSING RESEARCH AND INFORMATION  
26 PROGRAM. With money available under Section 1372.006(a), the  
27 department shall fund ~~[establish an affordable]~~ the housing

1 research center described in Section 2306.252 of this Chapter [~~and~~  
2 ~~information program in which the department shall contract for:~~

3 [~~(1) periodic market studies to determine the need for~~  
4 ~~housing families of extremely low, very low, and low~~  
5 ~~income in census tracts throughout the state;~~

6 [~~(2) research from qualified professionals to~~  
7 ~~determine the effect of affordable housing developments~~  
8 ~~on property values, social conditions, and quality of~~  
9 ~~life in surrounding neighborhoods; and~~

10 [~~(3) independent research in affordable housing~~  
11 ~~design and development approaches that enhance~~  
12 ~~community acceptance of affordable housing and improve~~  
13 ~~the quality of life for the residents of the housing;~~  
14 ~~and~~

15 [~~(4) public education and outreach efforts to assist~~  
16 ~~the public in understanding the nature and purpose of~~  
17 ~~affordable housing and the process for public~~  
18 ~~participation in the administration of affordable~~  
19 ~~housing programs].~~

20 SECTION 1.36. Amend Section 2306.269, Texas Government  
21 Code, to read as follows:

22 Sec. 2306.269. TENANT [~~AND MANAGER~~] SELECTION. (a) The  
23 department may [~~shall~~] set standards for tenant [~~and management~~]  
24 selection by a housing sponsor.

25 (b) The department shall prohibit a multifamily rental  
26 housing development funded or administered by the department,  
27 including a development supported with a housing tax credit



1 allocation under Subchapter DD, from:

2 (1) excluding an individual or family from admission  
3 to the development solely because the individual or family  
4 participates in the housing choice voucher program under Section 8,  
5 United States Housing Act of 1937 (42 U.S.C. Section 1437f) [~~and~~

6 [~~(2) using a financial or minimum income standard for~~  
7 ~~an individual or family participating in the voucher program~~  
8 ~~described by Subdivision (1) that requires the individual or family~~  
9 ~~to have a monthly income of more than 2-1/2 times the individual's~~  
10 ~~or family's share of the total monthly rent payable to the owner of~~  
11 ~~the development]~~.

12 SECTION 1.37. Amend Section 2306.271, Texas Government  
13 Code, to read as follows:

14 Sec. 2306.271. COST CONTROLS. (a) The housing finance  
15 division by rule shall specify the categories of costs allowable in  
16 the construction, reconstruction, remodeling, improvement, or  
17 rehabilitation of a housing development.

18 (b) The housing finance division shall require a housing  
19 sponsor to certify the actual housing development costs on  
20 completion of the housing development [~~subject to audit and~~  
21 ~~determination by the department]~~. The certification of costs shall  
22 be accompanied by an unqualified certified public accountant's  
23 audit report on the actual housing development costs and prepared  
24 in accordance with generally accepted accounting principles and  
25 generally accepted auditing standards.

26 (c) The department may accept, instead of certification of  
27 housing development costs under Subsection (b), other assurances of

1 the costs, in any form, that will enable the housing finance  
2 division to determine with reasonable accuracy the amount of the  
3 costs.

4 (d) In this section, "housing development costs" means the  
5 total of all reasonable and necessary costs incurred in financing,  
6 creating, or purchasing a housing development, including a  
7 single-family dwelling [~~approved by the department as reasonable~~  
8 ~~and necessary~~]. The costs may include:

9 (1) the value of land and buildings on the land owned  
10 by the sponsor or the cost of acquiring land and buildings on the  
11 land, including payments for options, deposits, or contracts to  
12 purchase properties on the proposed housing site;

13 (2) costs of site preparation, demolition, and  
14 development;

15 (3) expenses relating to the issuance of bonds;

16 (4) fees paid or payable in connection with the  
17 planning, execution, and financing of the housing development,  
18 including fees to:

19 (A) architects;

20 (B) engineers;

21 (C) attorneys;

22 (D) accountants; or

23 (E) the housing finance division on the  
24 department's behalf;

25 (5) costs of necessary studies, surveys, plans,  
26 permits, insurance, interest, financing, tax and assessment costs,  
27 and other operating and carrying costs during construction;

1           (6) costs of construction, rehabilitation,  
2 reconstruction, fixtures, furnishings, equipment, machinery, and  
3 apparatus related to the real property;

4           (7) costs of land improvements, including landscaping  
5 and off-site improvements, whether or not the costs have been paid  
6 in cash or in a form other than cash;

7           (8) necessary expenses for the initial occupancy of  
8 the housing development;

9           (9) a reasonable profit and ~~[risk]~~ a fee for developer  
10 services in addition to job overhead to the general contractor or  
11 limited profit housing sponsor;

12           (10) an allowance ~~[established by the department]~~ for  
13 working capital and contingency reserves and reserves for  
14 anticipated operating deficits during the first two years of  
15 occupancy; and

16           (11) the cost of other items, including tenant  
17 relocation if tenant relocation costs are not otherwise provided  
18 for, ~~[that the department determines are reasonable and necessary~~  
19 ~~for the development of the housing development,]~~ less net rents and  
20 other net revenues received from the operation of the real and  
21 personal property on the development site during construction.

22           SECTION 1.38. Amend Section 2306.313, Texas Government  
23 Code, to read as follows:

24           Sec. 2306.313. Termination of Tenancy. (a) The department  
25 or ~~[with the department's approval,]~~ the housing sponsor of a  
26 housing development may terminate the tenancy or interest of an  
27 individual or family whose gross income exceeds the income level

1 allowed for admission if retaining the household as an occupant  
2 would violate the income limitations for the specific affordable  
3 housing program [~~by more than 25 percent for six months or more~~].

4 (b) A tenancy or interest of an individual or family in a  
5 housing development may not be terminated except on reasonable  
6 notice [~~and opportunity to obtain suitable alternate housing under~~  
7 ~~the department's rules~~

8 [~~(c) At the time notice of termination is given, the housing~~  
9 ~~finance division shall provide information to the tenant on other~~  
10 ~~division programs for which the tenant qualifies and shall~~  
11 ~~encourage the tenant's participation in those programs~~].

12 SECTION 2.01. Amend Section 2306.6701, Texas Government  
13 Code, to read as follows:

14 SUBCHAPTER DD. LOW INCOME HOUSING TAX CREDIT PROGRAM

15 Sec. 2306.6701. PURPOSE. (a) The department shall  
16 administer the low income housing tax credit program to:

17 (1) encourage the development and preservation of  
18 appropriate types of rental housing for households that have  
19 difficulty finding suitable, affordable rental housing in the  
20 private marketplace;

21 (2) maximize the number of suitable, affordable  
22 residential rental units added to the state's housing supply;

23 (3) maintain [~~prevent losses for any reason to~~] the  
24 state's supply of suitable, affordable residential rental units by  
25 enabling the rehabilitation of rental housing or by providing other  
26 preventive financial support under this subchapter; ~~and~~

27 (4) provide for and encourage the participation of

1 for-profit organizations in the acquisition, development, and  
2 operation of affordable housing developments; and

3 (5) provide for and encourage the participation of  
4 nonprofit organizations in the acquisition, development, and  
5 operation of affordable housing developments [~~in urban and rural~~  
6 ~~communities~~].

7 (b) Pursuant to its goals under this chapter, the department  
8 shall not approve, promulgate, nor otherwise publish any rule that:

9 (1) establishes standards or parameters that exceed  
10 the regulatory requirements of Section 42, Internal Revenue Code of  
11 1986 (26 U.S.C. Section 42); or

12 (2) imposes, or has the effect of imposing, direct  
13 compliance requirements or costs on local governments, or program  
14 applicants, that are not required by federal law or state statute.

15 SECTION 2.02. Amend Section 2306.6702, Texas Government  
16 Code, to read as follows:

17 Sec. 2306.6702. DEFINITIONS. (a) In this subchapter:

18 (1) "Applicant" means any person or affiliate of a  
19 person who files an application with the department requesting a  
20 housing tax credit allocation.

21 (2) "Application" means an application filed with the  
22 department by an applicant and includes any exhibits or other  
23 supporting materials.

24 (3) "Application log" means a form containing [~~at~~  
25 ~~least~~] the information required by Section 2306.6709.

26 (4) "Application round" means the period beginning on  
27 the date the department begins accepting applications and

1 continuing until all available housing tax credits are allocated [~~7~~  
2 ~~but not extending past the last day of the calendar year~~].

3 (5) "Area Median Gross Household Income" or "AMGI"  
4 means the area median gross household income, as determined for all  
5 purposes under and in accordance with the requirements of the  
6 Internal Revenue Code, §42 [ 26 U.S.C Section Section 42].

7 ~~(5)~~ (6) "At-risk development" means a development  
8 that:

9 (A) has received the benefit of a subsidy in the  
10 form of a below-market interest rate loan, interest rate reduction,  
11 rental subsidy, Section 8 housing assistance payment, rental  
12 supplement payment, or rental assistance payment [~~7~~~~or equity~~  
13 ~~incentive~~] under the following federal laws, as applicable:

14 (i) Sections 221(d)(3) and (5), National  
15 Housing Act (12 U.S.C. Section 1715l); or

16 (ii) Section 236, National Housing Act (12  
17 U.S.C. Section 1715z-1); or

18 (iii) Section 202, Housing Act of 1959 (12  
19 U.S.C. Section 1701q); or

20 (iv) Section 101, Housing and Urban  
21 Development Act of 1965 (12 U.S.C. Section 1701s); or

22 (v) [~~the Section 8 Additional Assistance~~  
23 ~~Program for housing developments with HUD-Insured and HUD-Held~~  
24 ~~Mortgages administered by the United States Department of Housing~~  
25 ~~and Urban Development,~~

26 [~~(vi) the Section 8 Housing Assistance~~  
27 ~~Program for the Disposition of HUD-Owned Projects administered by~~

1 ~~the United States Department of Housing and Urban Development,~~

2 ~~(vii)]~~ Sections 514, 515, and 516, Housing  
3 Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

4 ~~(viii)~~ (vi) Section 42, Internal Revenue  
5 Code of 1986 (26 U.S.C. Section 42); or

6 (vii) any project-based assistance  
7 authority pursuant to Section 8 of the United States Housing Act of  
8 1937; and

9 (B) is subject to the following conditions:

10 (i) the stipulation to maintain  
11 affordability in the contract granting the subsidy is ~~[nearing]~~  
12 within two years of expiration or has expired but has the ability to  
13 be reinstated; or

14 (ii) the federally insured mortgage on the  
15 development is eligible for prepayment or is nearing the end of its  
16 term.

17 ~~(6)~~ (7) "Development" means a proposed qualified low  
18 income housing project, as defined by Section 42(g), Internal  
19 Revenue Code of 1986 (26 U.S.C. Section 42(g)), that consists of one  
20 or more buildings containing multiple units, that is financed under  
21 a common plan, and that is owned by the same person for federal tax  
22 purposes, including a project consisting of multiple buildings  
23 that:

24 (A) are located on scattered sites; and

25 (B) contain only rent-restricted units.

26 (8) ~~(7)~~ "Development owner" means any person or  
27 affiliate of a person who owns or proposes a development or expects

1 to acquire control of a development under a purchase contract  
2 approved by the department.

3 (9) ~~(8)~~ "Housing tax credit" means a tax credit  
4 allocated under the low income housing tax credit program.

5 (10) ~~(9)~~ "Land use restriction agreement" means an  
6 agreement between the department, the development owner, and the  
7 development owner's successors in interest that encumbers the  
8 development with respect to the requirements of this subchapter and  
9 the requirements of Section 42, Internal Revenue Code of 1986 (26  
10 U.S.C. Section 42).

11 (11) ~~(10)~~ "Qualified allocation plan" means a plan  
12 adopted by the board under this subchapter that:

13 (A) provides the threshold~~[7]~~ and scoring ~~[7 and~~  
14 ~~underwriting]~~ criteria based on housing priorities of the  
15 department that are ~~[appropriate to local conditions,~~

16 ~~[(B)]~~ consistent with Sections 2306.67042 and  
17 2306.6710 ~~[(e), gives preference in housing tax credit allocations~~  
18 ~~to developments that, as compared to the other developments:~~

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

22 ~~[(ii) produces for the longest economically~~  
23 ~~feasible period [the greatest number of high quality] units~~  
24 ~~committed to remaining affordable to any tenants who are~~  
25 ~~income-eligible under the low income housing tax credit program,~~  
26 and

27 (B) ~~[(C)]~~ provides a procedure for the



1 department, the department's agent, or another private contractor  
2 of the department to use in monitoring compliance with the  
3 qualified allocation plan and this subchapter.

4 (12) ~~(11)~~ "Related party" means the following  
5 individuals or entities:

6 (A) the brothers, sisters, spouse, ancestors,  
7 and descendants of a person within the third degree of  
8 consanguinity, as determined by Chapter 573;

9 (B) a person and a corporation, if the person  
10 owns more than 50 percent of the outstanding stock of the  
11 corporation;

12 (C) two or more corporations that are connected  
13 through stock ownership with a common parent possessing more than  
14 50 percent of:

15 (i) the total combined voting power of all  
16 classes of stock of each of the corporations that can vote;

17 (ii) the total value of shares of all  
18 classes of stock of each of the corporations; or

19 (iii) the total value of shares of all  
20 classes of stock of at least one of the corporations, excluding, in  
21 computing that voting power or value, stock owned directly by the  
22 other corporation;

23 (D) a grantor and fiduciary of any trust;

24 (E) a fiduciary of one trust and a fiduciary of  
25 another trust, if the same person is a grantor of both trusts;

26 (F) a fiduciary of a trust and a beneficiary of  
27 the trust;

1 (G) a fiduciary of a trust and a corporation if  
2 more than 50 percent of the outstanding stock of the corporation is  
3 owned by or for:

4 (i) the trust; or

5 (ii) a person who is a grantor of the trust;

6 (H) a person or organization and an organization  
7 that is tax-exempt under Section 501(a), Internal Revenue Code of  
8 1986 (26 U.S.C. Section 501), and that is controlled by that person  
9 or the person's family members or by that organization;

10 (I) a corporation and a partnership or joint  
11 venture if the same persons own more than:

12 (i) 50 percent of the outstanding stock of  
13 the corporation; and

14 (ii) 50 percent of the capital interest or  
15 the profits' interest in the partnership or joint venture;

16 (J) an S corporation and another S corporation if  
17 the same persons own more than 50 percent of the outstanding stock  
18 of each corporation;

19 (K) an S corporation and a C corporation if the  
20 same persons own more than 50 percent of the outstanding stock of  
21 each corporation;

22 (L) a partnership and a person or organization  
23 owning more than 50 percent of the capital interest or the profits'  
24 interest in that partnership; or

25 (M) two partnerships, if the same person or  
26 organization owns more than 50 percent of the capital interests or  
27 profits' interests.

1           ~~[(12) "Rural area" means an area that is located:~~

2                   ~~[(A) outside the boundaries of a primary~~  
3 ~~metropolitan statistical area or a metropolitan statistical area,~~

4                   ~~[(B) within the boundaries of a primary~~  
5 ~~metropolitan statistical area or a metropolitan statistical area,~~  
6 ~~if the statistical area has a population of 20,000 or less and does~~  
7 ~~not share a boundary with an urban area; or~~

8                   ~~[(C) in an area that is eligible for funding by~~  
9 ~~the Texas Rural Development Office of the United States Department~~  
10 ~~of Agriculture.]~~

11           (13) "Rural development agency" means the state agency  
12 designated by the legislature as primarily responsible for rural  
13 area development in the state.

14           (14) "Set-aside" means a reservation of a portion of  
15 the available housing tax credits to provide financial support for  
16 specific types of housing or geographic locations or serve specific  
17 types of applicants as permitted by the qualified allocation plan  
18 on a priority basis.

19           (15) "Threshold criteria" means the criteria used to  
20 determine whether the development satisfies the minimum level of  
21 acceptability for consideration established in Section 2306.67042  
22 of this Chapter ~~[the department's qualified allocation plan].~~

23           (16) "Unit" means any residential rental unit in a  
24 development consisting of an accommodation, including a single room  
25 used as an accommodation on a non-transient basis, that contains  
26 complete physical facilities and fixtures for living, sleeping,  
27 eating, cooking, and sanitation.

1 (b) For purposes of Subsection (a) (12) [~~(11)~~], the  
2 constructive ownership provisions of Section 267, Internal Revenue  
3 Code of 1986 (26 U.S.C. Section 267), apply. The board may lower in  
4 the qualified allocation plan the percentages described by  
5 Subsection (a) (12) [~~(11)~~].

6 SECTION 2.03. Amend Section 2306.6703, Texas Government  
7 Code, to read as follows:

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

11 (1) at the time of application or at any time during  
12 the two-year period preceding the date the application round  
13 begins, the applicant, or a related party, or any persons required  
14 to be disclosed under Section 2306.6707 of this chapter, is or has  
15 been:

16 (A) a member of the board; or

17 (B) the director, a deputy director, the director  
18 of housing programs, the director of compliance, the director of  
19 underwriting, or the low income housing tax credit program manager  
20 employed by the department, or a member of the department staff  
21 committee that selects applications for approval;

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; or Text of (a)(3) as amended by Acts 2003, 78th Leg., ch.  
6 330, Sec. 18

7 (3) the applicant proposes to develop [~~construct~~] a  
8 new construction development that is located one linear mile or  
9 less from a development that:

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

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

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

18 Text of (a)(3) as amended by Acts 2003, 78th Leg., ch. 1106, Sec. 1

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;~~

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

27 ~~(C) has not been withdrawn or terminated from the~~

1 ~~low income housing tax credit program.~~

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

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

9 (B) provides, prior to allocation, [~~has included~~  
10 ~~in the application~~] a written statement of support from that  
11 governing body referencing this section and authorizing an  
12 allocation of housing tax credits for the development.

13 (5) if the application or any affiliate of the  
14 applicant has any business relationship with any board member or a  
15 member of the department staff.

16 (b) Subsection (a)(3) and (a)(4) do ~~does~~ not apply to a  
17 development:

18 (1) that is using:

19 (A) federal HOPE VI funds received through the  
20 United States Department of Housing and Urban Development; or

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

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

26 (D) funds provided to the state and participating  
27 jurisdictions under the Housing and Community Development Act of

1 1974 (42 U.S.C. Section 5301 et seq.); or

2 (E) funds provided under the Section 515 Rural  
3 Rental Housing Program administered by the United States Department  
4 of Agriculture (42 U.S.C. Section 1485); or

5 Text of (b)(2) as added by Acts 2003, 78th Leg., ch. 330, Sec. 18

6 (2) that is located in a county with a population of  
7 less than one million; or

8 Text of (b)(2) as added by Acts 2003, 78th Leg., ch. 1106, Sec. 1

9 ~~(2) that is located outside of a metropolitan~~  
10 ~~statistical area; or~~

11 (3) that a local government where the project is to be  
12 located has by vote specifically allowed the development  
13 ~~construction~~ of a new construction development located within one  
14 linear mile or less from a development under Subsection (a).

15 SECTION 2.04. Add new Section 2306.67035, Texas Government  
16 Code, to read as follows:

17 Sec. 2306.67035. SPECIAL RURAL AND HISTORICALLY  
18 UNDERSERVED URBAN AREAS REQUIREMENTS. (a) Notwithstanding any  
19 other provision of this chapter, an application for housing tax  
20 credits from the funds available for rural areas should be limited  
21 to rehabilitation of any size development and new construction  
22 developments of 76 units or less. A new construction development  
23 in excess of 76 units that is located in a rural area shall only be  
24 eligible for funding from the urban or historically underserved  
25 urban area funding regardless of its location.

26 Section 2.05 Amend Section 2306.6704, Texas Government  
27 Code, to read as follows:

1           Sec. 2306.6704. PREAPPLICATION PROCESS. (a) To prevent  
2 unnecessary filing costs, the department by rule shall establish a  
3 voluntary preapplication process to enable a preliminary  
4 assessment of an application proposed for filing under this  
5 subchapter.

6           (b) The department shall award in the application  
7 evaluation process described by Section 2306.6710 an appropriate  
8 number of points as an incentive for participation in the  
9 preapplication process established under this section.

10           (b-1) The preapplication process must require the applicant  
11 to provide the department with evidence that the applicant has  
12 notified the following entities with respect to the filing of the  
13 application:

14           (1) any neighborhood [~~organizations~~] associations on  
15 record with the [~~state or county~~] department, as of the first of  
16 December in the year immediately preceding the application  
17 deadline, in which the development is to be located and whose  
18 boundaries contain the proposed development site;

19           (2) the superintendent and the presiding officer of  
20 the board of trustees of the school district containing the  
21 development;

22           (3) the presiding officer of the governing body of any  
23 municipality containing the development and all elected members of  
24 that body;

25           (4) the presiding officer of the governing body of the  
26 county containing the development and all elected members of that  
27 body; and



1 (5) the state senator and state representative of the  
2 district containing the development.

3 (c) The department shall reject and return to the applicant  
4 any application assessed by the department under this section that  
5 fails to satisfy the threshold criteria specified in Section  
6 2306.67042 ~~required by the board in the qualified allocation plan.~~

7 (d) If feasible under Section 2306.67041, an application  
8 under this section ~~may~~ must be submitted electronically.

9 (e) The department shall specify the date for filing a  
10 preapplication; provided, however, that the last date for  
11 submitting a preapplication under this section shall not be earlier  
12 than February 1.

13 SECTION 2.06. Add a new Section 2306.67042, Texas  
14 Government Code, to read as follows:

15 Section 2306.67042 Threshold Criteria. (a) In order to be  
16 eligible for scoring, the department shall only require that all  
17 applications for an allocation of low income housing tax credits  
18 satisfy the following threshold criteria:

19 (1) Completion and submission of the Application as  
20 developed by the Department; and

21 (2) Completion and submission of information  
22 regarding the location of the proposed development; and

23 (3) Documentation must be provided that confirms  
24 eligibility for all Set-Asides under which the Application is  
25 seeking funding; and

26 (4) Certifications:

27 (A) A certification of the basic amenities

1 selected for the Development. The amenities selected must be made  
2 available for the benefit of all tenants. If fees in addition to  
3 rent are charged for amenities reserved for an individual tenant's  
4 use, then the amenity may not be included. Developments with more  
5 than 36 units must provide at least four of the amenities provided  
6 in clauses (i) through (vi) of this subparagraph. Developments  
7 with 36 Units or less and/or Developments receiving funding from  
8 under the Section 515 program administered by the United States  
9 Department of Agriculture (42. U.S.C. Section 1485) must provide at  
10 least two of the following amenities:

- 11 (i) full perimeter fencing;  
12 (ii) designated playground and equipment;  
13 (iii) community laundry room and/or laundry  
14 hook-ups in Units ;  
15 (iv) a furnished community room;  
16 (v) recreation facilities;  
17 (vi) public telephone(s) available to  
18 tenants 24 hours a day;

19 (C) A certification that the Development will  
20 adhere to the Texas Property Code relating to security devices and  
21 other applicable requirements for residential tenancies.

22 (D) A certification that the Applicant is in  
23 compliance with state and federal laws relating to fair housing.

24 (E) A certification that the Development will  
25 comply with the accessibility standards that are required under  
26 Section 2306.6722 of this Chapter; and

27 (5) All of the architectural drawings identified in

1 clauses (i) through (iv) of this subparagraph. While full size  
2 design or construction documents are not required, the drawings  
3 must have an accurate and legible scale and show the dimensions.  
4 All Developments involving new construction, or conversion of  
5 existing buildings not configured in the Unit pattern proposed in  
6 the Application, must provide all of the items identified in  
7 clauses (i) through (iii) of this subparagraph. For Developments  
8 involving rehabilitation for which the Unit configurations are not  
9 being altered, only the items identified in clauses (i) and (ii) of  
10 this subparagraph are required:

- 11 (i) a site plan;  
12 (ii) floor plans for each type of  
13 residential building and each type of common area building;  
14 (iii) floor plans and elevations for each  
15 type of residential building and each common area building clearly  
16 depicting the height of each floor; and

17 (B) City or County lot maps of the proposed  
18 Development site; and

19 (6) A description of the Development's development  
20 costs and corresponding credit request and syndication information  
21 as described in subparagraphs (A) through (C) of this paragraph.

22 (A) The information required in Section  
23 2306.6705 of this Chapter.

24 (B) For Developments located in a Qualified  
25 Census Tract as determined by the Secretary of HUD, a copy of the  
26 census map clearly showing that the proposed Development is located  
27 within a qualified census tract

1                   (C) A schedule of any offsite costs; and

2                   (7) Evidence of readiness to proceed as evidenced by  
3 at least one of the items under each of subparagraphs (A) through  
4 (C) of this paragraph:

5                   (A) Evidence of site control in the name of  
6 Development Owner.

7                   (B) Evidence of interim and permanent financing  
8 sufficient to fund the proposed total housing development cost less  
9 any other funds requested from the Department and any other sources  
10 documented in the Application. Such evidence must be consistent  
11 with the sources and uses of funds represented in the Application  
12 and shall be provided in one or more of the following forms  
13 described in clauses (i) through (iv) of this subparagraph:

14                   (i) bona fide financing in place as  
15 evidenced by a valid and binding loan agreement and a deed(s) of  
16 trust in the name of the Development Owner which identifies the  
17 mortgagor as the Applicant or entities which comprise the general  
18 partner and/or expressly allows the transfer to the development  
19 owner; or,

20                   (ii) bona fide commitment or term sheet for  
21 the interim and permanent loans issued by a lending institution or  
22 mortgage company that is actively and regularly engaged in the  
23 business of lending money which is addressed to the development  
24 owner, or entities which comprise the Applicant and which has been  
25 executed by the lender (the term of the loan must be for a minimum of  
26 15 years with at least a 30 year amortization). The commitment must  
27 state an expiration date and all the terms and conditions

1 applicable to the financing including the mechanism for determining  
2 the interest rate, if applicable, and the anticipated interest rate  
3 and any required guarantors. Such a commitment may be conditional  
4 upon the completion of specified due diligence by the lender and  
5 upon the award of tax credits; or,

6 (iii) any federal, state or local gap  
7 financing, whether of soft or hard debt, must be identified at the  
8 time of Application. At a minimum, evidence from the lending agency  
9 that an application for funding has been made and a term sheet which  
10 clearly describes the amount and terms of the funding, and the date  
11 by which the funding determination will be made and any commitment  
12 issued, must be submitted. Evidence of application for funding  
13 from another department program is not required.

14 (C) A legal description of the proposed site; and

15 (8) Evidence of all of the public notifications  
16 required in this Chapter; and

17 (9) A description of the development's proposed  
18 ownership structure and the Applicant's previous experience as  
19 described in subparagraphs (A) through (B) of this paragraph.

20 (A) Chart which clearly illustrates the complete  
21 organizational structure of the proposed development owner  
22 providing the names and ownership percentages of all persons having  
23 an ownership interest in the development owner.

24 (B) Evidence that each entity shown on an the  
25 organizational chart described in subparagraph (A) of this  
26 paragraph that has 10% or more ownership interest in the  
27 development owner has provided a copy of the completed and executed

1 previous participation and background certification form to the  
2 department; and

3 (10) A description of the development's projected  
4 income and operating expenses as described in subparagraphs (A)  
5 through (C) of this paragraph:

6 (A) A 15-year proforma estimate of operating  
7 income and expenses and supporting documentation used to generate  
8 projections.

9 (B) If rental assistance, an operating subsidy,  
10 or an interest rate reduction payment is proposed for the  
11 development, a description of the source and type of assistance ,  
12 the number of units receiving the funds, and the term and expiration  
13 date of the contract or other agreement.

14 (C) Applicant must provide documentation from  
15 the source of the utility allowance estimate used in completing the  
16 rent schedule; and

17 (11) Applications involving nonprofit general  
18 partners and qualified nonprofit developments.

19 (A) All applications involving a nonprofit  
20 general partner or applying for the nonprofit set-aside must submit  
21 all of the documents described in Section 2306.6706 of this  
22 Chapter.

23 (B) Additionally, all applications applying  
24 under the nonprofit set-aside must also provide the following  
25 information with respect to the qualified nonprofit organization  
26 as described in clauses (i) through (vi) of this subparagraph.

27 (i) copy of the page from the articles of

1 incorporation or bylaws indicating that one of the exempt purposes  
2 of the nonprofit organization is to provide low income housing;

3 (ii) copy of the page from the articles of  
4 incorporation or bylaws indicating that the nonprofit organization  
5 prohibits a member of its board of directors, other than a chief  
6 staff member serving concurrently as a member of the board, from  
7 receiving material compensation for service on the board;

8 (iii) a third party legal opinion stating:

9 (I) that the nonprofit organization  
10 is not affiliated with or controlled by a for-profit organization  
11 and the basis for that opinion, and

12 (II) that the nonprofit organization  
13 is eligible, as further described, for a housing credit allocation  
14 from the nonprofit set-aside and the basis for that opinion.  
15 Eligibility is contingent upon the non-profit organization  
16 controlling the Development, or if the organization's application  
17 is filed on behalf of a limited partnership, or limited liability  
18 company, being the managing general partner (or managing member);  
19 and otherwise meet the requirements of the Section §42(h)(5) of the  
20 Internal Revenue Code [(26 U.S.C. Section 42(h)(5))];

21 (iv) a copy of the nonprofit organization's  
22 most recent audited financial statement; and

23 (12) Applicants applying for acquisition credits or  
24 affiliated with the seller must provide all of the documentation  
25 described in subparagraphs (A) through (C) of this paragraph.  
26 Applicants applying for acquisition credits must also provide the  
27 items described in subparagraph (D) of this paragraph; and

1           (A) an appraisal, not more than 12 months old as  
2 of the date of submittal to the department. The appraisal may be  
3 submitted within 30 days of the date the application is submitted to  
4 the department. This appraisal of the property must separately  
5 state the as-is, pre-acquisition or transfer value of the land and  
6 the improvements where applicable;

7           (B) a valuation report from the county tax  
8 appraisal district;

9           (C) clear identification of the selling Persons,  
10 and details of any relationship between the seller and the  
11 Applicant

12           (D) Information to establish that the  
13 development is eligible for acquisition credits; and

14           (13) Financial statement of the applicant and any  
15 controlling persons; and

16           (14) Information demonstrating that the project  
17 development applicant has the experience and the financial capacity  
18 to ensure project completion; and

19           (15) Supplemental Threshold Reports. Documents under  
20 subparagraph (A) and (B) of this paragraph may be submitted within  
21 30 days from the date of submittal to the department of the  
22 application.

23           (A) A Phase I Environmental Site Assessment on  
24 the subject property, dated not more than 12 months prior to the  
25 date the application is submitted to the department. In the event  
26 that a Phase I Environmental Site Assessment on the development is  
27 dated more than 12 months prior to the date the application is



1 submitted to the department, the applicant must supply the  
2 department with an updated letter or updated report dated at least  
3 three months prior to the date the application is submitted from the  
4 organization which prepared the initial assessment confirming that  
5 the site has been reinspected and reaffirming the conclusions of  
6 the initial report or identifying the changes since the initial  
7 report. Developments involving funding from the Rural Housing  
8 Service of the United States Department of Agriculture or the  
9 United States Department of Housing and Urban Affairs are not be  
10 required to submit a Phase I Environmental Site Assessment.

11 (B) A comprehensive market analysis prepared at  
12 the Applicant's expense by a disinterested qualified market analyst  
13 in accordance with Section 2306.67055 of this Chapter. For  
14 applications involving the rehabilitation of an existing property  
15 and that receive funding from the Rural Housing Service of the  
16 United States Department of Agriculture, no market analysis shall  
17 be required.

18 SECTION 2.07. Amend Section 2306.6705, Texas Government  
19 Code, to read as follows:

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

23 (1) a description of:

24 (A) the financing plan for the development,  
25 including any nontraditional financing arrangements;

26 (B) the use of funds with respect to the  
27 development;

1 (C) the funding sources for the development,  
2 including:

3 (i) construction, permanent, and bridge  
4 loans; and

5 (ii) rents, operating subsidies, and  
6 replacement reserves; and

7 (D) the commitment status of the funding sources  
8 for the development;

9 (2) if syndication costs are included in the eligible  
10 basis, a justification of the syndication costs for each cost  
11 category by an attorney or accountant specializing in tax matters;

12 (3) from a syndicator or a financial consultant of the  
13 applicant, an estimate of the amount of equity dollars expected to  
14 be raised for the development in conjunction with the amount of  
15 housing tax credits requested for allocation to the applicant,  
16 including:

17 (A) pay-in schedules; and

18 (B) syndicator consulting fees and other  
19 syndication costs;

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

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

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

25 (C) the term and expiration date of the contract  
26 or other agreement;

27 (5) if the development is located within the

1 boundaries of a political subdivision with a zoning ordinance,  
2 evidence in the form of a letter from the chief executive officer of  
3 the political subdivision or from another local official with  
4 jurisdiction over zoning matters that states that:

5 (A) the development is permitted under the  
6 provisions of the ordinance that apply to the location of the  
7 development; or

8 (B) the applicant is in the process of seeking  
9 the appropriate zoning and has signed and provided to the political  
10 subdivision a release agreeing to hold the political subdivision  
11 and all other parties harmless in the event that the appropriate  
12 zoning is denied;

13 (6) if an occupied development is proposed for  
14 rehabilitation:

15 ~~(A) an explanation of the process used to notify~~  
16 ~~and consult with the tenants in preparing the application;~~

17 (A) (B) a relocation plan outlining:

18 (i) how the rehabilitation process will  
19 affect any existing tenants relocation requirements; and

20 (ii) a budget for any permanent or  
21 temporary relocation of tenants, if any, with an identified funding  
22 source. ~~and~~

23 ~~(C) if applicable, evidence that the relocation~~  
24 ~~plan has been submitted to the appropriate local agency;~~

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

1           ~~(8) any other information required by the board in the~~  
2 ~~qualified allocation plan; and~~

3           (8) ~~(9)~~ evidence that the applicant has notified the  
4 following entities with respect to the filing of the application:

5                   (A) any neighborhood ~~[organizations]~~  
6 associations on record with the ~~[state or county]~~ department in  
7 which the development is to be located and whose boundaries contain  
8 the proposed development site;

9                   (B) the superintendent and the presiding officer  
10 of the board of trustees of the school district containing the  
11 development;

12                   (C) the presiding officer of the governing body  
13 of any municipality containing the development and all elected  
14 members of that body;

15                   (D) the presiding officer of the governing body  
16 of the county containing the development and all elected members of  
17 that body; and

18                   (E) the state senator and state representative of  
19 the district containing the development.

20           (9) the department shall not require any additional  
21 information other than in this chapter.

22           SECTION 2.08. Add new Section 2306.67053, Texas Government  
23 Code, to read as follows:

24           Sec. 2306.67053. Application Requirement Prohibitions.

25 (a) In setting requirements under this subchapter, the board and  
26 the department shall be prohibited from promulgating rules, or  
27 otherwise mandating the unit mix or bedroom makeup of any non

1 elderly housing development.

2 SECTION 2.09. Amend Section 2306.6706, Texas Government  
3 Code, to read as follows:

4 Sec. 2306.6706. ADDITIONAL APPLICATION REQUIREMENT:  
5 NONPROFIT SET-ASIDE ALLOCATION. (a) In addition to the  
6 information required by Section 2306.6705, an application for a  
7 housing tax credit allocation from the nonprofit set-aside, as  
8 defined by Section 42(h)(5), Internal Revenue Code of 1986 (26  
9 U.S.C. Section 42(h)(5)), must contain the following written,  
10 detailed information with respect to each development owner and  
11 each general partner of a development owner:

12 (1) Internal Revenue Service documentation of  
13 designation as a Section 501(c)(3) or 501(c)(4) organization;

14 (2) evidence that one of the exempt purposes of the  
15 nonprofit organization is to provide low income housing;

16 (3) a description of the nonprofit organization's  
17 participation in the construction or rehabilitation of the  
18 development and in the ongoing operations of the development;

19 (4) evidence that the nonprofit organization  
20 prohibits a member of its board of directors, other than a chief  
21 staff member serving concurrently as a member of the board, from  
22 receiving material compensation for service on the board;

23 (5) a third-party legal opinion stating that the  
24 nonprofit organization is not affiliated with or controlled by a  
25 for-profit organization and the basis for that opinion;

26 (6) a copy of the nonprofit organization's most recent  
27 audited financial statement;

1           (7) a list of the names and home addresses of members  
2 of the board of directors of the nonprofit organization;

3           (8) a third-party legal opinion stating that the  
4 nonprofit organization is eligible under Subsection (b) for a  
5 housing tax credit allocation from the nonprofit set-aside and the  
6 basis for that opinion; and

7           (9) evidence that a majority of the members of the  
8 nonprofit organization's board of directors principally reside:

9           (A) in this state, if the development is located  
10 in a rural area; or

11           (B) not more than 90 miles from the development  
12 in the community in which the development is located, if the  
13 development is not located in a rural area.

14           (b) To be eligible for a housing tax credit allocation from  
15 the nonprofit set-aside, a nonprofit organization must:

16           (1) control a majority of the development;

17           (2) ~~[if the organization's application is filed on~~  
18 ~~behalf of a limited partnership, be the managing general partner]~~  
19 materially participate in the development and operation of the  
20 development throughout the compliance period; and

21           (3) otherwise meet the requirements of Section  
22 42(h)(5), Internal Revenue Code of 1986 (26 U.S.C. Section  
23 42(h)(5)).

24           SECTION 2.10. Amend Section 2306.6707, Texas Government  
25 Code, to read as follows:

26           Sec. 2306.6707. ADDITIONAL APPLICATION REQUIREMENT:  
27 DISCLOSURE OF INTERESTED PERSONS. (a) The applicant must disclose

1 in the application the names of any persons, including affiliates  
2 of those persons and related parties, providing developmental or  
3 operational services to the development, including:

- 4 (1) a development owner;
- 5 (2) an architect;
- 6 (3) an attorney;
- 7 (4) a tax professional;
- 8 (5) a property management company;
- 9 (6) a consultant;
- 10 (7) a market analyst;
- 11 (8) a tenant services provider;
- 12 (9) a syndicator;
- 13 (10) a real estate broker or agent or a person  
14 receiving a fee in connection with services usually provided by a  
15 real estate broker or agent;
- 16 (11) at the time the application is submitted, the  
17 owners of the property on which the development is located;
- 18 (12) a developer; ~~and~~
- 19 (13) a builder or general contractor; and
- 20 (14) any person described by Section 2306.6703(1) of  
21 this chapter.

22 (b) For each person described by Subsection (a), the  
23 application must disclose any company name, company contact person,  
24 address, and telephone number.

25 SECTION 2.11. Amend Section 2306.6709, Texas Government  
26 Code, to read as follows:

27 Sec. 2306.6709. APPLICATION LOG. (a) In a form prescribed

1 by the department, the department shall maintain for each  
2 application an application log that tracks the application from the  
3 date of its submission.

4 (b) The application log must contain at least the following  
5 information:

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

7 (2) the physical location of the development,  
8 including the relevant region of the state;

9 (3) the amount of housing tax credits requested for  
10 allocation by ~~[the department to]~~ the applicant;

11 (4) any set-aside category under which the application  
12 is filed;

13 (5) in strict accordance with Section 2306.6710 of  
14 this chapter and Section 42(m)(B), Internal Revenue Code of 1986  
15 (26 U.S.C. Section 42(m)(B), the score of the application in each  
16 scoring category ~~[adopted by the department under]~~ contained within  
17 the qualified allocation plan;

18 (6) any decision made by the department or board  
19 regarding the application, including the ~~[department's decision~~  
20 ~~regarding whether to underwrite the application and the]~~ board's  
21 decision regarding whether to allocate housing tax credits to the  
22 development;

23 (7) the names of persons making the decisions  
24 described by Subdivision (6), including the names of department  
25 staff scoring ~~[and underwriting]~~ the application, to be recorded  
26 next to the description of the applicable decision;

27 (8) the amount of housing tax credits allocated to the



1 development; and

2 (9) a dated record and summary of any contact between  
3 the department staff, the board, and the applicant or any related  
4 parties.

5 SECTION 2.12. Amend Section 2306.6710, Texas Government  
6 Code, to read as follows:

7 Sec. 2306.6710. EVALUATION [~~AND UNDERWRITING~~] OF  
8 APPLICATIONS. (a) In evaluating an application, the department  
9 shall determine whether the application satisfies the threshold  
10 criteria required by the board in the qualified allocation plan.  
11 The department shall reject and return to the applicant any  
12 application that fails to satisfy the threshold criteria.

13 (b) If an application satisfies the threshold criteria, the  
14 department shall score and rank the application using the following  
15 ~~a~~ point system [~~that~~]:

16 (1) Development Financial Feasibility.

17 (A) Fifty points will be awarded if the project  
18 is determined to be financially feasible based on the Applicant's  
19 certification of reasonably expected sources and uses of funds  
20 during the development process and of planned operating income and  
21 expenses during the initial 15 years of operation as a housing  
22 development. No partial points will be awarded.

23 (B) Although a development may be deemed  
24 financially feasible under subparagraph (A) above, if the deferral  
25 of 50% or more of the developer's fee for urban development (or 60%  
26 or more for a rural developments) is required to make the project  
27 feasible based upon the supporting financial data then there shall

1 be 10 points deducted from the Application.

2 (2) Quantifiable Community Participation from  
3 Neighborhood Associations. Points will be awarded based on written  
4 statements of support or opposition from neighborhood associations  
5 on record with the department and whose boundaries contain the  
6 proposed Development site. If there are no neighborhood  
7 associations on record with the department, or if no letters either  
8 in support or opposition are received, or if the application  
9 involves the rehabilitation of an At-Risk development, the  
10 development shall be awarded the maximum points allowable under  
11 this scoring component. If 80% or more of letters from neighborhood  
12 associations support the development, then the Applicant will be  
13 awarded 40 points. If between 50% and 79.9% of the letters from  
14 neighborhood associations support the development, then the  
15 applicant will be awarded 30 points. If a majority of the letters  
16 from neighborhood associations oppose the development, then the  
17 Applicant will be awarded zero points.

18 (3) Income level of tenants. An Applicant may receive  
19 points under either subparagraph (A) or (B), but not both.

20 (A) If the proposed development is located  
21 outside of a qualified census tract and there is documented,  
22 committed, and available third party funding source to provide  
23 project based rental assistance to 50 percent of the tenants, and  
24 the Applicant will agree that 50% or more of the total units in the  
25 development will be restricted to being rented to households with  
26 incomes equal to or below 30% of the greater of local area median  
27 income, as adjusted for household size, or the statewide median

1 income, as adjusted for household size, then the Applicant shall be  
2 awarded 30 points. The documented, committed and available third  
3 party funding source to provide project based rental assistance  
4 shall only be from project based Section 8, USDA 5 year rental  
5 assistance contract, or HUD contract for project based Section 8  
6 operating assistance, or similar long term ( at least 5  
7 year)federal or state project based rental assistance programs.

8 (B). An Application may qualify for points under  
9 only one of the below listed subsections (i) through (vii). To  
10 qualify for these points, the rents for the rent-restricted Units  
11 must not be higher than the allowable tax credit rents at the  
12 rent-restricted area median gross income level, as defined by this  
13 subchapter in Sec. 2306.6702. For Section 8 residents, or other  
14 rental assistance tenants, the tenant paid rent plus the utility  
15 allowance is compared to the rent limit to determine compliance.  
16 The development owner, upon making selections will set aside units  
17 at the rent-restricted levels of AMGI and will maintain the  
18 percentage of such Units continuously over the compliance and  
19 extended use period as specified in a land use restriction  
20 agreement. Developments may qualify for points under only one  
21 subparagraph in this section.

22 (i) If 10% of the total number of low income  
23 units (including Units at 60% of AMGI) are designated for tenants at  
24 or below 30% of the AMGI, then the Applicant shall be awarded 25  
25 points.

26 (ii) If 40% of the total number of low  
27 income units (including Units at 60% of AMGI) are designated for

1 tenants at or below 50% of the AMGI, then the Applicant shall be  
2 awarded 20 points.

3 (iii) If 35% of the total number of low  
4 income units (including Units at 60% of AMGI) are designated for  
5 tenants at or below 50% of the AMGI, then the Applicant shall be  
6 awarded 17 points.

7 (iv) If 30% of the total number of low  
8 income units (including Units at 60% of AMGI) are designated for  
9 tenants at or below 50% of the AMGI, then the Applicant shall be  
10 awarded 14 points.

11 (v) If 25% of the total number of low income  
12 units (including Units at 60% of AMGI) are designated for tenants at  
13 or below 50% of the AMGI, then the Applicant shall be awarded 11  
14 points.

15 (vi) If 20% of the total number of low  
16 income units (including Units at 60% of AMGI) are designated for  
17 tenants at or below 50% of the AMGI, then the Applicant shall be  
18 awarded 8 points.

19 (vii) If 15% of the total number of low  
20 income units (including Units at 60% of AMGI) are designated for  
21 tenants at or below 50% of the AMGI, then the Applicant shall be  
22 awarded 5 points.

23 (viii) If 10% of the total number of low  
24 income units (including Units at 60% of AMGI) are designated for  
25 tenants at or below 50% of the AMGI, then the Applicant shall be  
26 awarded 2 points.

27 (4) Development Characteristics. Applications may

1 receive points under as many of the following subparagraphs as are  
2 applicable; however to qualify for points under subsection , the  
3 development must first meet the minimum requirements identified  
4 under subparagraph (A) of this subsection, with the exception that  
5 the minimum requirement does not apply to applications involving  
6 rehabilitation, or developments receiving funding from Rural  
7 Housing Service of the United States Department of Agriculture.  
8 The maximum number of points to be awarded under this paragraph is  
9 25 points.

10 (A) Unit Size. The square feet of all of the  
11 units in the development, for each type of unit, must be at minimum:

- 12 (i) 500 square feet for an efficiency unit;  
13 (ii) 650 square feet for a non-elderly one  
14 bedroom unit; 550 square feet for an elderly one bedroom unit;  
15 (iii) 900 square feet for a two bedroom  
16 unit; 750 square feet for an elderly two bedroom unit;  
17 (iv) 1,000 square feet for a three bedroom  
18 unit; and  
19 (v) 1,200 square feet for a four bedroom  
20 unit.

21 (B) Unit Amenities and Quality. Applications in  
22 which developments provide specific amenity and quality features in  
23 every Unit at no extra charge to the tenant will be awarded points  
24 based on the point structure provided in clauses (i) through  
25 (xxxiv) of this subparagraph, not to exceed 25 points in total.  
26 Applications involving rehabilitation or proposing single room  
27 occupancy will double the points listed for each item, not to exceed

1 25 points in total.

2 (i) Computer line/phone jack available in  
3 all bedrooms (only one phone line needed) (1 point)

4 (ii) Mini-blinds or window coverings for  
5 all windows ( 1 point);

6 (iii) Dishwasher and disposal in all units  
7 ( 1 point)

8 (iv) Refrigerator with ice maker ( 2  
9 points)

10 (v) Self-cleaning ovens ( 1 point)

11 (vi) Ceiling fans in living areas and  
12 bedrooms ( 2 points)

13 (vii) Covered entries (1 point);

14 (viii) Nine foot ceilings (2 points);

15 (xi) Ceiling fixtures in all rooms (globe  
16 with ceiling fan in all bedrooms) (1 point);

17 (xii) Laundry connections (2 point);

18 (xiii) Storage room or closet, of  
19 approximately 9 square feet or greater, which does not include  
20 bedroom, entryway or linen closets (1 point);

21 (xiv) Laundry equipment (washers and  
22 dryers) in units (3 points);

23 (xv) Thirty year architectural shingle  
24 roofing (1 point);

25 (xvi) Covered patios or covered balconies  
26 (1 point);

27 (xvii) Covered parking of at least one

1 covered space per Unit (2 points);

2 (xviii) Parking garages of at least one  
3 covered space per Unit (4 points);

4 (xix) Greater than 75 % masonry on exterior  
5 ( 2 points) or 100% masonry on exterior, which can include stucco  
6 and cementious board products, excluding efis (3 points);

7 (xix) Energy Star or equivalently rated  
8 Kitchen Appliances (2 points)

9 (xx) Full perimeter fencing (1 point) or  
10 full perimeter fencing with controlled gate access (3 points)

11 (xxi) Designated playground and equipment (  
12 2 points);

13 (xxii) Community laundry room ( 1 point);

14 (xxiii) A furnished community room ( 1  
15 point)

16 (xxiv) Public telephone available to  
17 tenants 24 hours a day ( 1 point)

18 (xxv) All units will adhere to the 2000  
19 International Energy Conservation Code (IECC) for Energy savings  
20 Devises as listed below. If all requirements met, then 3 points:

21 (a) For new construction, insulation  
22 values of R-15 for exterior walls and R-30 for ceilings. For  
23 rehabilitation projects, insulation values of R-30 for ceilings.;

24 (b) If newly installed, Energy Star or  
25 equivalent rated air handler and condenser; or heating and cooling  
26 systems with minimum SEER 12 A/C and AFUE 90% furnace if using gas;  
27 or in dry climates an evaporative cooling system may replace the

1 Energy Star cooling system;

2 (c) If installed new, water heaters to  
3 have an energy factor no less than .93 for electric or greater than  
4 .62 for gas; and

5 (d) Maximum 2.5 gallon/per minute  
6 showerheads and maximum 1.5 gallon/minute faucet aerators.

7 (xxvi) Radiant-barrier roofing technology  
8 (3 points);

9 (xxvii) Gazebo/Arbor w/sitting area (1  
10 point);

11 (xxviii) Accessible walking path (1 point);

12 (xxix) Community gardens (1 point)

13 (xxx) Barbecue grill and picnic table 1  
14 point);

15 (xxxi) Covered pavilion ( 1 point)

16 (xxxii) Swimming pool ( 3 points)

17 (xxxiii) Furnished fitness center ( 2  
18 points)

19 (xxxiv) Game/TV room ( 2 points);

20 (5) Commitment of development funding by local  
21 political subdivision. If the proposed development has received a  
22 commitment for equal to or greater than 10% of the total development  
23 cost from a local political subdivision, which is not related to the  
24 Applicant, then the Applicant shall receive 20 points. Such funds  
25 can include Community Development Block Grant or loan funds, HOME  
26 funds, a local housing trust, local Affordable Housing funds, or  
27 other quantifiable financing contributions by the local political



1 subdivision. For rural projects, HOME and Housing Trust Funds  
2 allocated by the Department shall qualify for these points.  
3 Evidence to be submitted with the Application must include a copy of  
4 the commitment of funds or a copy of the application with the  
5 funding entity and a letter from the funding entity indicating that  
6 the application was received. The Applicant must provide a  
7 commitment of funds 30 days prior to the Board recommendation of tax  
8 credit allocations in order to receive points under this  
9 subparagraph.

10 (6) Community Support from State Elected Officials.  
11 Points will be awarded based on the written statements of support or  
12 opposition from state elected officials representing constituents  
13 in areas that include the location of the Development. The  
14 department shall score letters from State Representatives or State  
15 Senators as long as the letter is received by the department prior  
16 to any action by the board on the application. Points can be  
17 awarded for letters of support or opposition as identified in  
18 clauses (i) through (v) of this subparagraph, not to exceed a total  
19 of 14 points.

20 (i) Letter of support from both State of  
21 Texas Representative and Senator (7 points each, maximum of 14  
22 points);

23 (ii) Letter of support from either State of  
24 Texas Representative or Senator (7 points);

25 (iii) Letter of opposition from either  
26 State of Texas Representative or Senator (-10 points).

27 (iv) Letter of opposition from both State

1 of Texas Representative and Senator (-25 points)

2 (v) If both State of Texas Representative  
3 and Senator are contacted but no letters either in support or  
4 opposition are received (10 points).

5 (7) Rent level of units. If greater than 95 percent of  
6 the units in the development (excluding any units reserved for a  
7 manager) are restricted to having rents plus the allowance for  
8 utilities equal to or below the maximum tax credit rent, then the  
9 development shall be awarded 12 points. If between 91 percent and  
10 95 percent of the units in the development (excluding any units  
11 reserved for a manager) are restricted to having rents plus the  
12 allowance for utilities equal to or below the maximum tax credit  
13 rent, then the development shall be awarded 10 points. If between  
14 86 percent and 90 percent of the units in the development (excluding  
15 any units reserved for a manager) are restricted to having rents  
16 plus the allowance for utilities equal to or below the maximum tax  
17 credit rent, then the development shall be awarded 9 points. If  
18 between 81 percent and 85 percent of the units in the development  
19 (excluding any units reserved for a manager) are restricted to  
20 having rents plus the allowance for utilities equal to or below the  
21 maximum tax credit rent, then the development shall be awarded 8  
22 points. If 80% or fewer of the units in the development (excluding  
23 any units reserved for a manager) are restricted to having rents  
24 plus the allowance for utilities equal to or below the maximum tax  
25 credit rent, then the development shall be awarded 7 points.

26 (8) Cost of the development per square foot. If the  
27 total construction cost for the development does not exceed the

1 limitation specified in this section, the applicant shall qualify  
2 for 9 points. For purposes of this subsection, total construction  
3 cost shall include costs normally associated with the actual  
4 construction of the development including on and off site work,  
5 contingency, contractor profit, contractor overhead, and  
6 contractor general requirements. The construction cost per net  
7 rentable area shall be as follows: (1) \$65 per square foot for  
8 developments not otherwise described; (2) \$75 per square for  
9 developments dedicated as 100% for use by elderly households or  
10 100% transitional housing for the homeless, unless located in  
11 Aransas, Calhoun, Chambers, Jefferson, Kleberg, Nueces, San  
12 Patricio, Brazoria, Cameron, Galveston, Kenedy, Matagorda, Refugio  
13 or Willacy County in which event the amount shall be \$77 per square  
14 foot, (3) \$67 per square foot for developments located in Aransas,  
15 Calhoun, Chambers, Jefferson, Kleberg, Nueces, San Patricio,  
16 Brazoria, Cameron, Galveston, Kenedy, Matagorda, Refugio or  
17 Willacy County. The department shall annually adjust the dollar  
18 limitations of this section to account for inflation.

19 (9) Ad valorem taxes. If the Applicant will pay ad  
20 valorem taxes on the development for a minimum of 15 years, the  
21 Applicant will be awarded 8 points.

22 (10) Development Location Characteristics. If the  
23 subject Property is located within one of the geographical areas  
24 described in subparagraphs (A) through (E) of this paragraph will  
25 receive 5 points. An Application may only receive points under one  
26 of the subparagraphs (A) through (E) of this paragraph. An  
27 Application may receive an additional 5 points pursuant to

1 subparagraph (F) of this paragraph in addition to any points  
2 awarded in subparagraphs (A) through (E).

3 (A) A geographical area which is:

4 (i) an Economically Distressed Area; or

5 (ii) a Colonia, or

6 (iii) a Difficult Development Area (DDA) as  
7 specifically designated by the Secretary of HUD.

8 (B) A designated state or federal  
9 empowerment/enterprise zone, urban enterprise community, or urban  
10 enhanced enterprise community.

11 (C) A city-sponsored area or zone where a city or  
12 county has, through a local government initiative, specifically  
13 encouraged or channeled growth, neighborhood preservation or  
14 redevelopment.

15 (D) The Development is located in a county that  
16 has received an award as of November 15, 2003, within the past three  
17 years, from the Texas Department of Agriculture's Rural Municipal  
18 Finance Program or Real Estate Development and Infrastructure  
19 Program. Cities which have received one of these awards are  
20 categorized as awards to the county as a whole so Developments  
21 located in a different city than the city awarded, but in the same  
22 county, will still be eligible for these points.

23 (E) A qualified census tract, as defined in  
24 Section 42(a)(5)(c) of the Internal Revenue Code [USC Title 26,  
25 Sec. 42(d)(5)(C)] and the development of which contributes to a  
26 concerted community revitalization plan.

27 (F) The Development is located in a census tract

1 in which there are no other existing developments supported by  
2 housing tax credits.

3 (11) Development Provides Supportive Services to  
4 Tenants. Points may be received under both subparagraphs (A) and  
5 (B) of this paragraph.

6 (A) Applicants will receive a point for  
7 coordinating their tenant services with those services provided  
8 through state workforce development and welfare programs as  
9 evidenced by execution of a Tenant Supportive Services  
10 Certification (1 point).

11 (B) The Applicant must certify that the  
12 development will provide special supportive services appropriate  
13 for the proposed tenants No fees may be charged to the tenants for  
14 any of the services. Services must be provided on-site or  
15 transportation to off-site services must be provided (maximum of 1  
16 point).

17 (i) Service options include child care;  
18 counseling services; GED preparation; English as a second language  
19 classes; credit counseling; financial planning assistance or  
20 courses; scholastic tutoring; social events and activities; senior  
21 meal program; home-delivered meal program; any other programs  
22 described under Title IV-A of the Social Security Act (42 U.S.C. §§  
23 601 et seq.) which enables children to be cared for in their homes  
24 or the homes of relatives; ends the dependence of needy families on  
25 government benefits by promoting job preparation; prevents and  
26 reduces the incidence of out-of wedlock pregnancies; or encourages  
27 the formation and maintenance of two-parent families.

1           (12) Preservation of existing low income housing. If  
2 the application involves the preservation of existing low income  
3 housing, the applications shall be awarded 2 points. A development  
4 funded under the HOPE VI funding or funding from a Public Housing  
5 Authority capital grant funds shall be eligible for 2 points

6           (13) Senior or homeless populations. The proposed  
7 development will be 100% dedicated units for senior or homeless  
8 populations. 1 point.

9           (14) Developer commits to notify Public Housing  
10 Authority of availability of housing for PHA's waiting list. If the  
11 Applicant commits to notify the local Public Housing Authority, or  
12 the nearest agency that administers Section 8 certificates or  
13 vouchers for the area in which the development is located, that the  
14 applicant will consider individuals and households on the Public  
15 Housing Authority's waiting list for occupancy, 1 point will be  
16 awarded.

17           (15) Family Units. The development will have 50% of  
18 more of the total units in the development have 2 or more bedrooms  
19 (2 points).

20           (16) Agreement to sell to nonprofit or tenant  
21 organization If the development owner agrees to provide a right of  
22 first refusal to purchase the development upon or following the end  
23 of the compliance period for the minimum purchase price provided  
24 in, and in accordance with the requirements of, §42(i)(7) of the  
25 Internal Revenue Code, (26 U.S.C. Section 42(I)(7) ) to a qualified  
26 nonprofit organization, or either an individual tenant with respect  
27 to a single family building, or a tenant cooperative, a resident

1 management corporation in the development or other association of  
2 tenants in the development with respect to multifamily  
3 developments, the applicant will be awarded one point.

4 (17) Extended Use. If the applicant agrees to extend  
5 the affordable housing period beyond the minimum required by  
6 Section 42 of the Internal Revenue Code for an additional five year  
7 period shall be awarded 1 point.

8 (18) Mixed Income units The development is a  
9 mixed-income development comprised of both market rate units and  
10 qualified tax credit units. Points will be awarded to developments  
11 with a tax credit unit based applicable fraction which is no greater  
12 than:

- 13 (i) 85% (3 points); or,  
14 (ii) 90% (2 points); or,  
15 (ii) 95% (1 point).

16 (19) Small projects. The development consists of not  
17 more than 36 units and is not part of, or contiguous to, a larger  
18 development. (4 points).

19 (20) Fair Housing Seminar. The applicant or a  
20 representative of the applicant has attended a fair housing seminar  
21 (of at least five and 1/5 hours) within the preceding three years  
22 shall receive 1 point.

23 (21) Accessible Units. If the development is designed  
24 to have five percent of its units fully accessible for persons with  
25 disability and at least 2 percent of its units designed for a person  
26 with a visual or hearing impairment, then the development shall be  
27 awarded 4 points

1           (22) Pre-Application Points. Applications which  
2 submitted a pre-application in conformity with the rules of the  
3 department shall receive 4 points. Applications involving funding  
4 from the Rural Housing Service United States Department of  
5 Agriculture that also involve the rehabilitation of an affordable  
6 housing development shall qualify for the preapplication points  
7 without submitting the preapplication.

8           (23) In the event that two or more applications have  
9 the same score, the department shall use a tiebreaker and award the  
10 allocation of tax credits to the development that requests the  
11 least tax credits per net rentable area.

12           ~~[(1) prioritizes in descending order criteria~~  
13 ~~regarding:~~

14           ~~(A) financial feasibility of the development~~  
15 ~~based on the supporting financial data required in the application~~  
16 ~~that will include a project underwriting pro forma from the~~  
17 ~~permanent or construction lender;~~

18           ~~(B) quantifiable community participation with~~  
19 ~~respect to the development, evaluated on the basis of written~~  
20 ~~statements from any neighborhood [organizations] associations on~~  
21 ~~record with the [state or county] department in which the~~  
22 ~~development is to be located and whose boundaries contain the~~  
23 ~~proposed development site;~~

24           ~~(C) the income levels of tenants of the~~  
25 ~~development;~~

26           ~~(D) the size and quality of the units;~~

27           ~~(E) the commitment of development funding by~~



1 ~~local political subdivisions;~~

2 ~~(F) the level of [community] support for the~~  
3 ~~application, evaluated on the basis of written statements from~~  
4 ~~state elected officials;~~

5 ~~(G) the rent levels of the units;~~

6 ~~(H) the cost of the development by square foot;~~

7 ~~and~~

8 ~~(I) the services to be provided to tenants of the~~  
9 ~~development; and~~

10 (2) uses criteria imposing substantial penalties or  
11 point reductions on ~~applicants or affiliates who have requested~~  
12 ~~extensions of department deadlines relating to developments~~  
13 ~~supported by housing tax credit allocations made in the application~~  
14 ~~round preceding the current round or a developer or principal of the~~  
15 applicant that has been removed by the lender, equity provider, or  
16 limited partners for its failure to perform its obligations under  
17 the loan documents or limited partnership agreement.

18 (c) The department shall publish in the qualified  
19 allocation plan details of the scoring system used by the  
20 department to score applications.

21 (d) The department shall implement a system of evaluating  
22 the financial aspects of tax credit developments that recognizes  
23 that such developments do not need, and shall not be subject to, the  
24 financial underwriting necessary for a mortgage loan transaction  
25 where the department has a financial interest in the loan. In  
26 evaluating tax credit developments, the department shall only  
27 ensure that the housing credit dollars allocated to a development

1 are not in excess of the amount necessary for the financial  
2 feasibility of the development and its viability throughout the  
3 first fifteen years of operation

4 (e) [~~(d)~~] The department shall [~~underwrite~~] evaluate the  
5 applications ranked under Subsection [~~(b)~~] (a) beginning with the  
6 applications with the highest scores in each region described by  
7 Section 2306.111(d) and in each set-aside category described in the  
8 qualified allocation plan. Based on application rankings, the  
9 department shall continue to [~~underwrite~~] evaluate applications  
10 until the department has processed enough applications satisfying  
11 the department's [~~underwriting~~] evaluation criteria to enable the  
12 allocation of all available housing tax credits according to  
13 regional allocation goals and set-aside categories. To enable the  
14 board to establish an applications waiting list under Section  
15 2306.6711, the department shall [~~underwrite~~] evaluate as many  
16 additional applications as the board considers necessary to ensure  
17 that all available housing tax credits are allocated within the  
18 period required by law. The department shall [~~underwrite~~] evaluate  
19 an application to determine the financial feasibility of the  
20 development and an appropriate level of housing tax credits.

21 (1) In evaluating the proposed development, the  
22 department shall only consider:

23 (A) the sources and uses of funds and the total  
24 financing planned for the project;

25 (B) any proceeds or receipts expected to be  
26 generated by reason of tax benefits;

27 (C) the percentage of the housing credit dollar

1 amount used for project costs other than the cost of  
2 intermediaries;

3 (D) the reasonableness of the developmental and  
4 operational costs of the project.

5 (2) In determining an appropriate level of housing tax  
6 credits, the department shall evaluate the cost of the development  
7 based on acceptable cost parameters as adjusted for inflation and  
8 as established by historical final cost certifications of all  
9 previous housing tax credit allocations for:

10 [(1)] (A) the county in which the development is  
11 to be located;

12 [(2)] (B) if certifications are unavailable  
13 under Subdivision (1), the metropolitan statistical area in which  
14 the development is to be located; or

15 [(3)] (C) if certifications are unavailable  
16 under Subdivisions [(1)] (A) and [(2)] (B), the uniform state  
17 service region in which the development is to be located.

18 ~~(c) In scoring applications for purposes of housing tax~~  
19 ~~credit allocations, the department shall award, consistent with~~  
20 ~~Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42),~~  
21 ~~preference points to a development that will:~~

22 ~~(1) when practicable and feasible based on documented,~~  
23 ~~committed, and available third-party funding sources, serve the~~  
24 ~~lowest income tenants per housing tax credit, if the development is~~  
25 ~~to be located outside a qualified census tract, and~~

26 ~~(2) produce for the longest economically feasible~~  
27 ~~period the greatest number of high quality units committed to~~

1 ~~remaining affordable to any tenants who are income-eligible under~~  
2 ~~the low income housing tax credit program.~~

3 ~~(f) In evaluating the level of community support for an~~  
4 ~~application under Subsection (b) (1)(F), the department shall~~  
5 ~~award:~~

6 ~~(1) positive points for positive written statements~~  
7 ~~received;~~

8 ~~(2) negative points for negative written statements~~  
9 ~~received; and~~

10 ~~(3) zero points for neutral statements received.~~

11 ~~(g) In awarding points under Subsection (f), the department~~  
12 ~~shall give equal weight to each written statement received.~~

13 SECTION 2.13. Amend Section 2306.6711, Texas Government  
14 Code, to read as follows:

15 Sec. 2306.6711. ALLOCATION OF HOUSING TAX CREDITS. (a) The  
16 director shall provide the application scores to the board before  
17 the 30th day preceding the date the board begins to issue  
18 commitments for housing tax credits in the allocation round.

19 (b) Not later than the deadline specified in the qualified  
20 allocation plan, the board shall issue commitments for available  
21 housing tax credits based on the application evaluation process  
22 provided by Section 2306.6710. The board may not allocate to an  
23 applicant housing tax credits in any unnecessary amount, as  
24 ~~[determined]~~ evaluated by the department ~~[its underwriting policy]~~  
25 in accordance with Subsection (c)(1) of this Section, and by  
26 federal law, and in any event may not allocate to the applicant  
27 housing tax credits in an amount greater than \$2 million in a single

1 application round. The \$2 million maximum amount to any one  
2 applicant applies regardless of the capacity in which the applicant  
3 or any affiliated or related person is involved.

4 (c) Concurrently with the initial issuance of commitments  
5 for housing tax credits under Subsection (b), the board shall  
6 establish a waiting list of additional applications ranked by score  
7 in descending order of priority based on set-aside categories and  
8 regional allocation goals.

9 (d) The board shall issue commitments for housing tax  
10 credits with respect to applications on the waiting list as  
11 additional credits become available.

12 (e) Not later than the 120th day after the date of the  
13 initial issuance of commitments for housing tax credits under  
14 Subsection (b), the department shall provide to an applicant who  
15 did not receive a commitment under that subsection an opportunity  
16 to meet and discuss with the department the application's  
17 deficiencies and scoring.

18 (f) The board may allocate housing tax credits to more than  
19 one development in a single community , as defined by department  
20 rule, in the same calendar year ~~only~~ if:

21 (1) the new construction developments are or will be  
22 located more than one linear mile apart; or

23 (2) the developments are placed in service in  
24 different taxable years, in accordance with Section 42(f)(1),  
25 Internal Revenue Code of 1986 (26 U.S.C. Section 42). This  
26 subsection (f)(2) applies only to communities contained within  
27 counties with populations exceeding one million.

1 SECTION 2.14 Amend Section 2306.6712, Texas Government  
2 Code, to read as follows:

3 Sec. 2306.6712. AMENDMENT OF APPLICATION SUBSEQUENT TO  
4 ALLOCATION BY BOARD. (a) If a proposed modification would  
5 materially adversely alter a development approved for an allocation  
6 of a housing tax credit, the department shall require the applicant  
7 to file a formal, written amendment to the application on a form  
8 prescribed by the department.

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

19 (c) The board must vote on whether to approve the amendment  
20 or to send the matter to the Alternative Dispute Resolution process  
21 as provided for in Section 2306.082 of this chapter. The board by  
22 vote may reject an amendment and, if appropriate, rescind the  
23 allocation of housing tax credits and reallocate the credits to  
24 other applicants on the waiting list required by Section 2306.6711  
25 if the board determines that the modification proposed in the  
26 amendment:

27 (1) would materially alter the development in a

1 negative manner; or

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

4 (d) Material alteration of a development includes:

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

6 (2) a modification of the number of units or bedroom  
7 mix of units;

8 (3) a substantive modification of the scope of tenant  
9 services;

10 (4) a change in the income levels of the tenants to be  
11 served by the development

12 (5) any modification in the attributes of the  
13 development that would have affected the selection of the  
14 application in the application round;

15 ~~(4) a reduction of three percent or more in the square~~  
16 ~~footage of the units or common areas;~~

17 ~~(5) a significant modification of the architectural~~  
18 ~~design of the development;~~

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

21 (6) (7) any other modification considered significant  
22 by the board.

23 ~~(e) In evaluating the amendment under this subsection, the~~  
24 ~~department staff shall consider whether the need for the~~  
25 ~~modification proposed in the amendment was:~~

26 ~~(1) reasonably foreseeable by the applicant at the~~  
27 ~~time the application was submitted; or~~

1           ~~(2) preventable by the applicant.~~

2           (f) This section shall be administered in a manner that is  
3 consistent with Section 42, Internal Revenue Code of 1986 (26  
4 U.S.C. Section 42).

5           SECTION 2.15. Amend Section 2306.6713, Texas Government  
6 Code, to read as follows:

7           Sec. 2306.6713. HOUSING TAX CREDIT AND OWNERSHIP TRANSFERS.

8           (a) An applicant may not transfer an allocation of housing tax  
9 credits or ownership of a development supported with an allocation  
10 of housing tax credits to any person other than an affiliate unless  
11 the applicant obtains the director's prior, written approval of the  
12 transfer.

13           (b) The director may not unreasonably withhold approval of  
14 the transfer.

15           (c) An applicant seeking director approval of a transfer and  
16 the proposed transferee must provide to the department a copy of any  
17 applicable agreement between the parties to the transfer, including  
18 any third-party agreement with the department.

19           (d) On request, an applicant seeking director approval of a  
20 transfer must provide to the department:

21                 (1) a list of the names of transferees and related  
22 parties; and

23                 (2) detailed information describing the experience  
24 and financial capacity of transferees and related parties.

25           ~~(e) The development owner shall certify to the director that~~  
26 ~~the tenants in the development have been notified in writing of the~~  
27 ~~transfer before the 30th day preceding the date of submission of the~~



1 ~~transfer request to the department.~~

2 (e) ~~(f)~~ Not later than the fifth working day after the date  
3 the department receives all necessary information under this  
4 section, the department shall conduct a qualifications review of a  
5 transferee to determine:

6 (1) the transferee's past compliance with all aspects  
7 of the low income housing tax credit program, including land use  
8 restriction agreements; and

9 (2) the sufficiency of the transferee's experience  
10 with developments supported with housing tax credit allocations.

11 SECTION 2.16. Amend Section 2306.6715, Texas Government  
12 Code, to read as follows:

13 Sec. 2306.6715. APPEAL. (a) In a form prescribed by the  
14 department in the qualified allocation plan, or also through the  
15 Alternative Dispute Resolution process provided for by Section  
16 2306.082 of this chapter, an applicant may appeal the following  
17 decisions made by the department in the application evaluation  
18 process provided by Section 2306.6710:

19 (1) an ~~[determination]~~ evaluation regarding the  
20 application's satisfaction of threshold and underwriting criteria,  
21 in accordance with Sections 2306.67042 or 2306.6710(c)(1) of this  
22 chapter;

23 (2) the scoring of the application; and

24 (3) a recommendation as to the amount of housing tax  
25 credits to be allocated to the application.

26 (b) An applicant may not appeal a decision made under  
27 Section 2306.6710 regarding an application filed by another

1 applicant unless it can be demonstrated that the department  
2 inconsistently evaluated similar applications.

3 (c) An applicant must file a written appeal authorized by  
4 this section with the department not later than the [~~seventh~~] tenth  
5 day after the date the department publishes the results of the  
6 application evaluation process provided by Section 2306.6710. In  
7 the appeal, the applicant must specifically identify the  
8 applicant's grounds for appeal, based on the original application  
9 and additional documentation filed with the original application.

10 (d) The director shall respond in writing to the appeal not  
11 later than the 14th day after the date of receipt of the appeal. If  
12 the applicant is not satisfied with the director's response to the  
13 appeal, the applicant may request an Alternative Dispute Resolution  
14 hearing, as provided for by Section 2306.082 of this chapter, in  
15 addition to making an appeal directly in writing to the board,  
16 provided that an appeal filed with the board under this subsection  
17 must be received by the board before:

18 (1) the seventh day preceding the date of the board  
19 meeting at which the relevant allocation decision is expected to be  
20 made; or

21 (2) the third day preceding the date of the board  
22 meeting described by Subdivision (1), if the director does not  
23 respond to the appeal before the date described by Subdivision (1).

24 (e) Board review of an appeal under Subsection (d) is based  
25 on the original application and additional documentation filed with  
26 the original application. The board may not review any information  
27 not contained in or filed with the original application, unless the

1 Alternative Dispute Resolution process recommends this review to  
2 the board. The decision of the board regarding the appeal is final.

3 SECTION 2.17. Amend Section 2306.6716, Texas Government  
4 Code, to read as follows:

5 Sec. 2306.6716. FEES. (a) A fee charged by the department  
6 for filing an application or for receiving an allocation or a  
7 commitment of tax credits may not be excessive and must reflect the  
8 department's actual costs in processing the application, providing  
9 copies of documents to persons connected with the application  
10 process, and making appropriate information available to the public  
11 through the department's website. For purposes of this section,  
12 the department shall include the total amount of all commitment or  
13 allocation fees as being earned and available for use in the year in  
14 which received.

15 (b) The department shall publish each year an updated  
16 schedule of application fees that specifies the amount to be  
17 charged at each stage of the application process.

18 (c) In accordance with the fee schedule, the department  
19 shall refund the balance of any fees collected for an application  
20 that is withdrawn by the applicant or that is not fully processed by  
21 the department. The department must provide the refund to the  
22 applicant not later than the 30th day after the date the last  
23 official action is taken with respect to the application.

24 (d) The department shall develop a sliding scale fee  
25 schedule for applications that encourages increased participation  
26 by community housing development organizations in the low income  
27 housing tax credit program.

1           SECTION 2.18. Amend Section 2306.6717, Texas Government  
2 Code, to read as follows:

3           Sec. 2306.6717. PUBLIC INFORMATION AND HEARINGS. (a)  
4 Subject to Section 2306.67041, the department shall make the  
5 following items available on the department's website:

6           (1) as soon as practicable, any proposed application  
7 submitted through the preapplication process established by this  
8 subchapter;

9           (2) before the 30th day preceding the date of the  
10 relevant board allocation decision, except as provided by  
11 Subdivision (3), the entire application, including all supporting  
12 documents and exhibits, the application log, a scoring sheet  
13 providing details of the application score, and any other document  
14 relating to the processing of the application;

15           (3) not later than the third working day after the date  
16 of the relevant determination, the results of each stage of the  
17 application process, including the results of the application  
18 scoring and [~~underwriting~~] evaluation phases and the allocation  
19 phase;

20           (4) before the 15th day preceding the date of board  
21 action on the amendment, notice of an amendment under Section  
22 2306.6712 and the recommendation of the director and monitor  
23 regarding the amendment; and

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

27           (b) The department shall make available on the department's

1 website information regarding the low income housing tax credit  
2 program, including notice regarding public hearings, meetings, the  
3 opening and closing dates for applications, submitted  
4 applications, and applications approved for evaluation  
5 ~~underwriting~~ and recommended to the board, and shall provide that  
6 information to:

- 7 (1) locally affected community groups;
- 8 (2) local and state elected officials;
- 9 (3) local housing departments;
- 10 (4) any appropriate newspapers of general or limited  
11 circulation that serve the community in which the development is to  
12 be located;
- 13 (5) nonprofit and for-profit organizations;
- 14 (6) on-site property managers of occupied  
15 developments that are the subject of applications for posting in  
16 prominent locations in those developments; and
- 17 (7) any other interested persons and community groups  
18 that request the information.

19 (c) The department shall hold at least three public hearings  
20 in different regions of the state to receive public comments on  
21 applications and on other issues relating to the low income housing  
22 tax credit program.

23 (d) Notwithstanding any other provision of this section,  
24 the department shall ~~may~~ treat the financial statements of any  
25 applicant as confidential and shall ~~may elect~~ not to disclose those  
26 statements to the public.

27 SECTION 2.19. Amend Section 2306.6718, Texas Government

1 Code, to read as follows:

2 Sec. 2306.6718. ELECTED OFFICIALS. (a) The department  
3 shall solely be responsible for providing [~~provide~~] written notice  
4 of the filing of an application to the following elected officials:

5 (1) members of the legislature who represent the  
6 community containing the development described in the application;  
7 and

8 (2) the chief executive officer of the political  
9 subdivision containing the development described in the  
10 application.

11 (b) The department shall provide the elected officials with  
12 an opportunity to comment on the application during the application  
13 evaluation process provided by Section 2306.6710 and shall consider  
14 those comments in evaluating applications under that section.

15 (c) A member of the legislature who represents the community  
16 containing the development may hold a community meeting at which  
17 the department shall provide appropriate representation.

18 (d) If the department receives written notice from the mayor  
19 or county judge of an affected municipality or county opposing an  
20 application, the department must contact the mayor or county judge  
21 and offer to conduct a physical inspection of the development site  
22 and consult with the mayor or county judge before the application is  
23 scored.

24 SECTION 2.20. Amend Section 2306.6719, Texas Government  
25 Code, to read as follows:

26 Sec. 2306.6719. MONITORING OF COMPLIANCE. (a) For  
27 developments that do not involve other federal assistance where the

1 federal agency will be monitoring the construction or  
2 rehabilitation of the development and that will provide the  
3 department with copies of its construction inspection or  
4 operational inspection reports, the department, may contract with  
5 an independent third party to monitor a development during its  
6 construction or rehabilitation and during its operation for  
7 compliance with:

8 (1) any conditions imposed by the department in  
9 connection with the allocation of housing tax credits to the  
10 development; and

11 (2) appropriate state and federal laws, as required by  
12 other state law or by the board.

13 (b) The department may assign department staff other than  
14 housing tax credit division staff to perform the relevant  
15 monitoring functions required by this section in the construction  
16 or rehabilitation phase of a development.

17 SECTION 2.21. Amend Section 2306.6720, Texas Government  
18 Code, to read as follows:

19 Sec. 2306.6720. ENFORCEABILITY OF APPLICANT  
20 REPRESENTATIONS. Each representation made by an applicant to  
21 secure a housing tax credit allocation is enforceable by the  
22 department ~~and the tenants of the development supported with the~~  
23 ~~allocation.~~

24 SECTION 2.22. Amend Section 2306.6721, Texas Government  
25 Code, to read as follows:

26 Sec. 2306.6721. DEBARMENT FROM PROGRAM PARTICIPATION. (a)  
27 The board by rule shall adopt a policy providing for the debarment

1 of a person from participation in the low income housing tax credit  
2 program as described by this section.

3 (b) The department may debar a person from participation in  
4 the program on the basis of the person's past failure to comply with  
5 any condition imposed by the department in connection with the  
6 allocation of housing tax credits.

7 (c) The department shall debar a person from participation  
8 in the program if the person:

9 (1) materially violates any condition imposed by the  
10 department in connection with the allocation of housing tax  
11 credits;

12 (2) is debarred from participation in federal housing  
13 programs by the United States Department of Housing and Urban  
14 Development; or

15 (3) is in material noncompliance with or has  
16 repeatedly violated a land use restriction agreement regarding a  
17 development supported with a housing tax credit allocation.

18 (d) A person debarred by the department from participation  
19 in the program shall not be eligible for a minimum of 5 years from  
20 the date of the debarment and may appeal the person's debarment  
21 through the Alternative Dispute Resolution Process, as provided for  
22 by Section 2306.082 of this chapter, and directly to the board.

23 SECTION 2.23. Amend Section 2306.7622, Texas Government  
24 Code, to read as follows:

25 Sec. 2306.6722. DEVELOPMENT ACCESSIBILITY. (a) Any new  
26 construction development or rehabilitation development that was  
27 first occupied after March 13, 1991 supported with a housing tax



1 credit allocation shall comply with the accessibility standards  
2 that are required under the Fair Housing Amendments Act of 1988 [42  
3 U.S.C. 3600 et. seq], as implemented in 24 C.F.R. Part 100.

4 (b) Any rehabilitation development shall endeavor, to the  
5 extent feasible, to satisfy the requirements of the Fair Housing  
6 Amendments Act of 1988 [42 U.S.C. 3600 et seq.], as implemented in  
7 24 C.F.R. Part 100. ~~Section 504, Rehabilitation Act of 1973 (29~~  
8 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart  
9 C.

10 SECTION 2.24. Amend Section 2306.6723, Texas Government  
11 Code, to read as follows:

12 Sec. 2306.6723. COORDINATION WITH RURAL DEVELOPMENT  
13 AGENCY. (a) The department shall jointly administer with the rural  
14 development agency the allocations for ~~set-aside for~~ rural areas  
15 to:

16 (1) ensure the maximum use and optimum geographic  
17 distribution of housing tax credits in rural areas; and

18 (2) provide for information sharing, efficient  
19 procedures, and fulfillment of development compliance requirements  
20 in rural areas.

21 (b) The rural development agency shall assist in developing  
22 all threshold, scoring, and underwriting criteria applied to  
23 applications eligible for the rural area set-aside. The criteria  
24 must be approved by that agency.

25 ~~(c) To ensure that the rural area set-aside receives a~~  
26 ~~sufficient volume of eligible applications, the department shall~~  
27 ~~fund and, with the rural development agency, shall jointly~~

1 ~~implement outreach, training, and rural area capacity building~~  
2 ~~efforts as directed by the rural development agency.~~

3 (c) ~~(d)~~ The department and the rural development agency  
4 shall jointly adjust the regional allocation of housing tax credits  
5 described by Section 2306.111 to offset the under-utilization and  
6 over-utilization of multifamily private activity bonds and other  
7 housing resources in the different regions of the state.

8 (d) ~~(e)~~ From application fees collected under this  
9 subchapter, the department shall reimburse the rural development  
10 agency for any costs incurred by the agency in carrying out the  
11 functions required by this section.

12 SECTION 2.25. Amend Section 2306.6724, Texas Government  
13 Code, to read as follows:

14 Sec. 2306.6724 DEADLINES FOR ALLOCATION OF LOW INCOME  
15 HOUSING TAX CREDITS. (a) Not later than ~~September 30~~ August 1 of  
16 each year, the department shall prepare and submit to the board for  
17 adoption the qualified allocation plan required by federal law for  
18 use by the department in setting criteria and priorities for the  
19 allocation of tax credits under the low income housing tax credit  
20 program.

21 (b) The board shall adopt and submit to the governor the  
22 qualified allocation plan not later than September 1 ~~November 15~~.

23 (c) The governor shall approve, reject, or modify and  
24 approve the qualified allocation plan not later than ~~December~~  
25 October 1.

26 (d) An applicant for a low income housing tax credit to be  
27 issued a commitment during the initial allocation cycle in a

1 calendar year must submit an application to the department not  
2 later than March 15 ~~1~~.

3 (e) The board shall review the recommendations of  
4 department staff regarding applications and shall issue a list of  
5 approved applications each year in accordance with the qualified  
6 allocation plan not later than ~~June~~ May 30.

7 (f) The board shall issue final commitments for allocations  
8 of housing tax credits each year in accordance with the qualified  
9 allocation plan not later than ~~July 31~~ June 30.

10 SECTION 2.26. Amend Section 2306.6725, Texas Government  
11 Code, to read as follows:

12 Sec. 2306.6725. SCORING OF APPLICATIONS. (a) In  
13 allocating low income housing tax credits, the department shall  
14 score each application using a point system that is consistent with  
15 Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42),  
16 and that is also consistent with Section 2306.6710 of this chapter.

17 ~~[based on criteria adopted by the department that are consistent~~  
18 ~~with the department's housing goals, including criteria addressing~~  
19 ~~the ability of the proposed project to:~~

20 ~~(1) provide quality social support services to~~  
21 ~~residents;~~

22 ~~(2) demonstrate community and neighborhood support as~~  
23 ~~defined by the qualified allocation plan;~~

24 ~~(3) consistent with sound underwriting practices and~~  
25 ~~when economically feasible, serve individuals and families of~~  
26 ~~extremely low income by leveraging private and state and federal~~  
27 ~~resources, including federal HOPE VI grants received through the~~

1 ~~United States Department of Housing and Urban Development,~~

2 ~~(4) serve traditionally underserved areas,~~

3 ~~(5) remain affordable to qualified tenants for an~~  
4 ~~extended, economically feasible period, and~~

5 ~~(6) comply with the accessibility standards that are~~  
6 ~~required under Section 504, Rehabilitation Act of 1973 (29 U.S.C.~~  
7 ~~Section 794), and specified under 24 C.F.R. Part 8, Subpart C.]~~

8 ~~(b) The department shall provide appropriate incentives as~~  
9 ~~determined through the qualified allocation plan to reward~~  
10 ~~applicants who agree to:~~

11 ~~(1) equip the property that is the basis of the~~  
12 ~~application with energy saving devices that meet the standards~~  
13 ~~established by the state energy conservation office [or to provide~~  
14 ~~to a qualified nonprofit organization or tenant organization a~~  
15 ~~right of first refusal to purchase the property at the minimum price~~  
16 ~~provided in, and in accordance with the requirements of, Section~~  
17 ~~42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section~~  
18 ~~42(i)(7)), and~~

19 ~~(2) locate the development in a census tract in which~~  
20 ~~there are no other existing developments supported by housing tax~~  
21 ~~credits.]~~

22 (b) ~~(c)~~ On awarding tax credit allocations, the board shall  
23 document the reasons for each project's selection, including an  
24 explanation of:

25 (1) all discretionary factors used in making its  
26 determination; and

27 (2) the reasons for any decision that conflicts with

1 the recommendations of department staff under Section 2306.6731 or  
2 the scoring criteria required by Section 2306.6710 of this Chapter.

3 ~~(d) For each scoring criterion, the department shall use a~~  
4 ~~range of points to evaluate the degree to which a proposed project~~  
5 ~~satisfies the criterion. The department may not award a number of~~  
6 ~~points for a scoring criterion that is disproportionate to the~~  
7 ~~degree to which a proposed project complies with that criterion.~~

8 SECTION 2.27. Amend 2306.6728, Texas Government Code, to  
9 read as follows:

10 Sec. 2306.6728. DEPARTMENT POLICY AND PROCEDURES REGARDING  
11 RECIPIENTS OF CERTAIN FEDERAL HOUSING ASSISTANCE. (a) The  
12 department by rule shall adopt a policy regarding the admittance to  
13 low income housing tax credit properties of income-eligible  
14 individuals and families receiving assistance under Section 8,  
15 United States Housing Act of 1937 (42 U.S.C. Section 1437f) where  
16 the Section 8 assistance to the family will be sufficient to allow  
17 the family to make the required rental payment on the apartment.

18 ~~(b) The policy must provide a reasonable minimum income~~  
19 ~~standard that is not otherwise prohibited by this chapter and that~~  
20 ~~is to be used by owners of low income housing tax credit properties~~  
21 ~~and must place reasonable limits on the use of any other factors~~  
22 ~~that impede the admittance of individuals and families described by~~  
23 ~~Subsection (a) to those properties, including credit histories,~~  
24 ~~security deposits, and employment histories.~~

25 ~~(c) The department by rule shall establish procedures to~~  
26 ~~monitor low income housing tax credit properties that refuse to~~  
27 ~~admit individuals and families described by Subsection (a). The~~

1 ~~department by rule shall establish enforcement mechanisms with~~  
2 ~~respect to those properties, including a range of sanctions to be~~  
3 ~~imposed against the owners of those properties.~~

4 SECTION 2.28. Amend Section 2306.6729, Texas Government  
5 Code, to read as follows:

6 Sec. 2306.6729. QUALIFIED NONPROFIT ORGANIZATION. (a) A  
7 qualified nonprofit organization may only compete in [~~any low~~  
8 ~~income housing tax credit allocation pool, including:~~

9 ~~(1)] the nonprofit allocation pool[+~~

10 ~~(2) the rural projects/prison communities allocation~~  
11 ~~pool; and~~

12 ~~(3) the general projects allocation pool].~~

13 (b) A qualified nonprofit organization submitting an  
14 application under this subchapter must have a controlling interest  
15 in a project proposed to be financed with a low income housing tax  
16 credit from the nonprofit allocation pool.

17 SECTION 2.29. Amend Section 2306.6731, Texas Government  
18 Code, to read as follows:

19 Sec. 2306.6731. ALLOCATION DECISION; REEVALUATION. (a)  
20 Department staff shall provide written, documented recommendations  
21 to the board ~~concerning the financial or programmatic viability~~ of  
22 each application for a low income housing tax credit before the  
23 board makes a decision relating to the allocation of tax credits.  
24 The board may not make without good cause an allocation decision  
25 that conflicts with the recommendations of department staff.

26 (b) Regardless of project stage, the board must reevaluate a  
27 project that undergoes a substantial change between the time of

1 initial board approval of the project and the time of issuance of a  
2 tax credit commitment for the project. The board may revoke any tax  
3 credit commitment issued for a project that has been unfavorably  
4 reevaluated by the board under this subsection.

5 SECTION 2.30. Amend Section 2306.6733, Texas Government  
6 Code, to read as follows:

7 Sec. 2306.6733. REPRESENTATION BY FORMER BOARD MEMBER OR  
8 OTHER PERSON. (a) A former board member or a former director,  
9 deputy director, director of housing programs, director of  
10 compliance, director of underwriting, member of any committee of  
11 the department involved in the selection of developments for an  
12 award of tax credits, or low income housing tax credit program  
13 manager employed by the department may not:

14 (1) for compensation, represent an applicant for an  
15 allocation of low income housing tax credits or a related party  
16 before the second anniversary of the date that the board member's,  
17 director's, or manager's service in office or employment with the  
18 department ceases;

19 (2) represent any applicant or related party or  
20 receive compensation for services rendered on behalf of any  
21 applicant or related party regarding the consideration of a housing  
22 tax credit application in which the former board member, director,  
23 Committee member, or manager participated during the period of  
24 service in office or employment with the department, either through  
25 personal involvement or because the matter was within the scope of  
26 the board member's, director's, or manager's official  
27 responsibility; or

1           (3) for compensation, communicate directly with a  
2 member of the legislative branch to influence legislation on behalf  
3 of an applicant or related party before the second anniversary of  
4 the date that the board member's, director's, Committee member, or  
5 manager's service in office or employment with the department  
6 ceases.

7           (b) In the event that the administration of the federal  
8 housing tax credit program is transferred to any other department  
9 or agency, the prohibition of paragraph (a) shall apply to any  
10 person that would have been prohibited from participating in a  
11 housing tax credit application as if the housing tax credit program  
12 had remained within the functions of the department.

13           (c) ~~(b)~~ A person commits an offense if the person violates  
14 this section. An offense under this section is a Class A  
15 misdemeanor.

16           SECTION 2.31. Add a new Section 2306.6735, Texas Government  
17 Code, to read as follows:

18           Sec. 2306.6735. RELATIONSHIP TO FEDERAL LAW. (a)  
19 Subchapter DD of this chapter is enacted to implement the low income  
20 housing tax credit established by Section 42 of the Internal  
21 Revenue Code (26 U.S.C. Sec 42) as it may be amended from time to  
22 time.

23           (b) To the extent that any provisions of this chapter is  
24 held to be inconsistent with, or repugnant to, federal law, the  
25 provision shall be given effect in accordance with its terms to the  
26 greatest extent possible and consistent with the federal law and  
27 inconsistency shall have no effect on the remaining provisions of



1 this subchapter.

2 (c) If a federal law or regulation is changed without making  
3 a provision for temporary waivers to allow compliance with state  
4 law and, as a result of this change, there is insufficient time to  
5 comply with any provision required by this subchapter, the  
6 department may act so as to comply with federal law subject to the  
7 requirements of subsection (e).

8 (d) If a federal statute or court order conflicts with this  
9 subchapter, the federal law or court order prevails over this  
10 subchapter.

11 (e) In the event the department determines that any  
12 provision of this subchapter is inconsistent with Section 42 of the  
13 Internal Revenue Code or any regulations promulgated thereunder,  
14 the department shall notify the Governor, the Lieutenant Governor,  
15 the Speaker of the House, the presiding officer of the House and  
16 Senate with oversight of the department and the Attorney General.  
17 If the Attorney General concurs with the department determination  
18 that a provision of this Subchapter is inconsistent with the  
19 federal law or regulation, the department shall be authorized to  
20 implement the federal law or regulation.

21 SECTION 2.32. Amend Section 2306.803, Texas Government  
22 Code, to read as follows:

23 Sec. 2306.803. AT-RISK MULTIFAMILY HOUSING:  
24 IDENTIFICATION, PRIORITIZATION, AND PRESERVATION. (a) The  
25 department shall determine the name and location of and the number  
26 of units in each multifamily housing development that is at risk of  
27 losing its low income use restrictions and subsidies and that meets

1 the requirements of a Class A priority described by Section  
2 2306.802.

3 ~~(b) The department shall maintain an accurate list of those~~  
4 ~~developments on the department's website.~~

5 ~~(c) The department shall develop cost estimates for the~~  
6 ~~preservation and rehabilitation of the developments in priority~~  
7 ~~Class A.~~

8 ~~(d) The department shall contact owners of developments~~  
9 ~~assigned a Class A priority under this section and shall attempt to~~  
10 ~~negotiate with those owners to ensure continued affordability for~~  
11 ~~individuals and families of low income under the federal housing~~  
12 ~~assistance program for those developments.~~

13 SECTION 2.33. Amend Section 2306.804, Texas Government  
14 Code, to read as follows:

15 Sec. 2306.804. USE OF HOUSING PRESERVATION RESOURCES. (a)  
16 To the extent possible, the department shall use available  
17 resources for the preservation and rehabilitation of the  
18 multifamily housing developments identified and listed under  
19 Section 2306.803.

20 (b) To the extent consistent with Section 2306.6710 of this  
21 Chapter, possible, the department shall allocate low income housing  
22 tax credits to applications involving the preservation of  
23 developments assigned a Class A priority under Section 2306.803 and  
24 in both urban and rural communities in approximate proportion to  
25 the housing needs of each uniform state service region.

26 ~~(c) The department shall give priority to providing~~  
27 ~~financing or funding to a buyer who is supported or approved by an~~

1 ~~association of residents of the multifamily housing development.~~

2 SECTION 3. The following provisions of the Texas Government  
3 Code are repealed:

4 (1) Subsections (c)(2)(A) through (c)(2)(C), and  
5 Subsections (c)(3) through (c)(6), and Subsection (c)(8),  
6 2306.072;

7 (2) Section 2306.0724, as added by Chapter 1367, Acts  
8 of the 77th Legislature, Regular Session, 2001;

9 (3) Subsections (d) and (e), Section 2306.077;

10 (4) Section 2306.078 and Section 2306.079, as added by  
11 Chapter 1367, Acts of the 77th Legislature, Regular Session, 2001;

12 (5) Section 2306.1112, as added by Chapter 1367, Acts  
13 of the 77th Legislature, Regular Session, 2001;

14 (6) Section 2305.251, as added by Ch. 268, Acts of the  
15 73rd Legislature; amended by Ch. 76, Acts of the 74th Legislature;  
16 and added by Ch. 980, Acts of the 75th Legislature;

17 (7) Section 2306.270, as added by Ch. 268, Acts of the  
18 73rd Legislature and added by Ch. 980, Acts of the 75th Legislature;

19 (8) Section 2306.314, as added by Ch. 268, Acts of the  
20 73rd Legislature;

21 (9) Sections 2306.6726 and 2306.6727, as added by Ch.  
22 980, Acts of the 75th Legislature, and amended by Ch. 1367, Acts of  
23 the 77th Legislature;

24 (10) Section 2306.6730, as added by Chapter 1367, Acts  
25 of the 77th Legislature, Regular Session, 2001;

26 (11) Section 2306.6734, as added by Chapter 1367, Acts  
27 of the 77th Legislature, Regular Session, 2001;

1           (12) Subsection (a-1), Section 2306.7581, as added by  
2 Chapter 1367, Acts of the 77th Legislature, Regular Session, 2001;

3           (13) Sections 2306.805(c), 2306.805(d), 2306.805(e),  
4 and 2306.806, as added by Chapter 1367, Acts of the 77th  
5 Legislature, Regular Session, 2001;

6           (14) Subchapter II, Section 2306.851 through Section  
7 2306.853, as added by Chapter 1367, Acts of the 77th Legislature,  
8 Regular Session, 2001; and

9           (15) Subchapter JJ, Section 2306.881 through Section  
10 2306.886, as added by Chapter 1367, Acts of the 77th Legislature,  
11 Regular Session, 2001.

12           SECTION 4. IMMEDIATE EFFECTIVE DATE. SECTION 2.25 of this  
13 Act takes effect immediately if it receives a vote of two-thirds of  
14 all the members elected to each house, as provided by Section 39,  
15 Article III, Texas Constitution. If this Act does not receive the  
16 vote necessary for immediate effect, this Act takes effect  
17 September 1, 2005.

18           SECTION 5. EFFECTIVE DATE. This Act takes effect September  
19 1, 2005.