

1 AN ACT

2 relating to the continuation and functions of the Texas Department
3 of Housing and Community Affairs.

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

5 ARTICLE 1. GENERAL OPERATIONS AND ADMINISTRATION OF THE TEXAS

6 DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

7 SECTION 1.01. Section 2306.022, Government Code, is amended
8 to read as follows:

9 Sec. 2306.022. APPLICATION OF SUNSET ACT. The Texas
10 Department of Housing and Community Affairs is subject to Chapter
11 325 (Texas Sunset Act). Unless continued in existence as provided
12 by that chapter, the department is abolished and this chapter
13 expires September 1, 2023 [~~2011~~].

14 SECTION 1.02. Section 2306.043(c), Government Code, is
15 amended to read as follows:

16 (c) The notice must:

- 17 (1) include a brief summary of the alleged violation;
18 (2) state the amount of the recommended penalty; and
19 (3) inform the person of the person's right to a
20 hearing before the State Office of Administrative Hearings [~~board~~]
21 on the occurrence of the violation, the amount of the penalty, or
22 both.

23 SECTION 1.03. Section 2306.044(a), Government Code, is
24 amended to read as follows:

1 (a) Not later than the 20th day after the date the person
2 receives the notice, the person in writing may:

3 (1) accept the determination and recommended penalty
4 of the director; or

5 (2) make a request for a hearing before the State
6 Office of Administrative Hearings [~~board~~] on the occurrence of the
7 violation, the amount of the penalty, or both.

8 SECTION 1.04. Section 2306.045, Government Code, is amended
9 to read as follows:

10 Sec. 2306.045. HEARING. (a) If the person requests a
11 hearing before the State Office of Administrative Hearings [~~board~~]
12 or fails to respond in a timely manner to the notice, the director
13 shall set a hearing and give written notice of the hearing to the
14 person.

15 (b) The State Office of Administrative Hearings [~~board~~]
16 shall:

17 (1) hold the hearing;

18 (2) [~~and~~] make findings of fact and conclusions of law
19 about the occurrence of the violation and the amount of a proposed
20 penalty; and

21 (3) issue a proposal for decision regarding the
22 penalty and provide notice of the proposal to the board.

23 (c) Any administrative proceedings relating to the
24 imposition of a penalty under Section 2306.041 is a contested case
25 under Chapter 2001.

26 SECTION 1.05. Section 2306.046(a), Government Code, is
27 amended to read as follows:

1 (a) The board shall issue an order after receiving a
2 proposal for decision from the State Office of Administrative
3 Hearings under Section 2306.045. [~~Based on the findings of fact and~~
4 ~~conclusions of law, the board by order may:~~

5 [~~(1) find that a violation occurred and impose a~~
6 ~~penalty; or~~

7 [~~(2) find that a violation did not occur.~~]

8 SECTION 1.06. Section 2306.049(a), Government Code, is
9 amended to read as follows:

10 (a) Judicial review of a board order imposing an
11 administrative penalty is under the substantial evidence rule [~~by~~
12 ~~trial de novo~~].

13 SECTION 1.07. Section 2306.072(c), Government Code, is
14 amended to read as follows:

15 (c) The report must include:

16 (1) a complete operating and financial statement of
17 the department;

18 (2) a comprehensive statement of the activities of the
19 department during the preceding year to address the needs
20 identified in the state low income housing plan prepared as
21 required by Section 2306.0721, including:

22 (A) a statistical and narrative analysis of the
23 department's performance in addressing the housing needs of
24 individuals and families of low and very low income;

25 (B) the ethnic and racial composition of
26 individuals and families applying for and receiving assistance from
27 each housing-related program operated by the department; [~~and~~]

1 (C) the department's progress in meeting the
2 goals established in the previous housing plan, including efforts
3 to address the populations described by Section 2306.0721(c)(1);
4 and

5 (D) recommendations on how to improve the
6 coordination of department services to the populations described by
7 Section 2306.0721(c)(1);

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

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

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

21 (6) an analysis, based on information provided by the
22 fair housing sponsor reports required under Section 2306.0724 and
23 other available data, of fair housing opportunities in each housing
24 development that receives financial assistance from the department
25 that includes the following information for each housing
26 development that contains 20 or more living units:

27 (A) the street address and municipality or county

1 in which the property is located;

2 (B) the telephone number of the property
3 management or leasing agent;

4 (C) the total number of units, reported by
5 bedroom size;

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

10 (E) the rent for each type of rental unit,
11 reported by bedroom size;

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

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

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

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

24 (J) a statement as to whether the development has
25 any instances of material noncompliance with bond indentures or
26 deed restrictions discovered through the normal monitoring
27 activities and procedures that include meeting occupancy

1 requirements or rent restrictions imposed by deed restriction or
2 financing agreements;

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

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

12 SECTION 1.08. Section 2306.0721(c), Government Code, is
13 amended to read as follows:

14 (c) The plan must include:

15 (1) an estimate and analysis of the size and the
16 different housing needs of the following populations in each
17 uniform state service region:

18 (A) individuals and families of moderate, low,
19 very low, and extremely low income;

20 (B) individuals with special needs; ~~and~~

21 (C) homeless individuals;

22 (D) veterans; and

23 (E) youth who are aging out of foster care;

24 (2) a proposal to use all available housing resources
25 to address the housing needs of the populations described by
26 Subdivision (1) by establishing funding levels for all
27 housing-related programs;

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

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

7 (5) a resource allocation plan that targets all
8 available housing resources to individuals and families of low and
9 very low income and individuals with special needs in each uniform
10 state service region;

11 (6) a description of the department's efforts to
12 monitor and analyze the unused or underused federal resources of
13 other state agencies for housing-related services and services for
14 homeless individuals and the department's recommendations to
15 ensure the full use by the state of all available federal resources
16 for those services in each uniform state service region;

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

19 (8) a description of the department's efforts to
20 encourage in each uniform state service region the construction of
21 housing units that incorporate energy efficient construction and
22 appliances;

23 (9) an estimate and analysis of the housing supply in
24 each uniform state service region;

25 (10) an inventory of all publicly and, where possible,
26 privately funded housing resources, including public housing
27 authorities, housing finance corporations, community housing

1 development organizations, and community action agencies;

2 (11) strategies for meeting rural housing needs;

3 (12) a biennial action plan for colonias that:

4 (A) addresses current policy goals for colonia
5 programs, strategies to meet the policy goals, and the projected
6 outcomes with respect to the policy goals; and

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

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

16 (14) any other housing-related information that the
17 state is required to include in the one-year action plan of the
18 consolidated plan submitted annually to the United States
19 Department of Housing and Urban Development.

20 SECTION 1.09. Section 2306.6721, Government Code, is
21 transferred to Subchapter B, Chapter 2306, Government Code,
22 redesignated as Section 2306.0504, Government Code, and amended to
23 read as follows:

24 Sec. 2306.0504 [~~2306.6721~~]. DEBARMENT FROM PROGRAM
25 PARTICIPATION. (a) The board by rule shall adopt a policy
26 providing for the debarment of a person from participation in
27 programs administered by the department [~~the low income housing tax~~

1 ~~credit program as described by this section].~~

2 (b) The department may debar a person from participation in
3 a department ~~[the]~~ program on the basis of the person's past failure
4 to comply with any condition imposed by the department in the
5 administration of its programs ~~[connection with the allocation of~~
6 ~~housing tax credits]~~.

7 (c) The department shall debar a person from participation
8 in a department ~~[the]~~ program if the person:

9 (1) materially or repeatedly violates any condition
10 imposed by the department in connection with the administration of
11 a department program, including a material or repeated violation of
12 a land use restriction agreement regarding a development supported
13 with a ~~[allocation of]~~ housing tax credit allocation ~~[credits]~~; or

14 (2) is debarred from participation in federal housing
15 programs by the United States Department of Housing and Urban
16 Development ~~[, or~~

17 ~~[(3) is in material noncompliance with or has~~
18 ~~repeatedly violated a land use restriction agreement regarding a~~
19 ~~development supported with a housing tax credit allocation].~~

20 (d) A person debarred by the department from participation
21 in a department ~~[the]~~ program may appeal the person's debarment to
22 the board.

23 ARTICLE 2. DISASTER MANAGEMENT PLANNING

24 SECTION 2.01. Section 418.106, Government Code, is amended
25 by adding Subsection (b-1) to read as follows:

26 (b-1) The plan must identify:

27 (1) any requirements or procedures that local agencies

1 and officials must satisfy or implement to:

2 (A) qualify for long-term federal disaster
3 recovery funding; and

4 (B) prepare for long-term disaster recovery; and

5 (2) any appropriate state or local resources available
6 to assist the local agencies and officials in satisfying or
7 implementing those requirements or procedures.

8 SECTION 2.02. Chapter 2306, Government Code, is amended by
9 adding Subchapter X-1 to read as follows:

10 SUBCHAPTER X-1. LONG-TERM DISASTER RECOVERY PLAN

11 Sec. 2306.531. LONG-TERM DISASTER RECOVERY PLAN. (a) In
12 consultation with the office of the governor, the department or
13 another agency or office designated under Subsection (f) shall
14 develop a long-term disaster recovery plan to administer money
15 received for disaster recovery from the federal government or any
16 other source.

17 (b) The department and the Texas Department of Rural Affairs
18 each must be consulted in developing and administering the plan, if
19 those agencies are not designated under Subsection (f). The
20 following entities must also be consulted:

21 (1) existing disaster recovery entities established
22 by law or local, state, or federal agreements;

23 (2) local government officials, contractors,
24 community advocates, businesses, nonprofit organizations, and
25 other stakeholders; and

26 (3) the United States Department of Housing and Urban
27 Development to ensure that the plan complies with federal law.

1 (c) The plan developed under this section must establish or
2 identify:

3 (1) a method of distribution of disaster relief
4 funding to local areas, subject to modification by the governor
5 based on the nature of the disaster;

6 (2) guidelines for outreach to program applicants and
7 for eligible housing and infrastructure activities;

8 (3) eligibility criteria for program applicants;

9 (4) housing quality and energy efficiency standards;

10 (5) priorities for serving local populations;

11 (6) procedures for establishing compliance with
12 federal requirements;

13 (7) procedures for coordination and communication
14 among federal, state, and local entities;

15 (8) pre-disaster and post-disaster training programs;

16 (9) a procedure for each appropriate state agency or
17 office to compile, update, and post on that agency's or office's
18 Internet website in advance of hurricane season all relevant forms
19 and information for program applicants;

20 (10) federal and state monitoring and reporting
21 requirements, including a list of the types of data that local
22 government officials may be required to collect, analyze, and
23 report;

24 (11) the state information technology systems and
25 processes that will be used to administer funds from the federal
26 government or any other source;

27 (12) a process for identifying elements of disaster

1 recovery where coordination between or among state agencies will be
2 required; and

3 (13) a process for implementing memoranda of
4 understanding in areas of disaster recovery where interagency
5 coordination will be required.

6 (d) In developing the plan under this section, the agency or
7 office designated under Subsection (f) shall seek from county
8 judges and mayors in areas impacted by large-scale natural
9 disasters input regarding the development of future methods of
10 distributing federal funding for long-term disaster recovery.

11 (e) The plan established under this section must be updated
12 biennially and approved by the governor.

13 (f) Biennially, the governor shall designate a state agency
14 or office to be the primary agency or office in charge of
15 coordinating the distribution of long-term disaster recovery
16 funding.

17 (g) This subchapter does not create a public or private
18 cause of action.

19 SECTION 2.03. Section 2306.542, Government Code, is amended
20 by amending Subsection (a) and adding Subsection (d) to read as
21 follows:

22 (a) Using the natural disaster housing reconstruction plan
23 developed under this subchapter, the director and advisory
24 committee shall develop, for implementation under Subsections (b)
25 and (c), housing reconstruction demonstration pilot programs for
26 three areas, each of which was affected by one of the three most
27 recent federally declared natural disasters. Except as provided by

1 Subsection (d), the [~~The~~] pilot programs must provide for the
2 replacement of at least 20 houses in each area to test the
3 feasibility of implementing the plan in the large-scale production
4 of replacement housing for victims of federally declared natural
5 disasters.

6 (d) If the local requirements, regulations, or
7 environmental factors of an area require elevation of houses, the
8 department may deviate from the 20-house requirement under
9 Subsection (a) and determine the number of houses needed to test the
10 feasibility of implementing the plan.

11 ARTICLE 3. HOUSING TRUST FUND PROGRAM; LOW INCOME HOUSING TAX

12 CREDIT PROGRAM

13 SECTION 3.01. Sections 2306.111(d-1) and (d-2), Government
14 Code, are amended to read as follows:

15 (d-1) In allocating low income housing tax credit
16 commitments under Subchapter DD, the department shall, before
17 applying the regional allocation formula prescribed by Section
18 2306.1115, set aside for at-risk developments, as defined by
19 Section 2306.6702, not less than the minimum amount of housing tax
20 credits required under Section 2306.6714. Funds or credits are not
21 required to be allocated according to the regional allocation
22 formula under Subsection (d) if:

23 (1) the funds or credits are reserved for
24 contract-for-deed conversions or for set-asides mandated by state
25 or federal law and each contract-for-deed allocation or set-aside
26 allocation equals not more than 10 percent of the total allocation
27 of funds or credits for the applicable program;

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

3 (3) the funds are housing trust funds administered by
4 the department under Sections 2306.201-2306.206 that are not
5 otherwise required to be set aside under state or federal law and do
6 not exceed \$3 million for each programmed activity during each
7 application cycle.

8 (d-2) In allocating low income housing tax credit
9 commitments under Subchapter DD, the department shall allocate five
10 percent of the housing tax credits in each application cycle to
11 developments that receive federal financial assistance through the
12 Texas Rural Development Office of the United States Department of
13 Agriculture. Any funds allocated to developments under this
14 subsection that involve rehabilitation must come from the funds set
15 aside for at-risk developments under Section 2306.6714 and any
16 additional funds set aside for those developments under Subsection
17 (d-1). This subsection does not apply to a development financed
18 wholly or partly under Section 538 of the Housing Act of 1949 (42
19 U.S.C. Section 1490p-2) unless the development involves the
20 rehabilitation of an existing property that has received and will
21 continue to receive as part of the financing of the development
22 federal financial assistance provided under Section 515 of the
23 Housing Act of 1949 (42 U.S.C. Section 1485).

24 SECTION 3.02. Section 2306.6702(a)(5), Government Code, is
25 amended to read as follows:

26 (5) "At-risk development" means:

27 (A) a development that:

1 (i) [~~(A)~~] has received the benefit of a
2 subsidy in the form of a below-market interest rate loan, interest
3 rate reduction, rental subsidy, Section 8 housing assistance
4 payment, rental supplement payment, rental assistance payment, or
5 equity incentive under the following federal laws, as applicable:

6 (a) [~~(i)~~] Sections 221(d)(3) and (5),
7 National Housing Act (12 U.S.C. Section 17151);

8 (b) [~~(ii)~~] Section 236, National
9 Housing Act (12 U.S.C. Section 1715z-1);

10 (c) [~~(iii)~~] Section 202, Housing Act
11 of 1959 (12 U.S.C. Section 1701q);

12 (d) [~~(iv)~~] Section 101, Housing and
13 Urban Development Act of 1965 (12 U.S.C. Section 1701s);

14 (e) [~~(v)~~] the Section 8 Additional
15 Assistance Program for housing developments with HUD-Insured and
16 HUD-Held Mortgages administered by the United States Department of
17 Housing and Urban Development;

18 (f) [~~(vi)~~] the Section 8 Housing
19 Assistance Program for the Disposition of HUD-Owned Projects
20 administered by the United States Department of Housing and Urban
21 Development;

22 (g) [~~(vii)~~] Sections 514, 515, and
23 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486);

24 or

25 (h) [~~(viii)~~] Section 42, Internal
26 Revenue Code of 1986 (26 U.S.C. Section 42); and

27 (ii) [~~(B)~~] is subject to the following

1 conditions:

2 (a) [~~(i)~~] the stipulation to maintain
3 affordability in the contract granting the subsidy is nearing
4 expiration; or

5 (b) [~~(i)~~] the federally insured
6 mortgage on the development is eligible for prepayment or is
7 nearing the end of its term; or

8 (B) a development that proposes to rehabilitate
9 or reconstruct housing units that:

10 (i) are owned by a public housing authority
11 and receive assistance under Section 9 of the National Housing Act
12 (12 U.S.C. Section 1706d); or

13 (ii) received assistance under Section 9 of
14 the National Housing Act (12 U.S.C. Section 1706d) and:

15 (a) are proposed to be disposed of or
16 demolished by a public housing authority; or

17 (b) have been disposed of or
18 demolished by a public housing authority in the two-year period
19 preceding the application for housing tax credits.

20 SECTION 3.03. Section 2306.67022, Government Code, is
21 amended to read as follows:

22 Sec. 2306.67022. QUALIFIED ALLOCATION PLAN; MANUAL. At
23 least biennially, the [~~The~~] board [~~annually~~] shall adopt a
24 qualified allocation plan and a corresponding manual to provide
25 information regarding the administration of and eligibility for the
26 low income housing tax credit program. The board may adopt the plan
27 and manual annually, as considered appropriate by the board.

1 SECTION 3.04. Sections 2306.6710(b) and (f), Government
2 Code, are amended to read as follows:

3 (b) If an application satisfies the threshold criteria, the
4 department shall score and rank the application using a point
5 system that:

6 (1) prioritizes in descending order criteria
7 regarding:

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

12 (B) quantifiable community participation with
13 respect to the development, evaluated on the basis of a resolution
14 concerning the development that is voted on and adopted by the
15 governing body of a municipality [~~written statements from any~~
16 ~~neighborhood organizations on record with the state or county in~~
17 ~~which the development is to be located and~~] whose boundaries
18 contain the proposed development site or by the commissioners court
19 of a county whose boundaries contain the proposed development site;

20 (C) the income levels of tenants of the
21 development;

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

23 (E) the commitment of development funding by
24 local political subdivisions;

25 (F) the level of community support for the
26 application, evaluated on the basis of a written statement
27 [~~statements~~] from the state representative [~~or the state senator~~]

1 that represents the district containing the proposed development
2 site;

3 (G) the rent levels of the units;

4 (H) the cost of the development by square foot;

5 (I) the services to be provided to tenants of the
6 development; and

7 (J) whether, at the time the complete application
8 is submitted or at any time within the two-year period preceding the
9 date of submission, the proposed development site is located in an
10 area declared to be a disaster under Section 418.014;

11 (2) uses criteria imposing penalties on applicants or
12 affiliates who have requested extensions of department deadlines
13 relating to developments supported by housing tax credit
14 allocations made in the application round preceding the current
15 round or a developer or principal of the applicant that has been
16 removed by the lender, equity provider, or limited partners for its
17 failure to perform its obligations under the loan documents or
18 limited partnership agreement; and

19 (3) encourages applicants to provide free notary
20 public service to the residents of the developments for which the
21 allocation of housing tax credits is requested.

22 (f) In evaluating the level of community support for an
23 application under Subsection (b)(1)(F), the department shall
24 award:

25 (1) positive points for a positive written statement
26 [~~statements~~] received;

27 (2) negative points for a negative written statement

1 ~~[statements]~~ received; and

2 (3) zero points for a neutral statement ~~[statements]~~
3 received.

4 SECTION 3.05. Sections 2306.6711(b) and (f), Government
5 Code, are amended to read as follows:

6 (b) Not later than the deadline specified in the qualified
7 allocation plan, the board shall issue commitments for available
8 housing tax credits based on the application evaluation process
9 provided by Section 2306.6710. The board may not allocate to an
10 applicant housing tax credits in any unnecessary amount, as
11 determined by the department's underwriting policy and by federal
12 law, and in any event may not allocate to the applicant housing tax
13 credits in an amount greater than \$3 ~~[\$2]~~ million in a single
14 application round or to an individual development more than \$2
15 million in a single application round.

16 (f) The board may allocate housing tax credits to more than
17 one development in a single community, as defined by department
18 rule, in the same calendar year only if the developments are or will
19 be located more than two ~~[one]~~ linear miles ~~[mile]~~ apart. This
20 subsection applies only to communities contained within counties
21 with populations exceeding one million.

22 SECTION 3.06. Section 2306.6718(b), Government Code, is
23 amended to read as follows:

24 (b) The department shall provide the elected officials with
25 an opportunity to comment on the application during the application
26 evaluation process ~~[provided by Section 2306.6710]~~ and shall
27 consider those comments in evaluating applications ~~[under that~~

1 ~~section]~~.

2 SECTION 3.07. Sections 2306.6724(a), (b), and (c),
3 Government Code, are amended to read as follows:

4 (a) Regardless of whether the board will adopt the plan
5 annually or biennially [~~Not later than September 30 of each year~~],
6 the department, not later than September 30 of the year preceding
7 the year in which the new plan is proposed for use, shall prepare
8 and submit to the board for adoption any proposed [~~the~~] qualified
9 allocation plan required by federal law for use by the department in
10 setting criteria and priorities for the allocation of tax credits
11 under the low income housing tax credit program.

12 (b) Regardless of whether the board has adopted the plan
13 annually or biennially, the [~~The~~] board shall [~~adopt and~~] submit to
14 the governor any proposed [~~the~~] qualified allocation plan not later
15 than November 15 of the year preceding the year in which the new
16 plan is proposed for use.

17 [~~(c)~~] The governor shall approve, reject, or modify and
18 approve the proposed qualified allocation plan not later than
19 December 1.

20 SECTION 3.08. Subchapter DD, Chapter 2306, Government Code,
21 is amended by adding Section 2306.6739 to read as follows:

22 Sec. 2306.6739. HOUSING TAX CREDITS FINANCED USING FEDERAL
23 EMERGENCY FUNDS. (a) To the extent the department receives federal
24 emergency funds that must be awarded by the department in the same
25 manner as and that are subject to the same limitations as awards of
26 housing tax credits, any reference in this chapter to the
27 administration of the housing tax credit program applies equally to

1 the administration of the federal funds, subject to Subsection (b).

2 (b) Notwithstanding any other law, the department may
3 establish a separate application procedure for the federal
4 emergency funds that does not follow the uniform application cycle
5 required by Section 2306.1111 or the deadlines established by
6 Section 2306.6724, and any reference in this chapter to an
7 application period occurring in relation to those federal emergency
8 funds refers to the period beginning on the date the department
9 begins accepting applications for the federal funds and continuing
10 until all of the available federal funds are awarded.

11 ARTICLE 4. MANUFACTURED HOUSING

12 SECTION 4.01. Section 2306.6022, Government Code, is
13 amended by adding Subsections (e) and (f) to read as follows:

14 (e) The division director may allow an authorized employee
15 of the division to dismiss a complaint if an investigation
16 demonstrates that:

17 (1) a violation did not occur; or

18 (2) the subject of the complaint is outside the
19 division's jurisdiction under this subchapter.

20 (f) An employee who dismisses a complaint under Subsection
21 (e) shall report the dismissal to the division director and the
22 board. The report must include a sufficient explanation of the
23 reason the complaint was dismissed.

24 SECTION 4.02. Subchapter AA, Chapter 2306, Government Code,
25 is amended by adding Section 2306.6023 to read as follows:

26 Sec. 2306.6023. NEGOTIATED RULEMAKING AND ALTERNATIVE
27 DISPUTE RESOLUTION. (a) The division shall develop and implement a

1 policy to encourage the use of:

2 (1) negotiated rulemaking procedures under Chapter
3 2008 for the adoption of division rules; and

4 (2) appropriate alternative dispute resolution
5 procedures under Chapter 2009 to assist in the resolution of
6 internal and external disputes under the division's jurisdiction.

7 (b) The division's procedures relating to alternative
8 dispute resolution must conform, to the extent possible, to any
9 model guidelines issued by the State Office of Administrative
10 Hearings for the use of alternative dispute resolution by state
11 agencies.

12 (c) The division shall:

13 (1) coordinate the implementation of the policy
14 adopted under Subsection (a);

15 (2) provide training as needed to implement the
16 procedures for negotiated rulemaking or alternative dispute
17 resolution; and

18 (3) collect data concerning the effectiveness of those
19 procedures.

20 SECTION 4.03. Section 1201.003, Occupations Code, is
21 amended by amending Subdivision (17) and adding Subdivision (17-a)
22 to read as follows:

23 (17) "License holder" or "licensee" means a person who
24 holds a department-issued license as a manufacturer, retailer,
25 broker, ~~rebuilder,~~ salesperson, or installer.

26 (17-a) "Management official" means an individual with
27 authority over employees involved in the sale of manufactured homes

1 at a retail location.

2 SECTION 4.04. Sections 1201.055(a) and (b), Occupations
3 Code, are amended to read as follows:

4 (a) With guidance from the federal Housing and Community
5 Development Act of 1974 (42 U.S.C. Section 5301 et seq.) and from
6 the rules and regulations adopted under the National Manufactured
7 Housing Construction and Safety Standards Act of 1974 (42 U.S.C.
8 Section 5401 et seq.), the board shall establish fees as follows:

9 (1) if the department acts as a design approval
10 primary inspection agency, a schedule of fees for the review of
11 HUD-code manufactured home blueprints and supporting information,
12 to be paid by the manufacturer seeking approval of the blueprints
13 and supporting information;

14 (2) except as provided by Subsection (e), a fee for the
15 inspection of each HUD-code manufactured home manufactured or
16 assembled in this state, to be paid by the manufacturer of the home;

17 (3) a fee for the inspection of an alteration made to
18 the structure or plumbing, heating, or electrical system of a
19 HUD-code manufactured home, to be charged on an hourly basis and to
20 be paid by the person making the alteration;

21 (4) a fee for the inspection of the rebuilding of a
22 salvaged manufactured home, to be paid by the retailer [~~rebuilder~~];

23 (5) a fee for the inspection of a used manufactured
24 home to determine whether the home is habitable for the issuance of
25 a new statement of ownership and location; and

26 (6) a fee for the issuance of a seal for a used mobile
27 or HUD-code manufactured home.

1 (b) In addition to the fees imposed under Subsections
2 (a)(2), (3), and (4), a manufacturer or [~~7~~] a person making an
3 alteration, [~~or a rebuilder,~~] as appropriate, shall be charged for
4 the actual cost of travel of a department representative to and
5 from:

6 (1) the manufacturing facility, for an inspection
7 described by Subsection (a)(2); or

8 (2) the place of inspection, for an inspection
9 described by Subsection (a)(3) or (4).

10 SECTION 4.05. Section 1201.056, Occupations Code, is
11 amended to read as follows:

12 Sec. 1201.056. LICENSE FEES. (a) The board shall establish
13 fees for the issuance and renewal of licenses for:

- 14 (1) manufacturers;
15 (2) retailers;
16 (3) brokers;
17 (4) salespersons; and
18 (5) [~~rebuilders, and~~
19 [~~6~~] installers.

20 (b) The board by rule may establish a fee for reprinting a
21 license issued under this chapter.

22 SECTION 4.06. Sections 1201.101(e) and (f-1), Occupations
23 Code, are amended to read as follows:

24 (e) A person may not repair, rebuild, or otherwise alter a
25 salvaged manufactured home unless the person holds a [~~rebuilder's~~
26 ~~or~~] retailer's license.

27 (f-1) A retailer may not be licensed to operate more than

1 ~~[at a principal location and]~~ one location ~~[or more branch~~
2 ~~locations]~~ under a single license~~;~~ ~~provided, however, that a~~
3 ~~separate application must be made for each branch, and each branch~~
4 ~~must be separately bonded].~~

5 SECTION 4.07. Sections 1201.103(a) and (b), Occupations
6 Code, are amended to read as follows:

7 (a) An applicant for a license as a manufacturer, retailer,
8 broker, ~~[rebuilder,~~ or installer must file with the director a
9 license application containing:

10 (1) the legal name, address, and telephone number of
11 the applicant and each person who will be a related person at the
12 time the requested license is issued;

13 (2) all trade names, and the names of all other
14 business organizations, under which the applicant does business
15 subject to this chapter, the name of each such business
16 organization registered with the secretary of state, and the
17 address of such business organization;

18 (3) the dates on which the applicant became the owner
19 and operator of the business; and

20 (4) the location to which the license will apply.

21 (b) A license application must be accompanied by:

22 (1) proof of the security required by this subchapter;

23 ~~[and]~~

24 (2) payment of the fee required for issuance of the
25 license; and

26 (3) the information and the cost required under
27 Section 1201.1031.

1 SECTION 4.08. Subchapter C, Chapter 1201, Occupations Code,
2 is amended by adding Section 1201.1031 to read as follows:

3 Sec. 1201.1031. CRIMINAL HISTORY RECORD INFORMATION
4 REQUIREMENT FOR LICENSE. (a) The department shall require that an
5 applicant for a license or renewal of an unexpired license submit a
6 complete and legible set of fingerprints, on a form prescribed by
7 the board, to the department or to the Department of Public Safety
8 for the purpose of obtaining criminal history record information
9 from the Department of Public Safety and the Federal Bureau of
10 Investigation. The applicant is required to submit a set of
11 fingerprints only once under this section unless a replacement set
12 is otherwise needed to complete the criminal history check required
13 by this section.

14 (b) The department shall refuse to issue a license to or
15 renew the license of a person who does not comply with the
16 requirement of Subsection (a).

17 (c) The department shall conduct a criminal history check of
18 each applicant for a license or renewal of a license using
19 information:

20 (1) provided by the individual under this section; and
21 (2) made available to the department by the Department
22 of Public Safety, the Federal Bureau of Investigation, and any
23 other criminal justice agency under Chapter 411, Government Code.

24 (d) The department may enter into an agreement with the
25 Department of Public Safety to administer a criminal history check
26 required under this section.

27 (e) The applicant shall pay the cost of a criminal history

1 check under this section.

2 SECTION 4.09. Section 1201.104, Occupations Code, is
3 amended by amending Subsections (a), (g), and (h) and adding
4 Subsections (a-1), (a-2), (a-3), and (a-4) to read as follows:

5 (a) Except as provided by Subsection (g) [~~(e)~~], as a
6 requirement for a manufacturer's, retailer's, broker's,
7 installer's, [~~salvage-rebuilder's,~~] or salesperson's license, a
8 person who was not licensed or registered with the department or a
9 predecessor agency on September 1, 1987, must, not more than 12
10 months before applying for the person's first license under this
11 chapter, attend and successfully complete eight [~~20~~] hours of
12 instruction in the law, including instruction in consumer
13 protection regulations.

14 (a-1) If the applicant is not an individual, the applicant
15 must have at least one related person who satisfies the
16 requirements of Subsection (a) [~~meets this requirement~~]. If that
17 applicant is applying for a retailer's license, the related person
18 must be a management official who satisfies the requirements of
19 Subsections (a) and (a-2) at each retail location operated by the
20 applicant.

21 (a-2) An applicant for a retailer's license must complete
22 four hours of specialized instruction relevant to the sale,
23 exchange, and lease-purchase of manufactured homes. The
24 instruction under this subsection is in addition to the instruction
25 required under Subsection (a).

26 (a-3) An applicant for an installer's license must complete
27 four hours of specialized instruction relevant to the installation

1 of manufactured homes. The instruction under this subsection is in
2 addition to the instruction required under Subsection (a).

3 (a-4) An applicant for a joint installer-retailer license
4 must comply with Subsections (a-2) and (a-3), for a total of eight
5 hours of specialized instruction. The instruction under this
6 subsection is in addition to the instruction required under
7 Subsection (a).

8 (g) Subsections [Subsection] (a), (a-2), (a-3), and (a-4)
9 do [does] not apply to a license holder who applies:

10 (1) for a license for an additional business location;
11 or

12 (2) to renew or reinstate a license.

13 (h) An examination must be a requirement of successful
14 completion of any initial required course of instruction under this
15 section. The period needed to complete an examination under this
16 subsection may not be used to satisfy the minimum education
17 requirements under Subsection (a), (a-2), (a-3), or (a-4).

18 SECTION 4.10. Section 1201.106(a), Occupations Code, is
19 amended to read as follows:

20 (a) An applicant for a license or a license holder shall
21 file a bond or other security under Section 1201.105 for the
22 issuance or renewal of a license in the following amount:

23 (1) \$100,000 for a manufacturer;

24 (2) \$50,000 for a retailer [~~retailer's principal~~
25 ~~location~~];

26 (3) [~~\$50,000 for each retailer's branch location,~~

27 [~~(4) \$50,000 for a rebuilder,~~

1 ~~[(5)]~~ \$50,000 for a broker; or
2 (4) ~~[(6)]~~ \$25,000 for an installer.

3 SECTION 4.11. Section 1201.110, Occupations Code, is
4 amended to read as follows:

5 Sec. 1201.110. SECURITY: DURATION. The department shall
6 maintain on file a security other than a bond canceled as provided
7 by Section 1201.109(a) until the later of:

8 (1) the second anniversary of the date the
9 manufacturer, retailer, broker, or installer~~[, or rebuilder]~~
10 ceases doing business; or

11 (2) the date the director determines that a claim does
12 not exist against the security.

13 SECTION 4.12. Section 1201.116(a), Occupations Code, is
14 amended to read as follows:

15 (a) The department shall renew a license if, before the
16 expiration date of the license, the department receives the renewal
17 application and payment of the required fee as well as the cost
18 required under Section 1201.1031 ~~[before the expiration date of the~~
19 ~~license]~~.

20 SECTION 4.13. Section 1201.303, Occupations Code, is
21 amended by amending Subsection (b) and adding Subsections (c), (d),
22 (e), (f), and (g) to read as follows:

23 (b) The department shall establish an installation
24 inspection program in which at least 75 ~~[25]~~ percent of installed
25 manufactured homes are inspected on a sample basis for compliance
26 with the standards and rules adopted and orders issued by the
27 director. The program must place priority on inspecting

1 multisection homes and homes installed in Wind Zone II counties.

2 (c) On or after January 1, 2015, the director by rule shall
3 establish a third-party installation inspection program to
4 supplement the inspections of the department if the department is
5 not able to inspect at least 75 percent of manufactured homes
6 installed in each of the calendar years 2012, 2013, and 2014.

7 (d) The third-party installation inspection program
8 established under Subsection (c) must:

9 (1) establish qualifications for third-party
10 inspectors to participate in the program;

11 (2) require third-party inspectors to register with
12 the department before participating in the program;

13 (3) establish a biennial registration and renewal
14 process for third-party inspectors;

15 (4) require the list of registered third-party
16 inspectors to be posted on the department's Internet website;

17 (5) establish clear processes governing inspection
18 fees and payment to third-party inspectors;

19 (6) establish the maximum inspection fee that may be
20 charged to a consumer;

21 (7) require a third-party inspection to occur not
22 later than the 14th day after the date of installation of the
23 manufactured home;

24 (8) establish a process for a retailer or broker to
25 contract, as part of the sale of a new or used manufactured home,
26 with an independent third-party inspector to inspect the
27 installation of the home;

1 (9) establish a process for an installer to schedule
2 an inspection for each consumer-to-consumer sale where a home is
3 reinstalled;

4 (10) if a violation is noted in an inspection, require
5 the installer to:

6 (A) remedy the violations noted;

7 (B) have the home reinspected at the installer's
8 expense; and

9 (C) certify to the department that all violations
10 have been corrected;

11 (11) require an inspector to report inspection results
12 to the retailer, installer, and the department;

13 (12) require all persons receiving inspection results
14 under Subdivision (11) to maintain a record of the results at least
15 until the end of the installation warranty period;

16 (13) authorize the department to charge a filing fee
17 and an inspection fee for third-party inspections;

18 (14) authorize the department to continue to conduct
19 no-charge complaint inspections under Section 1201.355 on request,
20 but only after an initial installation inspection is completed;

21 (15) establish procedures to revoke the registration
22 of inspectors who fail to comply with rules adopted under this
23 section; and

24 (16) require the department to notify the relevant
25 state agency if the department revokes an inspector registration
26 based on a violation that is relevant to a license issued to the
27 applicable person by another state agency.

1 (e) Not later than January 1, 2015, the department shall
2 submit to the Legislative Budget Board, the Governor's Office of
3 Budget, Planning, and Policy, and the standing committee of each
4 house of the legislature having primary jurisdiction over housing a
5 report concerning whether the department inspected at least 75
6 percent of manufactured homes installed in each of the calendar
7 years 2012, 2013, and 2014.

8 (f) Not later than December 1, 2015, the director shall
9 adopt rules as necessary to implement Subsections (c) and (d) if the
10 department did not inspect at least 75 percent of manufactured
11 homes installed in each of the calendar years 2012, 2013, and 2014.
12 Not later than January 1, 2016, the department shall begin
13 registering third-party inspectors under Subsections (c) and (d) if
14 the department inspections did not occur as described by this
15 subsection.

16 (g) If the department is not required to establish a
17 third-party installation inspection program as provided by
18 Subsection (c), Subsections (c), (d), (e), and (f) and this
19 subsection expire September 1, 2016.

20 SECTION 4.14. Section 1201.357, Occupations Code, is
21 amended by adding Subsection (b-1) to read as follows:

22 (b-1) As authorized by Section 1201.6041, the director may
23 order a manufacturer, retailer, or installer, as applicable, to pay
24 a refund directly to a consumer as part of an agreed order described
25 by Subsection (b) instead of or in addition to instituting an
26 administrative action under this chapter.

27 SECTION 4.15. Section 1201.461(d), Occupations Code, is

1 amended to read as follows:

2 (d) A person may not sell, convey, or otherwise transfer to
3 a consumer in this state a manufactured home that is salvaged. A
4 salvaged manufactured home may be sold only to a licensed retailer
5 [~~or licensed rebuilder~~].

6 SECTION 4.16. Subchapter M, Chapter 1201, Occupations Code,
7 is amended by adding Section 1201.6041 to read as follows:

8 Sec. 1201.6041. DIRECT CONSUMER COMPENSATION. (a) Instead
9 of requiring a consumer to apply for compensation from the trust
10 fund under Subchapter I, the director may order a manufacturer,
11 retailer, broker, or installer, as applicable, to pay a refund
12 directly to a consumer who sustains actual damages resulting from
13 an unsatisfied claim against a licensed manufacturer, retailer,
14 broker, or installer if the unsatisfied claim results from a
15 violation of:

- 16 (1) this chapter;
17 (2) a rule adopted by the director;
18 (3) the National Manufactured Housing Construction
19 and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);
20 (4) a rule or regulation of the United States
21 Department of Housing and Urban Development; or
22 (5) Subchapter E, Chapter 17, Business & Commerce
23 Code.

24 (b) For purposes of this section, the refund of a consumer's
25 actual damages is determined according to Section 1201.405.

26 (c) The director shall prepare information for notifying
27 consumers of the director's option to order a direct refund under

1 this section, shall post the information on the department's
2 Internet website, and shall make printed copies available on
3 request.

4 SECTION 4.17. Sections 1201.610(a), (b), and (f),
5 Occupations Code, are amended to read as follows:

6 (a) The [~~If the director has reasonable cause to believe~~
7 ~~that a person licensed under this chapter has violated or is about~~
8 ~~to violate any provision of this chapter or rules adopted by the~~
9 ~~department under this chapter, the~~] director may issue without
10 notice and hearing an order to cease and desist from continuing a
11 particular action or an order to take affirmative action, or both,
12 to enforce compliance with this chapter if the director has
13 reasonable cause to believe that a person has violated or is about
14 to violate any provision of this chapter or a rule adopted under
15 this chapter.

16 (b) The director may issue an order to any person [~~licensee~~]
17 to cease and desist from violating any law, rule, or written
18 agreement or to take corrective action with respect to any such
19 violations if the violations in any way are related to the sale,
20 financing, or installation of a manufactured home or the providing
21 of goods or services in connection with the sale, financing, or
22 installation of a manufactured home unless the matter that is the
23 basis of such violation is expressly subject to inspection and
24 regulation by another state agency; provided, however, that if any
25 matter involves a law that is subject to any other administration or
26 interpretation by another agency, the director shall consult with
27 the person in charge of the day-to-day administration of that

1 agency before issuing an order.

2 (f) If a person licensed under this chapter fails to pay an
3 administrative penalty that has become final or fails to comply
4 with an order of the director that has become final, in addition to
5 any other remedy provided by law, the director, after not less than
6 10 days' notice to the person, may without a prior hearing suspend
7 the person's license. The suspension shall continue until the
8 person has complied with the cease and desist order or paid the
9 administrative penalty. During the period of suspension, the
10 person may not perform any act requiring a license under this
11 chapter, and all compensation received by the person during the
12 period of suspension is subject to forfeiture to the person from
13 whom it was received.

14 SECTION 4.18. Section 1302.061, Occupations Code, is
15 amended to read as follows:

16 Sec. 1302.061. MANUFACTURED HOMES. This chapter does not
17 apply to a person or entity licensed as a manufacturer, retailer,
18 [~~rebuilder,~~] or installer under Chapter 1201 and engaged
19 exclusively in air conditioning and refrigeration contracting for
20 manufactured homes if the installation of air conditioning
21 components at the site where the home will be occupied is performed
22 by a person licensed under this chapter.

23 ARTICLE 5. TRANSITION PROVISIONS

24 SECTION 5.01. (a) Not later than October 1, 2011, the
25 governor shall designate a state agency or office to be the primary
26 agency or office in charge of coordinating the distribution of
27 long-term disaster recovery funding as required under Section

1 2306.531, Government Code, as added by this Act.

2 (b) Not later than March 1, 2012, the designated agency or
3 office shall develop the plan required under Section 2306.531,
4 Government Code, as added by this Act.

5 (c) Not later than May 1, 2012, the designated agency or
6 office shall obtain the governor's approval of the plan developed
7 under Section 2306.531, Government Code, as added by this Act.

8 SECTION 5.02. The change in law made by this Act to Sections
9 2306.043, 2306.044, 2306.045, 2306.046, and 2306.049, Government
10 Code, applies only to a violation committed on or after the
11 effective date of this Act. A violation committed before the
12 effective date of this Act is governed by the law in effect when the
13 violation was committed, and the former law is continued in effect
14 for that purpose.

15 SECTION 5.03. The change in law made by this Act to Section
16 2306.6022, Government Code, applies only to a complaint filed on or
17 after the effective date of this Act. A complaint filed before the
18 effective date of this Act is governed by the law in effect at the
19 time the complaint was filed, and the former law is continued in
20 effect for that purpose.

21 SECTION 5.04. The changes in law made by this Act to
22 Sections 2306.6702, 2306.6710, 2306.6711, and 2306.6718,
23 Government Code, apply only to an application for low income
24 housing tax credits that is submitted to the Texas Department of
25 Housing and Community Affairs during an application cycle that
26 begins on or after the effective date of this Act. An application
27 that is submitted during an application cycle that began before the

1 effective date of this Act is governed by the law in effect at the
2 time the application cycle began, and the former law is continued in
3 effect for that purpose.

4 SECTION 5.05. Notwithstanding Sections 1201.101(f-1) and
5 1201.106(a), Occupations Code, as amended by this Act, a retailer
6 licensed to operate one or more branch locations on or before the
7 effective date of this Act is not required to comply with the
8 changes in law made by those sections until March 1, 2012.

9 SECTION 5.06. (a) The change in law made by this Act in
10 amending Sections 1201.103 and 1201.104, Occupations Code, applies
11 only to an application for a license filed with the executive
12 director of the manufactured housing division of the Texas
13 Department of Housing and Community Affairs on or after the
14 effective date of this Act. An application for a license filed
15 before that date is governed by the law in effect on the date the
16 application was filed, and the former law is continued in effect for
17 that purpose.

18 (b) The change in law made by this Act in adding Section
19 1201.1031, Occupations Code, applies only to an application for a
20 license or license renewal filed with the executive director of the
21 manufactured housing division of the Texas Department of Housing
22 and Community Affairs on or after the effective date of this Act.
23 An application for a license or license renewal filed before that
24 date is governed by the law in effect on the date the application
25 was filed, and the former law is continued in effect for that
26 purpose.

27 (c) The change in law made by this Act in amending Section

1 1201.116, Occupations Code, applies only to an application for a
2 license renewal filed with the executive director of the
3 manufactured housing division of the Texas Department of Housing
4 and Community Affairs on or after the effective date of this Act.
5 An application for a license renewal filed before that date is
6 governed by the law in effect on the date the application was filed,
7 and the former law is continued in effect for that purpose.

8 ARTICLE 6. EFFECTIVE DATE

9 SECTION 6.01. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 2608 was passed by the House on May 3, 2011, by the following vote: Yeas 144, Nays 5, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2608 on May 25, 2011, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2608 on May 29, 2011, by the following vote: Yeas 144, Nays 3, 1 present, not voting.

Chief Clerk of the House

H.B. No. 2608

I certify that H.B. No. 2608 was passed by the Senate, with amendments, on May 23, 2011, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2608 on May 29, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor