

1-1 By: Harper-Brown (Senate Sponsor - Hinojosa) H.B. No. 2608
1-2 (In the Senate - Received from the House May 4, 2011;
1-3 May 5, 2011, read first time and referred to Committee on
1-4 Government Organization; May 19, 2011, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 6,
1-6 Nays 0; May 19, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2608 By: Hegar

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the Texas Department
1-11 of Housing and Community Affairs.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 ARTICLE 1. GENERAL OPERATIONS AND ADMINISTRATION OF THE TEXAS

1-14 DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

1-15 SECTION 1.01. Section 2306.022, Government Code, is amended
1-16 to read as follows:

1-17 Sec. 2306.022. APPLICATION OF SUNSET ACT. The Texas
1-18 Department of Housing and Community Affairs is subject to Chapter
1-19 325 (Texas Sunset Act). Unless continued in existence as provided
1-20 by that chapter, the department is abolished and this chapter
1-21 expires September 1, 2023 [~~2011~~].

1-22 SECTION 1.02. Section 2306.043(c), Government Code, is
1-23 amended to read as follows:

1-24 (c) The notice must:

1-25 (1) include a brief summary of the alleged violation;
1-26 (2) state the amount of the recommended penalty; and
1-27 (3) inform the person of the person's right to a
1-28 hearing before the State Office of Administrative Hearings [~~board~~]
1-29 on the occurrence of the violation, the amount of the penalty, or
1-30 both.

1-31 SECTION 1.03. Section 2306.044(a), Government Code, is
1-32 amended to read as follows:

1-33 (a) Not later than the 20th day after the date the person
1-34 receives the notice, the person in writing may:

1-35 (1) accept the determination and recommended penalty
1-36 of the director; or

1-37 (2) make a request for a hearing before the State
1-38 Office of Administrative Hearings [~~board~~] on the occurrence of the
1-39 violation, the amount of the penalty, or both.

1-40 SECTION 1.04. Section 2306.045, Government Code, is amended
1-41 to read as follows:

1-42 Sec. 2306.045. HEARING. (a) If the person requests a
1-43 hearing before the State Office of Administrative Hearings [~~board~~]
1-44 or fails to respond in a timely manner to the notice, the director
1-45 shall set a hearing and give written notice of the hearing to the
1-46 person.

1-47 (b) The State Office of Administrative Hearings [~~board~~]
1-48 shall:

1-49 (1) hold the hearing;

1-50 (2) [~~and~~] make findings of fact and conclusions of law
1-51 about the occurrence of the violation and the amount of a proposed
1-52 penalty; and

1-53 (3) issue a proposal for decision regarding the
1-54 penalty and provide notice of the proposal to the board.

1-55 (c) Any administrative proceedings relating to the
1-56 imposition of a penalty under Section 2306.041 is a contested case
1-57 under Chapter 2001.

1-58 SECTION 1.05. Section 2306.046(a), Government Code, is
1-59 amended to read as follows:

1-60 (a) The board shall issue an order after receiving a
1-61 proposal for decision from the State Office of Administrative
1-62 Hearings under Section 2306.045. [~~Based on the findings of fact and~~
1-63 conclusions of law, the board by order may:

2-1 ~~[(1) find that a violation occurred and impose a~~
2-2 ~~penalty; or~~
2-3 ~~[(2) find that a violation did not occur.]~~

2-4 SECTION 1.06. Section 2306.049(a), Government Code, is
2-5 amended to read as follows:

2-6 (a) Judicial review of a board order imposing an
2-7 administrative penalty is under the substantial evidence rule ~~[by~~
2-8 ~~trial de novo]~~.

2-9 SECTION 1.07. Section 2306.6721, Government Code, is
2-10 transferred to Subchapter B, Chapter 2306, Government Code,
2-11 redesignated as Section 2306.0504, Government Code, and amended to
2-12 read as follows:

2-13 Sec. 2306.0504 [2306.6721]. DEBARMENT FROM PROGRAM
2-14 PARTICIPATION. (a) The board by rule shall adopt a policy
2-15 providing for the debarment of a person from participation in
2-16 programs administered by the department ~~[the low income housing tax~~
2-17 ~~credit program as described by this section]~~.

2-18 (b) The department may debar a person from participation in
2-19 a department ~~[the]~~ program on the basis of the person's past failure
2-20 to comply with any condition imposed by the department in the
2-21 administration of its programs ~~[connection with the allocation of~~
2-22 ~~housing tax credits]~~.

2-23 (c) The department shall debar a person from participation
2-24 in a department ~~[the]~~ program if the person:

2-25 (1) materially or repeatedly violates any condition
2-26 imposed by the department in connection with the administration of
2-27 a department program, including a material or repeated violation of
2-28 a land use restriction agreement regarding a development supported
2-29 with a ~~[allocation of]~~ housing tax credit allocation ~~[credits]; or~~

2-30 (2) is debarred from participation in federal housing
2-31 programs by the United States Department of Housing and Urban
2-32 Development ~~[, or~~

2-33 ~~[(3) is in material noncompliance with or has~~
2-34 ~~repeatedly violated a land use restriction agreement regarding a~~
2-35 ~~development supported with a housing tax credit allocation]~~.

2-36 (d) A person debarred by the department from participation
2-37 in a department ~~[the]~~ program may appeal the person's debarment to
2-38 the board.

2-39 ARTICLE 2. GENERAL HOUSING MATTERS

2-40 SECTION 2.01. Section 481.078, Government Code, is amended
2-41 by amending Subsection (c) and adding Subsection (d-1) to read as
2-42 follows:

2-43 (c) Except as provided by Subsections ~~[Subsection]~~ (d) and
2-44 (d-1), the fund may be used only for economic development,
2-45 infrastructure development, community development, job training
2-46 programs, and business incentives.

2-47 (d-1) The fund may be used for the Texas homeless housing
2-48 and services program administered by the Texas Department of
2-49 Housing and Community Affairs. Subsections (e-1), (f), (g), (h),
2-50 (i), and (j) and Section 481.080 do not apply to a grant awarded for
2-51 a purpose specified by this subsection.

2-52 SECTION 2.02. Section 481.079, Government Code, is amended
2-53 by adding Subsection (a-1) to read as follows:

2-54 (a-1) For grants awarded for a purpose specified by Section
2-55 481.078(d-1), the report must include only the amount and purpose
2-56 of each grant.

2-57 SECTION 2.03. Subchapter K, Chapter 2306, Government Code,
2-58 is amended by adding Section 2306.2585 to read as follows:

2-59 Sec. 2306.2585. HOMELESS HOUSING AND SERVICES PROGRAM. (a)
2-60 The department may administer a homeless housing and services
2-61 program in each municipality in this state with a population of
2-62 285,500 or more to:

2-63 (1) provide for the construction, development, or
2-64 procurement of housing for homeless persons; and

2-65 (2) provide local programs to prevent and eliminate
2-66 homelessness.

2-67 (b) If the department implements the homeless housing and
2-68 services program under Subsection (a), the department shall adopt
2-69 rules to govern the administration of the program, including rules

3-1 that:
 3-2 (1) provide for the allocation of any available
 3-3 funding; and
 3-4 (2) provide detailed guidelines as to the scope of the
 3-5 local programs in the municipalities described by Subsection (a).
 3-6 (c) The department may use any available revenue, including
 3-7 legislative appropriations, and shall solicit and accept gifts and
 3-8 grants for the purposes of this section. The department shall use
 3-9 gifts and grants received for the purposes of this section before
 3-10 using any other revenue.
 3-11 ARTICLE 3. DISASTER MANAGEMENT PLANNING
 3-12 SECTION 3.01. Section 418.106, Government Code, is amended
 3-13 by adding Subsection (b-1) to read as follows:
 3-14 (b-1) The plan must identify:
 3-15 (1) any requirements or procedures that local agencies
 3-16 and officials must satisfy or implement to:
 3-17 (A) qualify for long-term federal disaster
 3-18 recovery funding; and
 3-19 (B) prepare for long-term disaster recovery; and
 3-20 (2) any appropriate state or local resources available
 3-21 to assist the local agencies and officials in satisfying or
 3-22 implementing those requirements or procedures.
 3-23 SECTION 3.02. Chapter 2306, Government Code, is amended by
 3-24 adding Subchapter X-1 to read as follows:
 3-25 SUBCHAPTER X-1. LONG-TERM DISASTER RECOVERY PLAN
 3-26 Sec. 2306.531. LONG-TERM DISASTER RECOVERY PLAN. (a) In
 3-27 consultation with the office of the governor, the department or
 3-28 another agency or office designated under Subsection (f) shall
 3-29 develop a long-term disaster recovery plan to administer money
 3-30 received for disaster recovery from the federal government or any
 3-31 other source.
 3-32 (b) The department and the Texas Department of Rural Affairs
 3-33 each must be consulted in developing and administering the plan, if
 3-34 those agencies are not designated under Subsection (f). The
 3-35 following entities must also be consulted:
 3-36 (1) existing disaster recovery entities established
 3-37 by law or local, state, or federal agreements;
 3-38 (2) local government officials, contractors,
 3-39 community advocates, businesses, nonprofit organizations, and
 3-40 other stakeholders; and
 3-41 (3) the United States Department of Housing and Urban
 3-42 Development to ensure that the plan complies with federal law.
 3-43 (c) The plan developed under this section must establish or
 3-44 identify:
 3-45 (1) a method of distribution of disaster relief
 3-46 funding to local areas, subject to modification by the governor
 3-47 based on the nature of the disaster;
 3-48 (2) guidelines for outreach to program applicants and
 3-49 for eligible housing and infrastructure activities;
 3-50 (3) eligibility criteria for program applicants;
 3-51 (4) housing quality and energy efficiency standards;
 3-52 (5) priorities for serving local populations;
 3-53 (6) procedures for establishing compliance with
 3-54 federal requirements;
 3-55 (7) procedures for coordination and communication
 3-56 among federal, state, and local entities;
 3-57 (8) pre-disaster and post-disaster training programs;
 3-58 (9) a procedure for each appropriate state agency or
 3-59 office to compile, update, and post on that agency's or office's
 3-60 Internet website in advance of hurricane season all relevant forms
 3-61 and information for program applicants;
 3-62 (10) federal and state monitoring and reporting
 3-63 requirements, including a list of the types of data that local
 3-64 government officials may be required to collect, analyze, and
 3-65 report;
 3-66 (11) the state information technology systems and
 3-67 processes that will be used to administer funds from the federal
 3-68 government or any other source;
 3-69 (12) a process for identifying elements of disaster

4-1 recovery where coordination between or among state agencies will be
 4-2 required; and

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

4-6 (d) In developing the plan under this section, the agency or
 4-7 office designated under Subsection (f) shall seek from county
 4-8 judges and mayors in areas impacted by large-scale natural
 4-9 disasters input regarding the development of future methods of
 4-10 distributing federal funding for long-term disaster recovery.

4-11 (e) The plan established under this section must be updated
 4-12 biennially and approved by the governor.

4-13 (f) Biennially, the governor shall designate a state agency
 4-14 or office to be the primary agency or office in charge of
 4-15 coordinating the distribution of long-term disaster recovery
 4-16 funding.

4-17 ARTICLE 4. HOUSING TRUST FUND PROGRAM; LOW INCOME HOUSING TAX
 4-18 CREDIT PROGRAM

4-19 SECTION 4.01. Sections 2306.111(d-1) and (d-2), Government
 4-20 Code, are amended to read as follows:

4-21 (d-1) In allocating low income housing tax credit
 4-22 commitments under Subchapter DD, the department shall, before
 4-23 applying the regional allocation formula prescribed by Section
 4-24 2306.1115, set aside for at-risk developments, as defined by
 4-25 Section 2306.6702, not less than the minimum amount of housing tax
 4-26 credits required under Section 2306.6714. Funds or credits are not
 4-27 required to be allocated according to the regional allocation
 4-28 formula under Subsection (d) if:

4-29 (1) the funds or credits are reserved for
 4-30 contract-for-deed conversions or for set-asides mandated by state
 4-31 or federal law and each contract-for-deed allocation or set-aside
 4-32 allocation equals not more than 10 percent of the total allocation
 4-33 of funds or credits for the applicable program;

4-34 (2) the funds or credits are allocated by the
 4-35 department primarily to serve persons with disabilities; or

4-36 (3) the funds are housing trust funds administered by
 4-37 the department under Sections 2306.201-2306.206 that are not
 4-38 otherwise required to be set aside under state or federal law and do
 4-39 not exceed \$3 million for each programmed activity during each
 4-40 application cycle.

4-41 (d-2) In allocating low income housing tax credit
 4-42 commitments under Subchapter DD, the department shall allocate five
 4-43 percent of the housing tax credits in each application cycle to
 4-44 developments that receive federal financial assistance through the
 4-45 Texas Rural Development Office of the United States Department of
 4-46 Agriculture. Any funds allocated to developments under this
 4-47 subsection that involve rehabilitation must come from the funds set
 4-48 aside for at-risk developments under Section 2306.6714 and any
 4-49 additional funds set aside for those developments under Subsection
 4-50 (d-1). This subsection does not apply to a development financed
 4-51 wholly or partly under Section 538 of the Housing Act of 1949 (42
 4-52 U.S.C. Section 1490p-2) unless the development involves the
 4-53 rehabilitation of an existing property that has received and will
 4-54 continue to receive as part of the financing of the development
 4-55 federal financial assistance provided under Section 515 of the
 4-56 Housing Act of 1949 (42 U.S.C. Section 1485).

4-57 SECTION 4.02. Section 2306.6702(a)(5), Government Code, is
 4-58 amended to read as follows:

4-59 (5) "At-risk development" means:

4-60 (A) a development that:

4-61 (i) ~~(A)~~ has received the benefit of a
 4-62 subsidy in the form of a below-market interest rate loan, interest
 4-63 rate reduction, rental subsidy, Section 8 housing assistance
 4-64 payment, rental supplement payment, rental assistance payment, or
 4-65 equity incentive under the following federal laws, as applicable:

4-66 (a) ~~(i)~~ Sections 221(d)(3) and (5),
 4-67 National Housing Act (12 U.S.C. Section 1715l);

4-68 (b) ~~(ii)~~ Section 236, National
 4-69 Housing Act (12 U.S.C. Section 1715z-1);

5-1 (c) [~~(iii)~~] Section 202, Housing Act
5-2 of 1959 (12 U.S.C. Section 1701q);
5-3 (d) [~~(iv)~~] Section 101, Housing and
5-4 Urban Development Act of 1965 (12 U.S.C. Section 1701s);
5-5 (e) [~~(v)~~] the Section 8 Additional
5-6 Assistance Program for housing developments with HUD-Insured and
5-7 HUD-Held Mortgages administered by the United States Department of
5-8 Housing and Urban Development;
5-9 (f) [~~(vi)~~] the Section 8 Housing
5-10 Assistance Program for the Disposition of HUD-Owned Projects
5-11 administered by the United States Department of Housing and Urban
5-12 Development;
5-13 (g) [~~(vii)~~] Sections 514, 515, and
5-14 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486);
5-15 or
5-16 (h) [~~(viii)~~] Section 42, Internal
5-17 Revenue Code of 1986 (26 U.S.C. Section 42); and
5-18 (ii) [~~(B)~~] is subject to the following
5-19 conditions:
5-20 (a) [~~(i)~~] the stipulation to maintain
5-21 affordability in the contract granting the subsidy is nearing
5-22 expiration; or
5-23 (b) [~~(ii)~~] the federally insured
5-24 mortgage on the development is eligible for prepayment or is
5-25 nearing the end of its term; or
5-26 (B) a development that proposes to rehabilitate
5-27 or reconstruct housing units that:
5-28 (i) are owned by a public housing authority
5-29 and receive assistance under Section 9 of the National Housing Act
5-30 (12 U.S.C. Section 1706d); or
5-31 (ii) received assistance under Section 9 of
5-32 the National Housing Act (12 U.S.C. Section 1706d) and:
5-33 (a) are proposed to be disposed of or
5-34 demolished by a public housing authority; or
5-35 (b) have been disposed of or
5-36 demolished by a public housing authority in the two-year period
5-37 preceding the application for housing tax credits.
5-38 SECTION 4.03. Section 2306.67022, Government Code, is
5-39 amended to read as follows:
5-40 Sec. 2306.67022. QUALIFIED ALLOCATION PLAN; MANUAL. At
5-41 least biennially, the [The] board [annually] shall adopt a
5-42 qualified allocation plan and a corresponding manual to provide
5-43 information regarding the administration of and eligibility for the
5-44 low income housing tax credit program. The board may adopt the plan
5-45 and manual annually, as considered appropriate by the board.
5-46 SECTION 4.04. Section 2306.6710(b), Government Code, is
5-47 amended to read as follows:
5-48 (b) If an application satisfies the threshold criteria, the
5-49 department shall score and rank the application using a point
5-50 system that:
5-51 (1) prioritizes in descending order criteria
5-52 regarding:
5-53 (A) financial feasibility of the development
5-54 based on the supporting financial data required in the application
5-55 that will include a project underwriting pro forma from the
5-56 permanent or construction lender;
5-57 (B) quantifiable community participation with
5-58 respect to the development, evaluated on the basis of a resolution
5-59 concerning the development that is voted on and adopted by the
5-60 governing body of a municipality [written statements from any
5-61 neighborhood organizations on record with the state or county in
5-62 which the development is to be located and] whose boundaries
5-63 contain the proposed development site or by the commissioners court
5-64 of a county whose boundaries contain the proposed development site;
5-65 (C) the income levels of tenants of the
5-66 development;
5-67 (D) the size and quality of the units;
5-68 (E) the commitment of development funding by
5-69 local political subdivisions;

6-1 (F) ~~[the level of community support for the~~
6-2 ~~application, evaluated on the basis of written statements from the~~
6-3 ~~state representative or the state senator that represents the~~
6-4 ~~district containing the proposed development site,~~

6-5 [~~G~~] the rent levels of the units;
6-6 (G) [~~H~~] the cost of the development by square
6-7 foot;

6-8 (H) [~~I~~] the services to be provided to tenants
6-9 of the development; and

6-10 (I) [~~J~~] whether, at the time the complete
6-11 application is submitted or at any time within the two-year period
6-12 preceding the date of submission, the proposed development site is
6-13 located in an area declared to be a disaster under Section 418.014;

6-14 (2) uses criteria imposing penalties on applicants or
6-15 affiliates who have requested extensions of department deadlines
6-16 relating to developments supported by housing tax credit
6-17 allocations made in the application round preceding the current
6-18 round or a developer or principal of the applicant that has been
6-19 removed by the lender, equity provider, or limited partners for its
6-20 failure to perform its obligations under the loan documents or
6-21 limited partnership agreement; and

6-22 (3) encourages applicants to provide free notary
6-23 public service to the residents of the developments for which the
6-24 allocation of housing tax credits is requested.

6-25 SECTION 4.05. Sections 2306.6711(b) and (f), Government
6-26 Code, are amended to read as follows:

6-27 (b) Not later than the deadline specified in the qualified
6-28 allocation plan, the board shall issue commitments for available
6-29 housing tax credits based on the application evaluation process
6-30 provided by Section 2306.6710. The board may not allocate to an
6-31 applicant housing tax credits in any unnecessary amount, as
6-32 determined by the department's underwriting policy and by federal
6-33 law, and in any event may not allocate to the applicant housing tax
6-34 credits in an amount greater than \$3 [~~\$2~~] million in a single
6-35 application round or to an individual development more than \$2
6-36 million in a single application round.

6-37 (f) The board may allocate housing tax credits to more than
6-38 one development in a single community, as defined by department
6-39 rule, in the same calendar year only if the developments are or will
6-40 be located more than two [~~one~~] linear miles [~~mile~~] apart. This
6-41 subsection applies only to communities contained within counties
6-42 with populations exceeding one million.

6-43 SECTION 4.06. Section 2306.6718(b), Government Code, is
6-44 amended to read as follows:

6-45 (b) The department shall provide the elected officials with
6-46 an opportunity to comment on the application during the application
6-47 evaluation process [~~provided by Section 2306.6710~~] and shall
6-48 consider those comments in evaluating applications [~~under that~~
6-49 ~~section~~].

6-50 SECTION 4.07. Sections 2306.6724(a), (b), and (c),
6-51 Government Code, are amended to read as follows:

6-52 (a) Regardless of whether the board will adopt the plan
6-53 annually or biennially [~~Not later than September 30 of each year~~],
6-54 the department, not later than September 30 of the year preceding
6-55 the year in which the new plan is proposed for use, shall prepare
6-56 and submit to the board for adoption any proposed [~~the~~] qualified
6-57 allocation plan required by federal law for use by the department in
6-58 setting criteria and priorities for the allocation of tax credits
6-59 under the low income housing tax credit program.

6-60 (b) Regardless of whether the board has adopted the plan
6-61 annually or biennially, the [~~The~~] board shall [~~adopt and~~] submit to
6-62 the governor any proposed [~~the~~] qualified allocation plan not later
6-63 than November 15 of the year preceding the year in which the new
6-64 plan is proposed for use.

6-65 [~~e~~] The governor shall approve, reject, or modify and
6-66 approve the proposed qualified allocation plan not later than
6-67 December 1.

6-68 SECTION 4.08. Subchapter DD, Chapter 2306, Government Code,
6-69 is amended by adding Section 2306.6739 to read as follows:

7-1 Sec. 2306.6739. HOUSING TAX CREDITS FINANCED USING FEDERAL
7-2 EMERGENCY FUNDS. (a) To the extent the department receives federal
7-3 emergency funds that must be awarded by the department in the same
7-4 manner as and that are subject to the same limitations as awards of
7-5 housing tax credits, any reference in this chapter to the
7-6 administration of the housing tax credit program applies equally to
7-7 the administration of the federal funds, subject to Subsection (b).

7-8 (b) Notwithstanding any other law, the department may
7-9 establish a separate application procedure for the federal
7-10 emergency funds that does not follow the uniform application cycle
7-11 required by Section 2306.1111 or the deadlines established by
7-12 Section 2306.6724, and any reference in this chapter to an
7-13 application period occurring in relation to those federal emergency
7-14 funds refers to the period beginning on the date the department
7-15 begins accepting applications for the federal funds and continuing
7-16 until all of the available federal funds are awarded.

7-17 ARTICLE 5. MANUFACTURED HOUSING

7-18 SECTION 5.01. Section 2306.6022, Government Code, is
7-19 amended by adding Subsections (e) and (f) to read as follows:

7-20 (e) The division director may allow an authorized employee
7-21 of the division to dismiss a complaint if an investigation
7-22 demonstrates that:

7-23 (1) a violation did not occur; or

7-24 (2) the subject of the complaint is outside the
7-25 division's jurisdiction under this subchapter.

7-26 (f) An employee who dismisses a complaint under Subsection
7-27 (e) shall report the dismissal to the division director and the
7-28 board. The report must include a sufficient explanation of the
7-29 reason the complaint was dismissed.

7-30 SECTION 5.02. Subchapter AA, Chapter 2306, Government Code,
7-31 is amended by adding Section 2306.6023 to read as follows:

7-32 Sec. 2306.6023. NEGOTIATED RULEMAKING AND ALTERNATIVE
7-33 DISPUTE RESOLUTION. (a) The division shall develop and implement a
7-34 policy to encourage the use of:

7-35 (1) negotiated rulemaking procedures under Chapter
7-36 2008 for the adoption of division rules; and

7-37 (2) appropriate alternative dispute resolution
7-38 procedures under Chapter 2009 to assist in the resolution of
7-39 internal and external disputes under the division's jurisdiction.

7-40 (b) The division's procedures relating to alternative
7-41 dispute resolution must conform, to the extent possible, to any
7-42 model guidelines issued by the State Office of Administrative
7-43 Hearings for the use of alternative dispute resolution by state
7-44 agencies.

7-45 (c) The division shall:

7-46 (1) coordinate the implementation of the policy
7-47 adopted under Subsection (a);

7-48 (2) provide training as needed to implement the
7-49 procedures for negotiated rulemaking or alternative dispute
7-50 resolution; and

7-51 (3) collect data concerning the effectiveness of those
7-52 procedures.

7-53 SECTION 5.03. Section 1201.003, Occupations Code, is
7-54 amended by amending Subdivision (17) and adding Subdivision (17-a)
7-55 to read as follows:

7-56 (17) "License holder" or "licensee" means a person who
7-57 holds a department-issued license as a manufacturer, retailer,
7-58 broker, ~~rebuilder,~~ salesperson, or installer.

7-59 (17-a) "Management official" means an individual with
7-60 authority over employees involved in the sale of manufactured homes
7-61 at a retail location.

7-62 SECTION 5.04. Sections 1201.055(a) and (b), Occupations
7-63 Code, are amended to read as follows:

7-64 (a) With guidance from the federal Housing and Community
7-65 Development Act of 1974 (42 U.S.C. Section 5301 et seq.) and from
7-66 the rules and regulations adopted under the National Manufactured
7-67 Housing Construction and Safety Standards Act of 1974 (42 U.S.C.
7-68 Section 5401 et seq.), the board shall establish fees as follows:

7-69 (1) if the department acts as a design approval

8-1 primary inspection agency, a schedule of fees for the review of
8-2 HUD-code manufactured home blueprints and supporting information,
8-3 to be paid by the manufacturer seeking approval of the blueprints
8-4 and supporting information;

8-5 (2) except as provided by Subsection (e), a fee for the
8-6 inspection of each HUD-code manufactured home manufactured or
8-7 assembled in this state, to be paid by the manufacturer of the home;

8-8 (3) a fee for the inspection of an alteration made to
8-9 the structure or plumbing, heating, or electrical system of a
8-10 HUD-code manufactured home, to be charged on an hourly basis and to
8-11 be paid by the person making the alteration;

8-12 (4) a fee for the inspection of the rebuilding of a
8-13 salvaged manufactured home, to be paid by the retailer ~~[rebuilder]~~;

8-14 (5) a fee for the inspection of a used manufactured
8-15 home to determine whether the home is habitable for the issuance of
8-16 a new statement of ownership and location; and

8-17 (6) a fee for the issuance of a seal for a used mobile
8-18 or HUD-code manufactured home.

8-19 (b) In addition to the fees imposed under Subsections
8-20 (a)(2), (3), and (4), a manufacturer or ~~[r]~~ a person making an
8-21 alteration, ~~[or a rebuilder,~~ as appropriate, shall be charged for
8-22 the actual cost of travel of a department representative to and
8-23 from:

8-24 (1) the manufacturing facility, for an inspection
8-25 described by Subsection (a)(2); or

8-26 (2) the place of inspection, for an inspection
8-27 described by Subsection (a)(3) or (4).

8-28 SECTION 5.05. Section 1201.056, Occupations Code, is
8-29 amended to read as follows:

8-30 Sec. 1201.056. LICENSE FEES. (a) The board shall establish
8-31 fees for the issuance and renewal of licenses for:

- 8-32 (1) manufacturers;
- 8-33 (2) retailers;
- 8-34 (3) brokers;
- 8-35 (4) salespersons; and
- 8-36 (5) ~~[rebuilders, and~~
- 8-37 ~~[(6)]~~ installers.

8-38 (b) The board by rule may establish a fee for reprinting a
8-39 license issued under this chapter.

8-40 SECTION 5.06. Sections 1201.101(e) and (f-1), Occupations
8-41 Code, are amended to read as follows:

8-42 (e) A person may not repair, rebuild, or otherwise alter a
8-43 salvaged manufactured home unless the person holds a ~~[rebuilder's~~
8-44 ~~or]~~ retailer's license.

8-45 (f-1) A retailer may not be licensed to operate more than
8-46 [at a principal location and] one location ~~[or more branch~~
8-47 ~~locations]~~ under a single license ~~[, provided, however, that a~~
8-48 ~~separate application must be made for each branch, and each branch~~
8-49 ~~must be separately bonded].~~

8-50 SECTION 5.07. Sections 1201.103(a) and (b), Occupations
8-51 Code, are amended to read as follows:

8-52 (a) An applicant for a license as a manufacturer, retailer,
8-53 broker, ~~[rebuilder,~~ or installer must file with the director a
8-54 license application containing:

8-55 (1) the legal name, address, and telephone number of
8-56 the applicant and each person who will be a related person at the
8-57 time the requested license is issued;

8-58 (2) all trade names, and the names of all other
8-59 business organizations, under which the applicant does business
8-60 subject to this chapter, the name of each such business
8-61 organization registered with the secretary of state, and the
8-62 address of such business organization;

8-63 (3) the dates on which the applicant became the owner
8-64 and operator of the business; and

8-65 (4) the location to which the license will apply.

8-66 (b) A license application must be accompanied by:

8-67 (1) proof of the security required by this subchapter;

8-68 ~~[and]~~

8-69 (2) payment of the fee required for issuance of the

9-1 license; and
 9-2 (3) the information and the cost required under
 9-3 Section 1201.1031.

9-4 SECTION 5.08. Subchapter C, Chapter 1201, Occupations Code,
 9-5 is amended by adding Section 1201.1031 to read as follows:

9-6 Sec. 1201.1031. CRIMINAL HISTORY RECORD INFORMATION
 9-7 REQUIREMENT FOR LICENSE. (a) The department shall require that an
 9-8 applicant for a license or renewal of an unexpired license submit a
 9-9 complete and legible set of fingerprints, on a form prescribed by
 9-10 the board, to the department or to the Department of Public Safety
 9-11 for the purpose of obtaining criminal history record information
 9-12 from the Department of Public Safety and the Federal Bureau of
 9-13 Investigation. The applicant is required to submit a set of
 9-14 fingerprints only once under this section unless a replacement set
 9-15 is otherwise needed to complete the criminal history check required
 9-16 by this section.

9-17 (b) The department shall refuse to issue a license to or
 9-18 renew the license of a person who does not comply with the
 9-19 requirement of Subsection (a).

9-20 (c) The department shall conduct a criminal history check of
 9-21 each applicant for a license or renewal of a license using
 9-22 information:

9-23 (1) provided by the individual under this section; and

9-24 (2) made available to the department by the Department
 9-25 of Public Safety, the Federal Bureau of Investigation, and any
 9-26 other criminal justice agency under Chapter 411, Government Code.

9-27 (d) The department may enter into an agreement with the
 9-28 Department of Public Safety to administer a criminal history check
 9-29 required under this section.

9-30 (e) The applicant shall pay the cost of a criminal history
 9-31 check under this section.

9-32 SECTION 5.09. Section 1201.104, Occupations Code, is
 9-33 amended by amending Subsections (a), (g), and (h) and adding
 9-34 Subsections (a-1), (a-2), (a-3), and (a-4) to read as follows:

9-35 (a) Except as provided by Subsection (g) [~~(e)~~], as a
 9-36 requirement for a manufacturer's, retailer's, broker's,
 9-37 installer's, [~~salvage rebuilder's,~~] or salesperson's license, a
 9-38 person who was not licensed or registered with the department or a
 9-39 predecessor agency on September 1, 1987, must, not more than 12
 9-40 months before applying for the person's first license under this
 9-41 chapter, attend and successfully complete 12 [20] hours of
 9-42 instruction in the law, including instruction in consumer
 9-43 protection regulations.

9-44 (a-1) If the applicant is not an individual, the applicant
 9-45 must have at least one related person who satisfies the
 9-46 requirements of Subsection (a) [~~meets this requirement~~]. If that
 9-47 applicant is applying for a retailer's license, the related person
 9-48 must be a management official who satisfies the requirements of
 9-49 Subsections (a) and (a-2) at each retail location operated by the
 9-50 applicant.

9-51 (a-2) An applicant for a retailer's license must complete
 9-52 four hours of specialized instruction relevant to the sale,
 9-53 exchange, and lease-purchase of manufactured homes. The
 9-54 instruction under this subsection is in addition to the instruction
 9-55 required under Subsection (a).

9-56 (a-3) An applicant for an installer's license must complete
 9-57 four hours of specialized instruction relevant to the installation
 9-58 of manufactured homes. The instruction under this subsection is in
 9-59 addition to the instruction required under Subsection (a).

9-60 (a-4) An applicant for a joint installer-retailer license
 9-61 must comply with Subsections (a-2) and (a-3), for a total of eight
 9-62 hours of specialized instruction. The instruction under this
 9-63 subsection is in addition to the instruction required under
 9-64 Subsection (a).

9-65 (g) Subsections [~~Subsection~~] (a), (a-2), (a-3), and (a-4)
 9-66 do [~~does~~] not apply to a license holder who applies:

9-67 (1) for a license for an additional business location;

9-68 or

9-69 (2) to renew or reinstate a license.

10-1 (h) An examination must be a requirement of successful
 10-2 completion of any initial required course of instruction under this
 10-3 section. The period needed to complete an examination under this
 10-4 subsection may not be used to satisfy the minimum education
 10-5 requirements under Subsection (a), (a-2), (a-3), or (a-4).

10-6 SECTION 5.10. Section 1201.106(a), Occupations Code, is
 10-7 amended to read as follows:

10-8 (a) An applicant for a license or a license holder shall
 10-9 file a bond or other security under Section 1201.105 for the
 10-10 issuance or renewal of a license in the following amount:

- 10-11 (1) \$100,000 for a manufacturer;
- 10-12 (2) \$50,000 for a retailer [~~retailer's principal~~
 10-13 ~~location~~];
- 10-14 (3) [~~\$50,000 for each retailer's branch location,~~
 10-15 ~~[(4) \$50,000 for a rebuilder,~~
 10-16 ~~[(5)] \$50,000 for a broker; or~~
 10-17 (4) ~~[(6)]~~ \$25,000 for an installer.

10-18 SECTION 5.11. Section 1201.110, Occupations Code, is
 10-19 amended to read as follows:

10-20 Sec. 1201.110. SECURITY: DURATION. The department shall
 10-21 maintain on file a security other than a bond canceled as provided
 10-22 by Section 1201.109(a) until the later of:

- 10-23 (1) the second anniversary of the date the
 10-24 manufacturer, retailer, broker, or installer [~~, or rebuilder~~]
 10-25 ceases doing business; or
- 10-26 (2) the date the director determines that a claim does
 10-27 not exist against the security.

10-28 SECTION 5.12. Section 1201.116(a), Occupations Code, is
 10-29 amended to read as follows:

10-30 (a) The department shall renew a license if, before the
 10-31 expiration date of the license, the department receives the renewal
 10-32 application and payment of the required fee as well as the cost
 10-33 required under Section 1201.1031 [~~before the expiration date of the~~
 10-34 ~~license~~].

10-35 SECTION 5.13. Section 1201.303, Occupations Code, is
 10-36 amended by amending Subsection (b) and adding Subsections (c), (d),
 10-37 (e), (f), and (g) to read as follows:

10-38 (b) The department shall establish an installation
 10-39 inspection program in which at least 75 [~~25~~] percent of installed
 10-40 manufactured homes are inspected on a sample basis for compliance
 10-41 with the standards and rules adopted and orders issued by the
 10-42 director. The program must place priority on inspecting
 10-43 multisection homes and homes installed in Wind Zone II counties.

10-44 (c) On or after January 1, 2015, the director by rule shall
 10-45 establish a third-party installation inspection program to
 10-46 supplement the inspections of the department if the department is
 10-47 not able to inspect at least 75 percent of manufactured homes
 10-48 installed in each of the calendar years 2012, 2013, and 2014.

10-49 (d) The third-party installation inspection program
 10-50 established under Subsection (c) must:

- 10-51 (1) establish qualifications for third-party
 10-52 inspectors to participate in the program;
- 10-53 (2) require third-party inspectors to register with
 10-54 the department before participating in the program;
- 10-55 (3) establish a biennial registration and renewal
 10-56 process for third-party inspectors;
- 10-57 (4) require the list of registered third-party
 10-58 inspectors to be posted on the department's Internet website;
- 10-59 (5) establish clear processes governing inspection
 10-60 fees and payment to third-party inspectors;
- 10-61 (6) establish the maximum inspection fee that may be
 10-62 charged to a consumer;
- 10-63 (7) require a third-party inspection to occur not
 10-64 later than the 14th day after the date of installation of the
 10-65 manufactured home;
- 10-66 (8) establish a process for a retailer or broker to
 10-67 contract, as part of the sale of a new or used manufactured home,
 10-68 with an independent third-party inspector to inspect the
 10-69 installation of the home;

11-1 (9) establish a process for an installer to schedule
 11-2 an inspection for each consumer-to-consumer sale where a home is
 11-3 reinstalled;
 11-4 (10) if a violation is noted in an inspection, require
 11-5 the installer to:
 11-6 (A) remedy the violations noted;
 11-7 (B) have the home reinspected at the installer's
 11-8 expense; and
 11-9 (C) certify to the department that all violations
 11-10 have been corrected;
 11-11 (11) require an inspector to report inspection results
 11-12 to the retailer, installer, and the department;
 11-13 (12) require all persons receiving inspection results
 11-14 under Subdivision (11) to maintain a record of the results at least
 11-15 until the end of the installation warranty period;
 11-16 (13) authorize the department to charge a filing fee
 11-17 and an inspection fee for third-party inspections;
 11-18 (14) authorize the department to continue to conduct
 11-19 no-charge complaint inspections under Section 1201.355 on request,
 11-20 but only after an initial installation inspection is completed;
 11-21 (15) establish procedures to revoke the registration
 11-22 of inspectors who fail to comply with rules adopted under this
 11-23 section; and
 11-24 (16) require the department to notify the relevant
 11-25 state agency if the department revokes an inspector registration
 11-26 based on a violation that is relevant to a license issued to the
 11-27 applicable person by another state agency.
 11-28 (e) Not later than January 1, 2015, the department shall
 11-29 submit to the Legislative Budget Board, the Governor's Office of
 11-30 Budget, Planning, and Policy, and the standing committee of each
 11-31 house of the legislature having primary jurisdiction over housing a
 11-32 report concerning whether the department inspected at least 75
 11-33 percent of manufactured homes installed in each of the calendar
 11-34 years 2012, 2013, and 2014.
 11-35 (f) Not later than December 1, 2015, the director shall
 11-36 adopt rules as necessary to implement Subsections (c) and (d) if the
 11-37 department did not inspect at least 75 percent of manufactured
 11-38 homes installed in each of the calendar years 2012, 2013, and 2014.
 11-39 Not later than January 1, 2016, the department shall begin
 11-40 registering third-party inspectors under Subsections (c) and (d) if
 11-41 the department inspections did not occur as described by this
 11-42 subsection.
 11-43 (g) If the department is not required to establish a
 11-44 third-party installation inspection program as provided by
 11-45 Subsection (c), Subsections (c), (d), (e), and (f) and this
 11-46 subsection expire September 1, 2016.
 11-47 SECTION 5.14. Section 1201.357, Occupations Code, is
 11-48 amended by adding Subsection (b-1) to read as follows:
 11-49 (b-1) As authorized by Section 1201.6041, the director may
 11-50 order a manufacturer, retailer, or installer, as applicable, to pay
 11-51 a refund directly to a consumer as part of an agreed order described
 11-52 by Subsection (b) instead of or in addition to instituting an
 11-53 administrative action under this chapter.
 11-54 SECTION 5.15. Section 1201.461(d), Occupations Code, is
 11-55 amended to read as follows:
 11-56 (d) A person may not sell, convey, or otherwise transfer to
 11-57 a consumer in this state a manufactured home that is salvaged. A
 11-58 salvaged manufactured home may be sold only to a licensed retailer
 11-59 [~~or licensed rebuilder~~].
 11-60 SECTION 5.16. Subchapter M, Chapter 1201, Occupations Code,
 11-61 is amended by adding Section 1201.6041 to read as follows:
 11-62 Sec. 1201.6041. DIRECT CONSUMER COMPENSATION. (a) Instead
 11-63 of requiring a consumer to apply for compensation from the trust
 11-64 fund under Subchapter I, the director may order a manufacturer,
 11-65 retailer, broker, or installer, as applicable, to pay a refund
 11-66 directly to a consumer who sustains actual damages resulting from
 11-67 an unsatisfied claim against a licensed manufacturer, retailer,
 11-68 broker, or installer if the unsatisfied claim results from a
 11-69 violation of:

- 12-1 (1) this chapter;
- 12-2 (2) a rule adopted by the director;
- 12-3 (3) the National Manufactured Housing Construction
- 12-4 and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);
- 12-5 (4) a rule or regulation of the United States
- 12-6 Department of Housing and Urban Development; or
- 12-7 (5) Subchapter E, Chapter 17, Business & Commerce
- 12-8 Code.

12-9 (b) For purposes of this section, the refund of a consumer's
 12-10 actual damages is determined according to Section 1201.405.

12-11 (c) The director shall prepare information for notifying
 12-12 consumers of the director's option to order a direct refund under
 12-13 this section, shall post the information on the department's
 12-14 Internet website, and shall make printed copies available on
 12-15 request.

12-16 SECTION 5.17. Sections 1201.610(a), (b), and (f),
 12-17 Occupations Code, are amended to read as follows:

12-18 (a) The [If the director has reasonable cause to believe
 12-19 that a person licensed under this chapter has violated or is about
 12-20 to violate any provision of this chapter or rules adopted by the
 12-21 department under this chapter, the] director may issue without
 12-22 notice and hearing an order to cease and desist from continuing a
 12-23 particular action or an order to take affirmative action, or both,
 12-24 to enforce compliance with this chapter if the director has
 12-25 reasonable cause to believe that a person has violated or is about
 12-26 to violate any provision of this chapter or a rule adopted under
 12-27 this chapter.

12-28 (b) The director may issue an order to any person [~~licensee~~]
 12-29 to cease and desist from violating any law, rule, or written
 12-30 agreement or to take corrective action with respect to any such
 12-31 violations if the violations in any way are related to the sale,
 12-32 financing, or installation of a manufactured home or the providing
 12-33 of goods or services in connection with the sale, financing, or
 12-34 installation of a manufactured home unless the matter that is the
 12-35 basis of such violation is expressly subject to inspection and
 12-36 regulation by another state agency; provided, however, that if any
 12-37 matter involves a law that is subject to any other administration or
 12-38 interpretation by another agency, the director shall consult with
 12-39 the person in charge of the day-to-day administration of that
 12-40 agency before issuing an order.

12-41 (f) If a person licensed under this chapter fails to pay an
 12-42 administrative penalty that has become final or fails to comply
 12-43 with an order of the director that has become final, in addition to
 12-44 any other remedy provided by law, the director, after not less than
 12-45 10 days' notice to the person, may without a prior hearing suspend
 12-46 the person's license. The suspension shall continue until the
 12-47 person has complied with the cease and desist order or paid the
 12-48 administrative penalty. During the period of suspension, the
 12-49 person may not perform any act requiring a license under this
 12-50 chapter, and all compensation received by the person during the
 12-51 period of suspension is subject to forfeiture to the person from
 12-52 whom it was received.

12-53 SECTION 5.18. Section 1302.061, Occupations Code, is
 12-54 amended to read as follows:

12-55 Sec. 1302.061. MANUFACTURED HOMES. This chapter does not
 12-56 apply to a person or entity licensed as a manufacturer, retailer,
 12-57 [~~rebuilder,~~] or installer under Chapter 1201 and engaged
 12-58 exclusively in air conditioning and refrigeration contracting for
 12-59 manufactured homes if the installation of air conditioning
 12-60 components at the site where the home will be occupied is performed
 12-61 by a person licensed under this chapter.

12-62 ARTICLE 6. TRANSITION PROVISIONS

12-63 SECTION 6.01. (a) Not later than October 1, 2011, the
 12-64 governor shall designate a state agency or office to be the primary
 12-65 agency or office in charge of coordinating the distribution of
 12-66 long-term disaster recovery funding as required under Section
 12-67 2306.531, Government Code, as added by this Act.

12-68 (b) Not later than March 1, 2012, the designated agency or
 12-69 office shall develop the plan required under Section 2306.531,

13-1 Government Code, as added by this Act.

13-2 (c) Not later than May 1, 2012, the designated agency or
13-3 office shall obtain the governor's approval of the plan developed
13-4 under Section 2306.531, Government Code, as added by this Act.

13-5 SECTION 6.02. The change in law made by this Act to Sections
13-6 2306.043, 2306.044, 2306.045, 2306.046, and 2306.049, Government
13-7 Code, applies only to a violation committed on or after the
13-8 effective date of this Act. A violation committed before the
13-9 effective date of this Act is governed by the law in effect when the
13-10 violation was committed, and the former law is continued in effect
13-11 for that purpose.

13-12 SECTION 6.03. The change in law made by this Act to Section
13-13 2306.6022, Government Code, applies only to a complaint filed on or
13-14 after the effective date of this Act. A complaint filed before the
13-15 effective date of this Act is governed by the law in effect at the
13-16 time the complaint was filed, and the former law is continued in
13-17 effect for that purpose.

13-18 SECTION 6.04. The changes in law made by this Act to
13-19 Sections 2306.6702, 2306.6710, 2306.6711, and 2306.6718,
13-20 Government Code, apply only to an application for low income
13-21 housing tax credits that is submitted to the Texas Department of
13-22 Housing and Community Affairs during an application cycle that
13-23 begins on or after the effective date of this Act. An application
13-24 that is submitted during an application cycle that began before the
13-25 effective date of this Act is governed by the law in effect at the
13-26 time the application cycle began, and the former law is continued in
13-27 effect for that purpose.

13-28 SECTION 6.05. Notwithstanding Sections 1201.101(f-1) and
13-29 1201.106(a), Occupations Code, as amended by this Act, a retailer
13-30 licensed to operate one or more branch locations on or before the
13-31 effective date of this Act is not required to comply with the
13-32 changes in law made by those sections until March 1, 2012.

13-33 SECTION 6.06. (a) The change in law made by this Act in
13-34 amending Sections 1201.103 and 1201.104, Occupations Code, applies
13-35 only to an application for a license filed with the executive
13-36 director of the manufactured housing division of the Texas
13-37 Department of Housing and Community Affairs on or after the
13-38 effective date of this Act. An application for a license filed
13-39 before that date is governed by the law in effect on the date the
13-40 application was filed, and the former law is continued in effect for
13-41 that purpose.

13-42 (b) The change in law made by this Act in adding Section
13-43 1201.1031, Occupations Code, applies only to an application for a
13-44 license or license renewal filed with the executive director of the
13-45 manufactured housing division of the Texas Department of Housing
13-46 and Community Affairs on or after the effective date of this Act.
13-47 An application for a license or license renewal filed before that
13-48 date is governed by the law in effect on the date the application
13-49 was filed, and the former law is continued in effect for that
13-50 purpose.

13-51 (c) The change in law made by this Act in amending Section
13-52 1201.116, Occupations Code, applies only to an application for a
13-53 license renewal filed with the executive director of the
13-54 manufactured housing division of the Texas Department of Housing
13-55 and Community Affairs on or after the effective date of this Act.
13-56 An application for a license renewal filed before that date is
13-57 governed by the law in effect on the date the application was filed,
13-58 and the former law is continued in effect for that purpose.

13-59 ARTICLE 7. EFFECTIVE DATE

13-60 SECTION 7.01. This Act takes effect September 1, 2011.

13-61 * * * * *