

BILL ANALYSIS

Senate Research Center

H.B. 3873
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Texas Department of Housing and Community Affairs (TDHCA) is operating under administrative provisions that are inconsistent with the Administrative Procedures Act and current practice, which create unnecessary burdens to TDHCA's operations.

H.B. 3873 addresses administrative, non-programmatic issues for TDHCA to allow TDHCA to operate more efficiently.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the governing board of the Texas Department of Housing and Community Affairs in SECTION 4 (Section 2306.042, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2306.004, Government code, by amending Subdivisions (4), (7), and (14) and adding subdivisions (4), (7), and (14) and adding Subdivisions (4-a), (12-a), (23-a), (23-b), (26-a), (28-a), (28-b), (35), and (36), to redefine "department," "elderly individual" and "housing sponsor" and define "development funding," "grant," "neighborhood organization," "new construction," "rehabilitation," "rural area," "rural development," "uniform application and funding cycle," and "urban area."

SECTION 2. Amends Sections 2306.032(b) through (e), Government Code, as follows:

(b) Requires the governing board (board) of the Texas Department of Housing and Community Affairs (TDHCA) to keep minutes, rather than complete minutes, and complete transcripts of board meetings. Requires TDHCA to post the transcripts on its website and otherwise maintain all accounts, minutes, and other records related to the meetings, rather than requiring the accounts, minutes, and other records to be maintained by TDHCA.

(c) Requires all materials provided to the board, rather than in the possession of TDHCA, that are relevant to a matter proposed for discussion at a board meeting to be posted on TDHCA's website not later than the third day before the date of the meeting. Deletes existing text requiring all material to be made available in hard-copy format at TDHCA, filed with the secretary of state for publication by reference in the Texas Register, and disseminated by any other means required by this chapter or by Chapter 551.

(d) Requires any materials made available to the board by TDHCA at a board meeting to be made available in hard copy format to the members of the public in attendance at the meeting, rather than as required by Subsection (c) not later than the seventh day before the date of the meeting. Deletes existing text prohibiting the board from considering at the meeting any material that is not made available to the public by the date required by this subsection.

(e) Requires the board to conduct its meetings in accordance with Chapter 551 (Open Meetings), except as otherwise required by this chapter. Deletes existing text requiring the agenda for a board meeting to state each project the staff is recommending for assistance by TDHCA.

SECTION 3. Amends Section 2306.039, Government Code, as follows:

(a) Includes Subsection (c), in addition to Subsection (b), as an exception to the subsection, providing that TDHCA and the Texas State Affordable Housing Corporation (corporation) are subject to Chapters 551 and 552 (Public Information).

(b) Provides that Chapters 551 and 552 do not apply to the personal or business financial information, including Social Security numbers, taxpayer identification numbers, or bank account numbers, submitted by a housing sponsor or an individual or family to receive a loan, grant, or other housing assistance under a program administered by TDHCA or the corporation or from bonds issued by TDHCA, except that TDHCA and the corporation are permitted to disclose information about any applicant in a form that does not reveal the identity of the sponsor, individual, or family for purposes of determining eligibility for programs and in preparing reports required under this chapter.

(c) Authorizes TDHCA's internal auditor, fraud prevention coordinator, or ethics advisor to meet in an executive session of the board to discuss issues related to fraud, waste, or abuse.

SECTION 4. Amends Subchapter B, Chapter 2306, Government Code, by adding Sections 2306.040 through 2306.0503, as follows:

Sec. 2306.040. DEPARTMENT PARTICIPATION IN LEGISLATIVE HEARING. Requires TDHCA, on request, to participate in any public hearing conducted by a legislator to discuss a rule to be adopted by TDHCA.

Sec. 2306.041. IMPOSITION OF PENALTY. Authorizes the board to impose an administrative penalty on a person who violates this chapter or a rule or order adopted under this chapter.

Sec. 2306.042. AMOUNT OF PENALTY. Prohibits the amount of an administrative penalty from exceeding \$1,000 for each violation. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Sets forth the criteria of which the amount of penalty is required to be based. Requires the board by rule or through procedures adopted by the board and published in the Texas Register to develop a standardized penalty schedule based on the criteria listed in this section.

Sec. 2306.043. REPORT AND NOTICE OF VIOLATION AND PENALTY. Requires the director, if the director determines that a violation occurred, to issue to the board a report stating the facts on which the determination is based and the director's recommendation on the imposition of the penalty, including a recommendation on the amount of the penalty. Requires the director, not later than the 14th day after the date the report is issued, to give written notice of the report to the person. Sets forth the requirements of the notice.

Sec. 2306.044. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, not later than the 20th day after the date the person receives the notice, in writing to accept the determination and recommended penalty of the director or make a request for a hearing before the board on the occurrence of the violation, the amount of the penalty, or both. Requires the board, if the person accepts the determination and recommended penalty of the director, by order to approve the determination and impose the recommended penalty.

Sec. 2306.045. HEARING. Requires the director, if the person requests a hearing before the board or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person. Requires the board to hold the hearing and make finding of fact and conclusions of law about the occurrence of the violation and the amount of a proposed penalty.

Sec. 2306.046. **DECISION BY BOARD.** Authorizes the board, based on the findings of fact and conclusions of law, by order to find that a violation occurred and impose a penalty or find that a violation did not occur. Requires the notice of the board's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 2306.047. **OPTIONS FOLLOWING DECISION: PAY OR APPEAL.** Requires the person, not later than the 30th day after the date the board's order becomes final, to pay the penalty or to file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 2306.048. **STAY OF ENFORCEMENT OF PENALTY.** Authorizes a person who files a petition for judicial review, within the 30-day period prescribed by Section 2306.047, to stay enforcement of the penalty or request the court to stay enforcement of the penalty by taking certain actions. Authorizes the director, if the director receives a copy of an affidavit under Subsection (a)(2), to file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 2306.049. **DECISION BY COURT.** Provides that judicial review of a board order imposing an administrative penalty is by trial de novo. Authorizes the court, if the court sustains the finding that a violation occurred, to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. Requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed, and authorizes the court to award the person reasonable attorney's fees.

Sec. 2306.050. **REMITTANCE OF PENALTY AND INTEREST.** Requires the court, if the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person. Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 2306.0501. **RELEASE OF BOND.** Requires the court, if the person gave a supersedeas bond and the penalty is not upheld by the court, to order, when the court's judgment becomes final, the release of the bond. Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 2306.0502. **COLLECTION OF PENALTY.** Authorizes the penalty, if the person and the enforcement of the penalty is not stayed, to be collected. Authorizes the attorney general to sue to collect the penalty.

Sec. 2306.0503. **ADMINISTRATIVE PROCEDURE.** Provides that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001.

SECTION 5. Amends Section 2306.054, Government Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes the governor or director to appoint special advisory councils to assist TDHCA in reviewing, rather than adopting, basic policy and to offer advice on technical aspects of certain programs.

(c) Provides that a special advisory council is subject to Chapter 2110 (State Agency Advisory Committees), including Section 2110.008(a) (authorizing a state agency to

designate the date the advisory committee will be abolished) but not including Section 2110.008(b) (providing for automatic abolishment of an advisory committee).

SECTION 6. Amends Section 2306.057(a), Government Code, to require TDHCA, before the board approves any project application submitted under this chapter, through the division with responsibility for compliance matters, to assess the compliance history in this state of the applicant and any affiliate of the applicant with respect to all applicable requirements and the compliance issues associated with the proposed project, and to provide to the board a written report regarding the results of the assessments described by Subdivision (1).

SECTION 7. Amends Section 2306.069(a), Government Code, to authorize TDHCA to hire appropriate outside legal counsel with the approval of the attorney general. Deletes existing text requiring TDHCA to obtain and evaluate information regarding the affirmative action policies and practices of proposed outside legal counsel. Deletes existing text requiring TDHCA to include the evaluation in a request to the attorney general for outside legal counsel.

SECTION 8. Amends Section 2306.070, Government Code, as follows:

(a) Creates this subsection from existing text. Requires TDHCA, in preparing TDHCA's legislative appropriations request, to also prepare, in addition to an operating budget for the housing finance division, a report detailing the fees received, on a cash basis, for each activity administered by TDHCA during each of the three preceding year and an explanation of any projected increase or decrease of three percent or more in fees estimated for the operating budget as compared to the fees received in the most recent budget year.

(b) Requires TDHCA to submit the report, operating budget, and explanation to the Legislative Budget Board, the Senate Finance Committee, and the House Appropriations Committee.

SECTION 9. Amends Sections 2306.072(a) and (b), Government Code, to require the director, not later than March, rather than December, 18 of each year, to prepare and submit to the board an annual report of TDHCA's housing activities for the preceding year. Requires the board, not later than the 30th day after the date the board receives and approves the report, to submit the report to certain persons.

SECTION 10. Amends Sections 2306.0721(a) and (b), Government Code, to make conforming changes.

SECTION 11. Amends Section 2306.0723, Government Code, as follows:

Sec. 2306.0723. New heading: REPORT CONSIDERED AS RULE. Requires TDHCA to consider the annual low income housing report to be a rule, and requires TDHCA, in developing the report, to follow rulemaking procedures required by Chapter 2001, rather than hold public hearings on the annual state low income housing plan and report before the director submits the report and the plan to the board. Deletes existing text requiring TDHCA to provide notice of the public hearings as required by Section 2306.0661. Deletes existing text requiring the published notice to include a summary of the report and plan. Deletes existing text requiring TDHCA to accept comments on the report and plan at the public hearing and for at least 30 days after the date of the publication of the notice of the hearings. Deletes existing Subsections (b), (c), and (d).

SECTION 12. Amends Section 2306.082, Government Code, by amending Subsections (b) and (c) and adding Subsections (d), (e), and (f), as follows:

(b) Requires TDHCA's procedures relating to alternative dispute resolution to designate, rather than conform, to the extent possible, to any model guidelines issued, the State Office of Administrative Hearings as the primary mediator and, to the extent practicable, conform to any guidelines or rules issued by that office.

(c) Requires TDHCA to designate a person, rather than a trained person, employed by or appointed to the office of the director but who is not in the legal division to coordinate and process requests for the alternative dispute resolution procedures. Requires the person to receive training from an independent source in alternative dispute resolution not later than the 180th day after the date the person was designated to coordinate and process requests for the alternative dispute resolution procedures. Deletes existing text regarding the duties of the person to be designated by TDHCA.

(d) Requires TDHCA to notify a person requesting the alternative dispute resolution procedures that an alternative dispute resolution decision is not binding on the state and TDHCA will mediate in good faith.

(e) Authorizes the alternative dispute resolution procedures to be requested before the board makes a final decision.

(f) Prohibits the alternative dispute resolution procedures, notwithstanding any other provision of this section, from being used to unnecessarily delay a proceeding under this chapter.

SECTION 13. Amends Section 2306.092, Government Code, to require TDHCA to administer, as appropriate under policies established by the board, certain programs.

SECTION 14. Amends Section 2306.1111, Government Code, as follows:

Sec. 2306.1111. New heading: UNIFORM APPLICATION AND FUNDING CYCLES. Requires TDHCA, notwithstanding any other state law and to the extent consistent with federal law, to establish uniform application and funding cycles, rather than a cycle, for all competitive single-family and multifamily housing program administered by TDHCA under this chapter, other than programs involving the issuance of private activity bonds.

SECTION 15. Amends Sections 2306.1112(b), (c), and (d), Government Code, as follows:

(b) Requires the advisory committee to include representatives from TDHCA's underwriting and compliance functions and from the division responsible for administering federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act and for administering low income housing tax credits, rather than providing that the advisory committee is composed of the director, the administrator of each of TDHCA's programs, and one representative from each of TDHCA's planning, underwriting, and compliance functions.

(c) Deletes existing Subsection (c) requiring the advisory committee to develop the funding priorities required by Section 2306.111(g) (relating to funding priorities for all urban/exurban areas and rural areas of each uniform state service region) and to make funding and allocation recommendations to the board based on the ability of applicants to meet those priorities. Redesignates existing Subsection (d) as (c). Provides that the advisory committee is not subject to Chapter 2110.

SECTION 16. Amends Section 2306.1113, Government Code, by amending Subsection (a), (a-1), and (b) and adding Subsection (c), as follows:

(a) Prohibits a member of the board, during the period beginning on the date project applications are filed, rather than on the date a project application is filed, in an application cycles and ending on the date the board makes a final decision with respect to the approval of any application, rather than any approval of that application, in that cycle, from communicating with an applicant or a related party, as defined by state law, including board rules, and federal law, and any person who is active in the construction, rehabilitation, ownership, or control of a proposed project, including certain persons, or who is employed as a consultant, lobbyist, or attorney by an applicant or a related party.

(a-1) Makes conforming changes.

(b) Authorizes a board member or TDHCA employee, notwithstanding Subsection (a) or (a-1), to communicate without restriction with a person listed in Subsection (a) or (a-1) during any board meeting or public hearing held with respect to the application, but not during a recess or other nonrecord portion of the meeting or hearing.

(c) Provides that Subsection (a) does not prohibit the board from participating in social events at which a person with whom communications are prohibited may or will be present, provided that all matters related to applications to be considered by the board will not be discussed.

SECTION 17. Amends Section 2306.185(b), Government Code, as follows:

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

SECTION 18. Amends Section 2306.229, Government Code, by adding Subsection (c), as follows:

(c) Requires TDHCA, for each loan made for the development of multifamily housing with funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act, to obtain a mortgagee's title policy in the amount of the loan. Prohibits TDHCA from designating a specific title insurance company to provide the mortgagee title policy or require the borrower to provide the policy from a specific title insurance company. Requires the borrower to select the title insurance company to close the loan and to provide the mortgagee title policy.

SECTION 19. Amends Section 2306.359(a), Government Code, as follows:

(a) Deletes existing Subdivision (2) regarding imposing penalties on applicants who have requested extensions of TDHCA deadlines relating to developments supported by an issuance of private activity bonds made in the application round preceding the current round. Deletes existing Paragraph (H) regarding the commitment of development funding by local political subdivisions that enables additional units for individuals and families of very low income. Redesignates existing paragraphs (A) through (G) and (I) to Subdivisions (1) through (8).

SECTION 20. Amends Section 2306.514(a), Government Code, to include, among the construction requirements of the affordable housing identified on a person's funding application, if a person is awarded state or federal funds by TDHCA to construct single family affordable housing for individuals and families of low and very low income, that each breaker box is located not higher than 48 inches above the floor inside the building on the first floor, if the applicable building code or codes do not prescribe another location for the breaker boxes.

SECTION 21. Amends Subchapter DD, Chapter 2306, Government Code, by adding Section 2306.6735, as follows:

Sec. 2306.6735. **REQUIRED LEASE AGREEMENT PROVISIONS.** Requires a lease agreement with a tenant in a development supported with a housing tax credit allocation to include any applicable federal or state standards identified by TDHCA rule that relate to the termination or nonrenewal of the lease agreement and be consistent with state and federal law.

SECTION 22. Amends Subchapter DD, Chapter 2306, Government Code, by adding Section 2306.67171, as follows:

Sec. 2306.67171. **ELECTRONIC MAIL NOTIFICATION SERVICE.** (a) Requires TDHCA to maintain an electronic mail notification service to which any person in this

state may electronically subscribe to receive information concerning the status of preapplications and applications under this subchapter.

(b) Requires the electronic mail notification services maintained under Subsection (a) to allow a subscriber to request for a zip code notification of the filing of any preapplication or application concerning a development that is or will be located in the zip code, any change in the status of an application or preapplication described by this section, and any public hearing to be held concerning an application or preapplication described by Paragraph (A), and to respond to a subscriber via electronic mail not later than the later of the third business day after the date TDHCA receives notice of an event described by Subdivision (1) or if applicable, the date or dates specified by Section 2306.6717(a).

(c) Authorizes TDHCA to include in an electronic mail notification sent to a subscriber any applicable information described by Section 2306.6717.

SECTION 23. Requires TDHCA to have the electronic mail notification service required to be maintained under Section 2306.67171, Government Code, as added by this Act, fully functional and able to receive subscription requests and respond appropriately to those requests not later than January 1, 2008.

SECTION 24. Repealer: (1) Sections 2306.021 (Department Divisions), 2306.062 (Career Ladder), 2306.0631 (State Employee Incentive Program), 2306.0661 (Public Hearings), 2306.0721(h) (requiring TDHCA to consider and incorporate the specific results of the programs of the Texas State Affordable Housing Corporation in TDHCA's estimate and analysis of the housing supply in each uniform state service region), 2306.079 (Regional Development Coordinator), 2306.081(e) (requiring TDHCA to allow the Texas State Affordable Housing Corporation timely access to information in the database), 2306.254 (Tenant Services Program), 2306.257(b), (c), and (d) (relating to the applicant compliance with state and federal laws prohibiting discrimination), and 2306.806 (Approval of Office of Rural Community Affairs), Government Code;

(2) Subchapter N (Housing Finance Division: Tenant of Housing Developments), Chapter 2306, Government Code;

(3) Subchapter O (Housing Finance Division: Regulation of Mortgage Lenders, Servicers, and Contractors), Chapter 2306, Government Code;

(4) Subchapter BB (Texas Youthworks Program), Chapter 2306, Government Code;

(5) Subchapter CC (Emergency Nutrition and Temporary Emergency Relief Program), Chapter 2306, Government Code; and

(6) Subchapter EE (Builder Incentive Partnership Program), Chapter 2306, Government Code.

SECTION 25. Provides that it is the intent of the legislature that the passage by the 80th Legislature, Regular Session, 2007, of another bill that amends Chapter 2306, Government Code, and the amendments made by this Act are required to be harmonized, if possible, as provided by Section 311.025(b), Government Code, so that effect may be given to each. Provides that if the amendments made by this Act to Chapter 2306, Government Code, and the amendments made to Chapter 2306, Government Code, by any other bill are irreconcilable, it is the intent of the legislature that this Act prevail, regardless of the relative date of enactment of this Act and the other bill or bills, but only to the extent that any differences are irreconcilable.

SECTION 26. Makes the changes in law made by this Act relating to the evaluation of applications for financial assistance administered by TDHCA prospective.

SECTION 27. Effective date: September 1, 2007.