

BILL ANALYSIS

Senate Research Center
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S.B. 665
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill seeks to enact the recommendations of the Sunset Advisory Commission for the Texas Department of Housing and Community Affairs (TDHCA). TDHCA works to ensure the availability of affordable single-family and multi-family housing, provides funding for community-based support services, and regulates the manufactured housing industry. Over the last several years, TDHCA has also helped distribute billions of dollars of federal aid to help Texas recover from hurricanes and the economic downturn.

TDHCA is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the legislature. The Sunset Advisory Commission concluded that Texas has an ongoing need for the functions of TDHCA, particularly in disbursing federal funds, but that changes are needed to improve the efficiency of several of the agency's programs.

TDHCA is governed by Chapter 2306 (Texas Department of Housing and Community Affairs), Government Code, and its Manufactured Housing Division is governed by Chapter 2306, Government Code, and Chapter 1201 (Manufactured Housing), Occupations Code.

Major provisions of S.B. 665 include continuing TDHCA for 12 years, requiring better upfront planning to avoid delays in getting disaster recovery funds to hard-hit Texas communities, removing impediments to the effective awarding of Texas' low-income housing tax credits, eliminating inconsistencies in TDHCA's enforcement process, improving the state's oversight of manufactured housing licensees, including requiring TDHCA to conduct a fingerprint-based criminal background check of all manufactured housing licensees.

As proposed, S.B. 665 amends current law relating to the continuation and functions of TDHCA.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the governing board of the Texas Department of Housing and Community Affairs (TDHCA) is modified in SECTION 1.07 (Section 2306.0504, Government Code) of this bill.

Rulemaking authority previously granted to the Manufactured Housing Board within TDHCA is modified in SECTION 4.05 (Section 1201.056, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the executive director of the Manufactured Housing Division of TDHCA in SECTION 4.13 (Section 1201.303, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. GENERAL OPERATIONS AND ADMINISTRATION OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

SECTION 1.01. Amends Section 2306.022, Government Code, to provide that unless continued in existence as provided by Chapter 325 (Texas Sunset Act), the Texas Department of Housing and Community Affairs (TDHCA) is abolished and this chapter expires September 1, 2023, rather than September 1, 2011.

SECTION 1.02. Amends Section 2306.043(c), Government Code, to require that the notice must include a brief summary of the alleged violation, state the amount of the recommended penalty, and inform the person of the person's right to a hearing before the State Office of Administrative Hearings (SOAH), rather than the governing board of TDHCA (board), on the occurrence of the violation, the amount of the penalty, or both.

SECTION 1.03. Amends Section 2306.044(a), Government Code, to authorize the person in writing, not later than the 20th day after the date the person receives the notice, to accept the determination and recommended penalty of the executive director of TDHCA (executive director), or to make a request for a hearing before SOAH, rather than the board, on the occurrence of the violation, the amount of the penalty, or both.

SECTION 1.04. Amends Section 2306.045, Government Code, as follows:

Sec. 2306.045. HEARING. (a) Requires the executive director, if the person requests a hearing before SOAH, rather than 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.

(b) Requires SOAH, rather than the board, to:

(1) hold the hearing;

(2) make findings of fact and conclusions of law about the occurrence of the violation and the amount of a proposed penalty; and

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

(c) Provides that any administrative proceedings relating to the imposition of a penalty under Section 2306.041 (Imposition of Penalty) is a contested case under Chapter 2001 (Administrative Procedure).

SECTION 1.05. Amends Section 2306.046(a), Government Code, as follows:

(a) Requires the board to issue an order after receiving a proposal for decision from SOAH under Section 2306.045. Deletes existing text authorizing 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.

SECTION 1.06. Amends Section 2306.049(a), Government Code, to provide that judicial review of a board order imposing an administrative penalty is under the substantial evidence rule, rather than is by trial de novo.

SECTION 1.07. Transfers Section 2306.6721, Government Code, to Subchapter B, Chapter 2306, Government Code, redesignates it as Section 2306.0504, Government Code, and amends it, as follows:

Sec. 2306.0504. DEBARMENT FROM PROGRAM PARTICIPATION. Redesignates existing Section 2306.6721 as Section 2306.0504. (a) Requires the board by rule to adopt a policy providing for the debarment of a person from participation in programs administered by TDHCA, rather than in the low income housing tax credit program as described by this section.

(b) Authorizes TDHCA to debar a person from participation in a TDHCA program on the basis of the person's past failure to comply with any condition imposed by TDHCA in the administration of its programs, rather than in connection with the allocation of housing tax credits. Makes a nonsubstantive change.

(c) Requires TDHCA to debar a person from participation in a TDHCA program if the person:

(1) materially or repeatedly violates any condition imposed by TDHCA in connection with the administration of a TDHCA program, including a material or repeated violation of a land use restriction agreement regarding a development supported with a housing tax credit allocation; or

(2) is debarred from participation in federal housing programs by the United States Department of Housing and Urban Development.

Deletes existing text requiring TDHCA to debar a person from participation in the program if the person materially violates any condition imposed by TDHCA in connection with the allocation of housing tax credits, or is in material noncompliance with or has repeatedly violated a land use restriction agreement regarding a development supported with a housing tax credit allocation. Makes a nonsubstantive change.

(d) Authorizes a person debarred by TDHCA from participation in a TDHCA program to appeal the person's debarment to the board. Makes a nonsubstantive change.

ARTICLE 2. DISASTER MANAGEMENT PLANNING

SECTION 2.01. Amends Section 418.106, Government Code, by adding Subsection (b-1), as follows:

(b-1) Requires that the plan identify:

(1) any requirements or procedures that local agencies and officials must satisfy or implement to qualify for long-term federal disaster recovery funding, and prepare for long-term disaster recovery; and

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

SECTION 2.02. Amends Chapter 2306, Government Code, by adding Subchapter X-1, as follows:

SUBCHAPTER X-1. LONG-TERM DISASTER RECOVERY PLAN

Sec. 2306.531. LONG-TERM DISASTER RECOVERY PLAN. (a) Requires TDHCA, in consultation with the Texas Department of Rural Affairs (TDRA) and the office of the governor, to develop a long-term disaster recovery plan to administer money received for disaster recovery from the federal government or any other source.

(b) Provides that in developing and administering the plan:

(1) TDHCA has primary responsibility over matters related to housing, and is required to consult with existing disaster recovery entities established by law or local, state, or federal agreements; local government officials, contractors, community advocates, businesses, nonprofit organizations, and other stakeholders; and the United States Department of Housing and Urban Development to ensure that the plan complies with federal law; and

(2) TDRA has primary responsibility over matters related to infrastructure; and is required to consult with existing disaster recovery entities established by law or local, state, or federal agreements; and local

government officials, contractors, community advocates, businesses, nonprofit organizations, and other stakeholders.

(c) Requires that the plan developed under this section establish or identify:

- (1) a method of distribution of disaster relief funding to local areas, subject to modification by the governor based on the nature of the disaster;
- (2) guidelines for outreach to program applicants and for eligible housing and infrastructure activities;
- (3) eligibility criteria for program applicants;
- (4) housing quality standards;
- (5) priorities for serving local populations;
- (6) procedures for establishing compliance with federal requirements;
- (7) procedures for coordination and communication among federal, state, and local entities;
- (8) pre-disaster and post-disaster training programs;
- (9) a procedure for each department to compile, update, and post on that department's Internet website in advance of hurricane season all relevant forms and information for program applicants;
- (10) federal and state monitoring and reporting requirements, including a list of the types of data that local government officials may be required to collect, analyze, and report;
- (11) the state information technology systems and processes that will be used to administer funds from the federal government or any other source;
- (12) a process for identifying elements of disaster recovery where coordination between or among state agencies will be required; and
- (13) a process for implementing memoranda of understanding in areas of disaster recovery where interagency coordination will be required.

(d) Requires that the plan established under this section be updated biennially and approved by the governor.

(e) Requires the governor, biennially, to designate a state agency to be the primary agency in charge of coordinating the distribution of long-term disaster recovery funding.

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

SECTION 3.01. Amends Section 2306.111(d-1), Government Code, as follows:

(d-1) Requires TDHCA, in allocating low income housing tax credit commitments under Subchapter DD (Low Income Housing Tax Credit Program), before applying the regional allocation formula prescribed by Section 2306.1115 (Regional Allocation Formula), to set aside for at-risk developments, as defined by Section 2306.6702 (Definitions), not less than the minimum amount of housing tax credits required under Section 2306.6714 (At-Risk Development Set-Aside). Provides that funds or credits are not required to be

allocated according to the regional allocation formula under Subsection (d) (relating to a formula for allocating certain housing funds) if:

- (1) the funds or credits are reserved for contract-for-deed conversions or for set-asides mandated by state or federal law and each contract-for-deed allocation or set-aside allocation equals not more than 10 percent of the total allocation of funds or credits for the applicable program;
- (2) the funds or credits are allocated by TDHCA primarily to serve persons with disabilities; or
- (3) the funds are housing trust funds administered by TDHCA under Sections 2306.201 (Housing Trust Fund), 2306.202 (Use of Housing Trust Fund), 2306.203 (Rules Regarding Administration of Housing Trust Fund), 2306.204 (Independent Audit of Housing Trust Fund), 2306.205 (Transfer of Money to Housing Trust Fund), and 2306.206 (Housing Trust Fund Not Subject to Texas Trust Code) that are not otherwise required to be set aside under state or federal law and do not exceed \$3 million for each programmed activity during each application cycle.

SECTION 3.02. Amends Section 2306.67022, Government Code, as follows:

Sec. 2306.67022. QUALIFIED ALLOCATION PLAN; MANUAL. Requires the board, at least biennially, rather than annually, to adopt a qualified allocation plan and a corresponding manual to provide information regarding the administration of and eligibility for the low income housing tax credit program. Authorizes the board to adopt the plan and manual annually, as considered appropriate by the board. Makes a nonsubstantive change.

SECTION 3.03. Amends Section 2306.6710(b), Government Code, as follows:

(b) Requires TDHCA, if an application satisfies the threshold criteria, to score and rank the application using a point system that:

(1) prioritizes in descending order criteria regarding:

- (A) financial feasibility of the development based on the supporting financial data required in the application that will include a project underwriting pro forma from the permanent or construction lender;
- (B) quantifiable community participation with respect to the development, evaluated on the basis of a resolution concerning the development that is voted on and adopted by the governing body of a municipality whose boundaries contain the proposed development site or by the commissioners court of a county whose boundaries contain the proposed development site;
- (C) the income levels of tenants of the development;
- (D) the size and quality of the units;
- (E) the commitment of development funding by local political subdivisions;
- (F) the rent levels of the units;
- (G) the cost of the development by square foot;
- (H) the services to be provided to tenants of the development;

(I) whether, at the time the complete application is submitted or at any time within the two-year period preceding the date of submission, the proposed development site is located in an area declared to be a disaster under Section 418.014 (Declaration of State of Disaster); and

(J) quantifiable community participation with respect to the development, evaluated on the basis of written statements from any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site;

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

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

Deletes existing text requiring TDHCA, if an application satisfies the threshold criteria, to score and rank the application using a point system that prioritizes in descending order certain criteria regarding quantifiable community participation with respect to the development, evaluated on the basis of written statements from any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site; and the level of community support for the application, evaluated on the basis of written statements from the state representative or the state senator that represents the district containing the proposed development site. Makes a nonsubstantive change.

SECTION 3.04. Amends Section 2306.6718(b), Government Code, to require TDHCA to provide the elected officials with an opportunity to comment on the application during the application evaluation process, rather than during the application evaluation process provided by Section 2306.6710 (Evaluation and Underwriting of Applications), and to consider those comments in evaluating applications, rather than in evaluating applications under that section.

SECTION 3.05. Amends Sections 2306.6724(a), (b), and (c), Government Code, as follows:

(a) Requires TDHCA, regardless of whether the board will adopt the plan annually or biennially, not later than September 30 of the year preceding the year in which the new plan is proposed for use, rather than not later than September 30 of each year, to prepare and submit to the board for adoption any proposed qualified allocation plan required by federal law for use by TDHCA in setting criteria and priorities for the allocation of tax credits under the low income housing tax credit program. Makes a nonsubstantive change.

(b) Requires the board, regardless of whether the board has adopted the plan annually or biennially, to submit, rather than to adopt and submit, to the governor any proposed qualified allocation plan not later than November 15 of the year preceding the year in which the new plan is proposed for use. Deletes existing designation of Subsection (c). Requires the governor to approve, reject, or modify and approve the proposed qualified allocation plan not later than December 1. Makes nonsubstantive changes.

SECTION 3.06. Amends Subchapter DD, Chapter 2306, Government Code, by adding Section 2306.6739, as follows:

Sec. 2306.6739. HOUSING TAX CREDITS FINANCED USING FEDERAL EMERGENCY FUNDS. (a) Provides that to the extent TDHCA receives federal emergency funds that are required to be awarded by TDHCA in the same manner as and

that are subject to the same limitations as awards of housing tax credits, any reference in this chapter to the administration of the housing tax credit program applies equally to the administration of the federal funds, subject to Subsection (b).

(b) Authorizes TDHCA, notwithstanding any other law, to establish a separate application procedure for the federal emergency funds that does not follow the uniform application cycle required by Section 2306.1111 (Uniform Application and Funding Cycles) or the deadlines established by Section 2306.6724 (Deadlines for Allocation of Low Income Housing Tax Credits), and any reference in this chapter to an application period occurring in relation to those federal emergency funds refers to the period beginning on the date TDHCA begins accepting applications for the federal funds and continuing until all of the available federal funds are awarded.

ARTICLE 4. MANUFACTURED HOUSING

SECTION 4.01. Amends Section 2306.6022, Government Code, by adding Subsections (e) and (f), as follows:

(e) Authorizes the executive director of the manufactured housing division of TDHCA (division director; division) to allow an authorized employee of the division to dismiss a complaint if an investigation demonstrates that:

(1) a violation did not occur; or

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

(f) Requires an employee who dismisses a complaint under Subsection (e) to report the dismissal to the division director and the Manufactured Housing Board within TDHCA (housing board). Requires that the report include a sufficient explanation of the reason the complaint was dismissed.

SECTION 4.02. Amends Subchapter AA, Chapter 2306, Government Code, by adding Section 2306.6023, as follows:

Sec. 2306.6023. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the division to develop and implement a policy to encourage the use of:

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

(2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies) to assist in the resolution of internal and external disputes under the division's jurisdiction.

(b) Requires that the division's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by SOAH for the use of alternative dispute resolution by state agencies.

(c) Requires the division to:

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

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

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

SECTION 4.03. Amends Section 1201.003, Occupations Code, by amending Subdivision (17) and adding Subdivision (17-a), to redefine "license holder" or "licensee," and to define "management official."

SECTION 4.04. Amends Sections 1201.055(a) and (b), Occupations Code, as follows:

(a) Requires the housing board, with guidance from the federal Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.) and from the rules and regulations adopted under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), to establish fees as follows:

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

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

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

- (4) a fee for the inspection of the rebuilding of a salvaged manufactured home, to be paid by the retailer, rather than by the rebuilder;

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

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

(b) Requires a manufacturer or a person making an alteration, rather than requires a manufacturer, a person making an alteration, or a rebuilder, as appropriate, in addition to the fees imposed under Subsections (a)(2), (3), and (4), to be charged for the actual cost of travel of a TDHCA representative to and from:

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

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

SECTION 4.05. Amends Section 1201.056, Occupations Code, as follows:

Sec. 1201.056. LICENSE FEES. (a) Creates this subsection from existing text. Requires the housing board to establish fees for the issuance and renewal of licenses for manufacturers, retailers, brokers, salespersons, and installers, rather than for manufacturers, retailers, brokers, salespersons, rebuilders, and installers. Makes a nonsubstantive change.

(b) Authorizes the housing board by rule to establish a fee for reprinting a license issued under this chapter.

SECTION 4.06. Amends Sections 1201.101(e) and (f-1), Occupations Code, as follows:

(e) Prohibits a person from repairing, rebuilding, or otherwise altering a salvaged manufactured home unless the person holds a retailer's license, rather than a rebuilder's or retailer's license.

(f-1) Prohibits a retailer from being licensed to operate more than one location under a single license. Deletes existing text authorizing a retailer to be licensed to operate at a principal location and one or more branch locations under a single license; provided, however, that a separate application is required to be made for each branch, and each branch is required to be separately bonded.

SECTION 4.07. Amends Sections 1201.103(a) and (b), Occupations Code, as follows:

(a) Requires an applicant for a license as a manufacturer, retailer, broker, or installer, rather than for a license as a manufacturer, retailer, broker, rebuilder, or installer, to file with the director a license application containing:

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

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

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

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

(b) Requires that a license application be accompanied by:

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

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

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

SECTION 4.08. Amends Subchapter C, Chapter 1201, Occupations Code, by adding Section 1201.1031, as follows:

Sec. 1201.1031. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a) Requires TDHCA to require that an applicant for a license or renewal of an unexpired license submit a complete and legible set of fingerprints, on a form prescribed by the housing board, to TDHCA or to the Department of Public Safety of the State of Texas (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation (FBI). Provides that the applicant is required to submit a set of fingerprints only once under this section unless a replacement set is otherwise needed to complete the criminal history check required by this section.

(b) Requires TDHCA to refuse to issue a license to or renew the license of a person who does not comply with the requirement of Subsection (a).

(c) Requires TDHCA to conduct a criminal history check of each applicant for a license or renewal of a license using information:

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

(2) made available to TDHCA by DPS, FBI, and any other criminal justice agency under Chapter 411, Government Code.

(d) Authorizes TDHCA to enter into an agreement with DPS to administer a criminal history check required under this section.

(e) Requires the applicant to pay the cost of a criminal history check under this section.

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

(a) Requires a person who was not licensed or registered with TDHCA or a predecessor agency on September 1, 1987, except as provided by Subsection (g), rather than Subsection (e), as a requirement for a manufacturer's, retailer's, broker's, installer's, or salesperson's license, rather than for a manufacturer's, retailer's, broker's, installer's, salvage rebuilder's or salesperson's license, not more than 12 months before applying for the person's first license under this chapter, to attend and successfully complete eight hours, rather than 20 hours, of instruction in the law, including instruction in consumer protection regulations.

(a-1) Creates this subsection from existing text. Requires the applicant, if the applicant is not an individual, to have at least one related person who satisfies the requirements of Subsection (a), rather than one related person who meets this requirement. Requires the related person, if that applicant is applying for a retailer's license, to be a management official who satisfies the requirements of Subsections (a) and (a-2) at each retail location operated by the applicant.

(a-2) Requires an applicant for a retailer's license to complete four hours of specialized instruction relevant to the sale, exchange, and lease-purchase of manufactured homes. Provides that the instruction under this subsection is in addition to the instruction required under Subsection (a).

(a-3) Requires an applicant for an installer's license to complete four hours of specialized instruction relevant to the installation of manufactured homes. Provides that the instruction under this subsection is in addition to the instruction required under Subsection (a).

(a-4) Requires an applicant for a joint installer-retailer license to comply with Subsections (a-2) and (a-3), for a total of eight hours of specialized instruction. Provides that the instruction under this subsection is in addition to the instruction required under Subsection (a).

(g) Provides that Subsections (a), (a-2), (a-3), and (a-4) do not apply to a license holder who applies for a license for an additional business location, or to renew or reinstate a license. Makes nonsubstantive changes.

(h) Requires that an examination be a requirement of successful completion of any initial required course of instruction under this section. Prohibits the period needed to complete an examination under this subsection from being used to satisfy the minimum education requirements under Subsection (a), (a-2), (a-3), or (a-4).

SECTION 4.10. Amends Section 1201.106(a), Occupations Code, to require an applicant for a license or a license holder to file a bond or other security under Section 1201.105 for the issuance or renewal of a license in the following amount: \$100,000 for a manufacturer, \$50,000 for a retailer, \$50,000 for a broker, or \$25,000 for an installer, rather than \$100,000 for a manufacturer, \$50,000 for a retailer's principal location, \$50,000 for each retailer's branch location, \$50,000 for a rebuilder, \$50,000 for a broker, or \$25,000 for an installer. Makes nonsubstantive changes.

SECTION 4.11. Amends Section 1201.110, Occupations Code, to require TDHCA to maintain on file a security other than a bond canceled as provided by Section 1201.109(a) (relating to

suspending the license for which a bond is required) until the later of the second anniversary of the date the manufacturer, retailer, broker, or installer, rather than the manufacturer, retailer, broker, rebuilder, or installer, ceases doing business; or the date the division director determines that a claim does not exist against the security.

SECTION 4.12. Amends Section 1201.116(a), Occupations Code, to require TDHCA to renew a license if, before the expiration date of the license, TDHCA receives the renewal application and payment of the required fee as well as the cost required under Section 1201.1031. Makes a nonsubstantive change.

SECTION 4.13. Amends Section 1201.303, Occupations Code, by amending Subsection (b) and adding Subsections (c), (d), (e), (f), and (g), as follows:

(b) Requires TDHCA to establish an installation inspection program in which at least 75 percent, rather than 25 percent, of installed manufactured homes are inspected on a sample basis for compliance with the standards and rules adopted and orders issued by the division director.

(c) Requires the division director, on or after January 1, 2015, by rule to establish a third-party installation inspection program to supplement the inspections of TDHCA if TDHCA is not able to inspect at least 75 percent of manufactured homes installed in each of the calendar years 2012, 2013, and 2014.

(d) Requires the third-party installation inspection program established under Subsection (c) to:

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

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

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

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

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

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

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

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

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

(10) require the installer, if a violation is noted in an inspection, to remedy the violations noted, have the home reinspected at the installer's expense, and certify to TDHCA that all violations have been corrected;

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

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

(13) authorize TDHCA to charge a filing fee and an inspection fee for third-party inspections;

(14) authorize TDHCA to continue to conduct no-charge complaint inspections under Section 1201.355 (Consumer Complaint Home Inspection) on request, but only after an initial installation inspection is completed;

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

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

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

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

(g) Provides that if TDHCA is not required to establish a third-party installation inspection program as provided by Subsection (c), Subsections (c), (d), (e), and (f) and this subsection expire September 1, 2016.

SECTION 4.14. Amends Section 1201.357, Occupations Code, by adding Subsection (b-1), to authorize the division director, as authorized by Section 1201.6041, to order a manufacturer, retailer, or installer, as applicable, to pay a refund directly to a consumer as part of an agreed order described by Subsection (b) (relating to an informal meeting regarding failure or refusal to provide warranty service), instead of or in addition, to instituting an administrative action under this chapter.

SECTION 4.15. Amends Section 1201.461(d), Occupations Code, to authorize a salvaged manufactured home to be sold only to a licensed retailer, rather than to a licensed retailer or licensed rebuilder.

SECTION 4.16. Amends Subchapter M, Chapter 1201, Occupations Code, by adding Section 1201.6041, as follows:

Sec. 1201.6041. DIRECT CONSUMER COMPENSATION. (a) Authorizes the division director, instead of requiring a consumer to apply for compensation from the trust fund under Subchapter I (Manufactured Homeowners' Recover Trust Fund), to order a manufacturer, retailer, broker, or installer, as applicable, to pay a refund directly to a consumer who sustains actual damages resulting from an unsatisfied claim against a licensed manufacturer, retailer, broker, or installer if the unsatisfied claim results from a violation of:

(1) this chapter;

(2) a rule adopted by the division director;

(3) the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);

(4) a rule or regulation of the United States Department of Housing and Urban Development; or

(5) Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17, Business & Commerce Code.

(b) Provides that for purposes of this section, the refund of a consumer's actual damages is determined according to Section 1201.405 (Limitations on Claims).

(c) Requires the division director to prepare information for notifying consumers of the director's option to order a direct refund under this section, to post the information on TDHCA's Internet website, and to make printed copies available on request.

SECTION 4.17. Amends Sections 1201.610(a), (b), and (f), Occupations Code, as follows:

(a) Authorizes the division director to issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter if the division director has reasonable cause to believe that a person has violated or is about to violate any provision of this chapter or a rule adopted under this chapter, rather than if the division director has reasonable cause to believe that a person licensed under this chapter has violated or is about to violate any provision of this chapter or rules adopted by TDHCA under this chapter.

(b) Authorizes the division director to issue an order to any person, rather than any licensee, to cease and desist from violating any law, rule, or written agreement or to take corrective action with respect to any such violations if the violations in any way are related to the sale, financing, or installation of a manufactured home or the providing of goods or services in connection with the sale, financing, or installation of a manufactured home unless the matter that is the basis of such violation is expressly subject to inspection and regulation by another state agency; provided, however, that if any matter involves a law that is subject to any other administration or interpretation by another agency, the division director is required to consult with the person in charge of the day-to-day administration of that agency before issuing an order.

(f) Authorizes the division director, if a person licensed under this chapter fails to pay an administrative penalty that has become final or fails to comply with an order of the division director that has become final, in addition to any other remedy provided by law, after not less than 10 days' notice to the person, without a prior hearing to suspend the person's license.

SECTION 4.18. Amends Section 1302.061, Occupations Code, to provide that this chapter does not apply to a person or entity licensed as a manufacturer, retailer, or installer, rather than as a manufacturer, retailer, rebuilder, or installer, under Chapter 1201 (Manufactured Housing) and engaged exclusively in air conditioning and refrigeration contracting for manufactured homes if the installation of air conditioning components at the site where the home will be occupied is performed by a person licensed under this chapter.

ARTICLE 5. REPEALER

SECTION 5.01. Repealer: Section 2306.6710(f) (relating to a points system used for evaluating the level of community support), Government Code.

ARTICLE 6. TRANSITION PROVISIONS

SECTION 6.01. (a) Requires TDHCA, not later than March 1, 2012, to develop the plan required under Section 2306.531, Government Code, as added by this Act.

(b) Requires TDHCA, not later than May 1, 2012, to obtain the governor's approval of the plan developed under Section 2306.531, Government Code, as added by this Act.

(c) Requires the governor, not later than May 1, 2012, to designate a state agency to be the primary agency in charge of coordinating the distribution of long-term disaster recovery funding as required under Section 2306.531, Government Code, as added by this Act.

SECTION 6.02. Makes application of the change in law made by this Act to Sections 2306.043 (Report and Notice of Violation and Penalty), 2306.044 (Penalty to Be Paid or Hearing Requested), 2306.045, 2306.046 (Decision by Board), and 2306.049 (Decision by Court), Government Code, prospective.

SECTION 6.03. Makes application of the change in law made by this Act to Section 2306.6022 (Complaints), Government Code, prospective.

SECTION 6.04. Makes application of the changes in law made by this Act to Sections 2306.6710 and 2306.6718 (Elected Officials), Government Code, only to an application for low income housing tax credits that is submitted to TDHCA during an application cycle that begins on or after the effective date of this Act, prospective.

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

SECTION 6.06. (a) Makes application of the change in law made by this Act in amending Sections 1201.103 (License Application) and 1201.104 (Qualifications for License), Occupations Code, only to an application for a license filed with the division director on or after the effective date of this Act, prospective.

(b) Makes application of the change in law made by this Act in adding Section 1201.1031, Occupations Code, only to an application for a license or license renewal filed with the division director on or after the effective date of this Act, prospective.

(c) Makes application of the change in law made by this Act in amending Section 1201.116 (Procedure for License Renewal), Occupations Code, only to an application for a license renewal filed with the division director on or after the effective date of this Act, prospective.

ARTICLE 7. EFFECTIVE DATE

SECTION 7.01. Effective date: September 1, 2011.