HOUSE
RESEARCH
ORGANIZATION bill analysis | 5/9/2011 | HB 2660 J. Davis

SUBJECT: Housing bond authority transfer from TDHCA

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 7 ayes — Dutton, Alvarado, Callegari, Mallory Caraway, Parker, Paxton, Simpson

0 nays

2 absent — Gutierrez, P. King

WITNESSES: For — JoAnn DePenning, J. DePenning Consulting, Inc; Bob Dransfield, Texas State Affordable Housing Corporation; (*Registered, but did not testify*: Mike Higgins, Texas State Association of Fire Fighters; Joyce McDonald, Frameworks Community Development Corp; Michele Blood)

Against — John Henneberger, Texas Low Income Housing Information Service; Barry Kahn, Texas Affiliation of Affordable Housing Providers (TAAHP); Gary Machak, Raymond James & Associates, Inc; Granger MacDonald; (*Registered, but did not testify*: Jim T. Brown, Diana McIver, Texas Affiliation of Affordable Housing Providers; Michael Clark, Texas Apartment Association; Scott Norman, Texas Association of Builders; Deena Perkins, TX Association of CDCs; Justin MacDonald)

On — Charles Cloutman, Meals on Wheels; Bill Dally, Tim Nelson, Texas Dept. of Housing and Community Affairs; David Danenfelzer, David Long, Texas State Affordable Housing Corporation; Stephanie Leibe, Office of the Attorney General; (*Registered, but did not testify*: Michael Gerber, Texas Dept. of Housing & Community Affairs; Bob Latsha, Bond Review Board; Jeffrey Smith, Jeanne Talerico, Ron Williams, Texas Association of Local Housing Finance Agencies)

BACKGROUND: Government Code, ch. 1372, authorizes state and local governments to issue private activity bonds. Twenty-eight percent of the state ceiling is set aside for issuers of qualified mortgage bonds. Of that 28 percent, the Texas Department of Housing and Community Affairs (TDHCA) has 33.34 percent, the Texas State Affordable Housing Corporation (TSAHC) has 10 percent, and housing finance corporations (local issuers) have 56.66 percent.

Twenty-two percent of the state ceiling is set aside for issuers of qualified residential rental project bonds. Of that 22 percent, TDHCA currently has 20 percent, TSAHC has 10 percent, and local issuers have 70 percent.

DIGEST:

HB 2660 would amend Government Code, sec. 1372.00223, to allot 40 percent of the state ceiling that was set aside for issuers of qualified mortgage bonds to the TSAHC and 60 percent to housing finance corporations. The bill would repeal the 33.34 percent available to the TDHCA.

The bill would allot 20 percent of the state ceiling that was set aside for issuers of qualified residential rental project bonds to TSAHC and 80 percent to housing finance corporations. The bill would repeal the 20 percent available to TDHCA.

Under HB 2660, of the 40 percent of the state ceiling that would be available to TSAHC for qualified mortgage bonds, 20 percent would be made available in connection with the professional educators home loan program and 10 percent would be made available in connection with the firefighter, law enforcement or security officer, and emergency medical services personnel home loan program.

Under HB 2660, TSAHC would have to perform compliance monitoring and physical inspections to ensure that recipients of money funded by bonds issued by it or by housing finance corporations complied with all legal and contractual requirements for receiving that money.

HB 2660 would transfer responsibility for implementing a statewide homebuyer education program from TDHCA to TSAHC.

The bill would take immediate effect if passed by a two-thirds majority in each house. Otherwise, it would take effect on September 1, 2011. It would apply only to a reservation of state ceiling granted on or after January 1, 2012.

SUPPORTERS SAY:

HB 2660 would create more projects for multifamily and single-family programs. TDHCA layers tax credits with multifamily development, and single-family development is not eligible for tax credits, so TDHCA is not strongly motivated to support development projects other than multifamily units. Over its lifetime, TDHCA has spent more money on multifamily developments than single-family ones, even though multifamily developments do not bring neighborhood stability. On the other hand, TSAHC does an exceptional job with developing single-family units. TSAHC's strong single-family portfolio combined with the ability of local issuers to work on multifamily development would allow the state's housing policy to better serve the diverse needs of the population.

HB 2660 would save the state money by transferring bond authority to TSAHC. TSAHC does not utilize any general revenue from the state and would cover the cost of the expansion with bond issuance fees. This shift in bond authority to TSAHC would reduce costs to the state, as TDHCA would be able to reduce staff who administered multifamily bond programs.

The AAA rating on TDHCA's existing bond indentures are not expected to change if its bond issuing authority is transferred to TSHAC. The existing bonds of TDHCA and TSAHC are backed by the mortgage collateral, which is primarily AAA-rated U.S. government-guaranteed mortgages.

TSAHC has the necessary infrastructure to assume additional authority without transitional downtime. TSAHC would be capable of the expanded bonding authority since the number of applications regularly exceeds the bonds available. It would be relatively simple for TSAHC to handle the operational transition to a larger volume of bond issuances and mortgage loans by scaling up its existing programs. The corporation would incur costs, but those costs would be borne by it from bond issuance fees and would not come from state funds.

HB 2660 would limit overlapping authority among TDHCA and TSAHC and address underserved rural areas. TDHCA uses its authority in areas where TSAHC and local issuers also have authority, which closes TSAHC and the local agencies out of the market. TDHCA currently leaves rural areas of the state underserved and, because of their location, TSAHC and local issuers are unable to reach these areas. Shifting more authority to TSAHC and local issuers would allow them to leverage funds and cover the whole state.

Transferring bond authority would allow TSAHC and the local issuers to focus on Texas communities in ways that TDHCA is not capable of doing.

The corporation has unique financial tools that would allow for more flexibility in the types of projects it would accept.

The transfer of bonding authority relates only to the new issuance of bonds. Current projects that originated with TDHCA would end with TDHCA. TDHCA still would maintain the minimal level of staff needed to oversee its portfolio, as those individuals are paid through bond revenue.

Economies of scale do not guarantee a lower bond rate or a lower mortgage rate. While there may be some economies of scale related to fees paid, they are not significant, and there are no economies of scale garnered by TDHCA related to bond pricing. Additionally, there is not a guaranteed benefit to economies of scale in terms of mortgage rates being lower.

In the early 2000s, the 501(c)3 bond structure was utilized by many entities, including TDHCA, and resulted in similar problems. TSAHC has not issued this type of bond structure since that time.

HB 2660 would not create any problems with transparency or accountability. The corporation receives the exact same oversight as TDHCA, except that it does not go through the appropriations review because it does not receive state money. TSAHC undergoes review by the Bond Review Board, the attorney general, and the Sunset Advisory Commission. The corporation's budget is submitted to the comptroller and the governor, and its programs are administered at the discretion of the Legislature. The corporation adheres to open records and meetings requirements, and has regularly scheduled board meetings that are available for anyone to attend.

OPPONENTS SAY:

HB 2660 would weaken the effectiveness of tax-exempt bonds to serve Texans. Extensive analysis by the Sunset Advisory Commission revealed that there would not be any significant benefit to consolidating functions or transferring functions of TDHCA.

The major credit rating agency Moody's has stated that it would view moving the state's single family bond program to TSAHC as a "credit negative" for the agencies, meaning it would consider lowering the credit ratings of both TDHCA and TSAHC. Lower credit ratings would result in higher borrowing costs and less efficient programs.

Removing TDHCA's bonding authority would not remove TDHCA's existing obligations under previously issued bonds. Without bonding authority and with lower credit ratings, borrowers could exit the existing bonds, which could trigger contractual requirements for the comptroller to purchase those bonds. HB 2660 could tie up $300 million in comptroller funds for the remaining life of the bonds. TDHCA would need to manage its existing bond portfolio without the fee income provided primarily by new bond issues. This could become a direct drain on state general revenue.

The bond program generates fees that TDHCA reinvests in legislatively supported programs such as the Office of the Colonias Initiatives. TDHCA has been tasked with many programs for which it does not receive general revenue. The money to operate them is derived from TDHCA's bond proceeds. HB 2660 would undo a myriad of programs that the Legislature has put into place. In tough economic times, the state should not give funds to a private nongovernmental entity.

By splitting money up among TSAHC and dozens of local finance corporations across the state, HB 2660 would cause the state to lose the substantial economies of scale that exist with the existing bond programs at TDHCA. TDHCA's combination of federal funds and bond authority allows it to achieve housing goals in addition to the economies of scale that are achieved with a large bond pool. There is a distinct advantage in having housing programs housed centrally, because the synergy of various resources help to make the programs work.

Historically, the administration of bonding authority by agencies outside of TDHCA has been troubled. They have issued bonds that defaulted, leaving people in low-income neighborhoods in substandard living conditions.

Due to oversight by the Legislature, TDHCA has a very open process and is highly scrutinized by many entities. HB 2660 would split this money up among several agencies and would remove oversight of the programs. Although the housing program currently has problems, this bill would only worsen them.

HB 2660 would have a negative impact on rural development, as it would create a level of unnecessary bureaucracy and added expense that could be avoided with the current one-stop shop. Under HB 2660, a developer would have to go to TDHCA for tax credits and then to TSAHC for bonds.

TDHCA has an exemplary compliance record with the IRS, and HB 2660 could endanger this.

Moving bond authority functions to a private nonprofit would not save the state money. It would only move them “off the balance sheet,” which would threaten the public and legislative oversight that is available with TDHCA.

NOTES: A floor amendment is expected to be offered that would keep the portion of the state ceiling available to issuers of qualified residential rental project bonds at the levels in current statute.

In the fiscal note, the LBB projects annual savings of $90,000 to general revenue from lower administrative costs at TDHCA. Revenue gains to TSAHC were not reflected because funding for that entity occurs outside the state treasury.

The companion bill, SB 1464 by Williams, was considered in a public hearing on April 27, and was left pending by the Senate Intergovernmental Relations Committee.