

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1474
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Intergovernmental Relations
4/10/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the 85th Legislative Interim, the Senate Committee on Intergovernmental Relations, while addressing their Housing Affordability Interim Charge, heard from concerned stakeholders who indicated that Texas' Private Activity Bond program could be strengthened by undertaking some critical updates and reforms. Interested parties contend that current state statutes that regulate the use of tax-exempt bonds could yield greater, more efficient results that would better allow the state to maximize the bond financing program.

Overall, the substitute incorporates critical updates to the Private Activity Bond program which ensure that the goal of increasing per project amounts across all issuers is achieved and maximizes the traditional use of existing sub-ceilings by better utilizing an un-utilized sub-ceiling to meet the increased demand in other categories. With these changes, C.S.S.B. 1474 modernizes the PAB, allows projects to be funded earlier in the year; and, remove the inefficient bottleneck of requests that is created in August.

C.S.S.B. 1474 amends current law relating to private activity bonds.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 1372.001(1) and (2), Government Code, as follows:

(1) Redefines "additional state ceiling" by deleting existing text relating to the additional tax-exempt private activity bonds authorized by Section 3021 of the Housing and Economic Recovery Act of 2008 (Pub. L. No. 110-289).

(2) Redefines "bonds" by deleting existing text relating to the Heartland Disaster Tax Relief Act of 2008 (Pub. L. No. 110-343), regarding Hurricane Ike disaster area bonds and the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5).

SECTION 2. Amends Sections 1372.002(a) and (c), Government Code, as follows:

(a) Provides that for purposes of this chapter (Private Activity Bonds and Certain Other Bonds), a project is:

(1) makes no changes to this subdivision;

(2) in connection with an issue of qualified mortgage bonds, rather than qualified mortgage bonds or qualified student loan bonds, the providing of financial assistance to qualified mortgagors, rather than mortgagors or students, located in all or any part of the jurisdiction of the issuer;

(3) in connection with an issue of qualified student loan bonds:

(A) if the issuer is the Texas Higher Education Coordinating Board (THECB), the provision of financial assistance to students; or

(B) if an issuer is authorized by Section 53B.47 (Guaranteed Student Loans and Alternative Education Loans; Bonds For the Purchase of Education Loan Notes), Education Code, the provision of guaranteed student loans or alternative education loans that satisfy the requirements of Section 53B.47(b), Education Code; or

(4) Creates this subdivision from existing text and makes a conforming change.

(c) Authorizes an application under this chapter, for purposes of Subsection (a)(1), to include either the rehabilitation of or new construction or both the rehabilitation and new construction, of qualified residential rental facilities located at multiple sites and with respect to which 51 percent or more of the residential units are located:

(1) in a county in which a population of less than 100,000, rather than less than 75,000; or

(2) makes no changes to this subdivision.

SECTION 3. Amends Section 1372.006(a), Government Code, as follows:

(a) Requires an application for a reservation under Subchapter B (Allocation and Reservation of State Ceiling) or a carryforward designation under Subchapter C (Carryforward of State Ceiling) to be accompanied by a nonrefundable fee in the amount of \$500, except that:

(1)–(2) makes no changes to these subdivisions; and

(3) for a project, rather than combined project, that includes multiple qualified residential rental projects authorized under Section 1372.002(f) (relating to authorizing a developer to aggregate projects under certain conditions), the application is required to be accompanied by a nonrefundable fee in an amount of \$5,000 for each qualified residential rental project included in the application for the project, rather than combined project, with a maximum total fee of \$25,000. Requires the board to retain 20 percent to offset the costs of the private activity bond allocation program and the administration of that program. Requires the board to transfer 80 percent through an interagency agreement to the Texas Department of Housing and Community Affairs (TDHCA) for use in the affordable housing research and information program as provided by Section 2306.259 (Affordable Housing Research and Information Program). Makes nonsubstantive changes.

SECTION 4. Amends Section 1372.022(a), Government Code, as follows:

(a) Provides that if the state ceiling is computed on the basis of \$75 per capita or a greater amount, before August 15 of each year:

(1) 32.25 percent, rather than 28.0 percent, of the state ceiling is available exclusively for reservations by issuers of qualified mortgage bonds;

(2) 10.0 percent, rather than 8 percent of the state ceiling is available exclusively for reservations by issuers of state-voted issuers;

(3) makes no changes to this subdivision;

(4) 26.25 percent, rather than 22.0 percent, of the state ceiling is available exclusively for reservations by issuers of qualified residential rental project bonds; and

(5) deletes existing Subdivision 5 relating to the availability of 10.5 percent of the state ceiling and redesignates existing Subdivision (6) as this subdivision.

SECTION 5. Reenacts and amends Section 1372.0231(b), Government Code, as amended by Chapters 1329 (S.B. 1664) and 330 (S.B. 264), Acts of the 78th Legislature, Regular Session, 2003 Texas Bond Review Board (BRB), as follows:

(b) Deletes existing text requiring the board with respect to the amount of the state ceiling set aside under Subsection (a)(1) (relating to availability of the state ceiling to TDHCA), to grant reservations at the directions of TDHCA as provided by Section 2306.359 (Issuance of Private Activity Bonds) and in a manner that ensures that not more than 50 percent of the set-aside amount is used for proposed projects that are located in qualified census tracts as defined by Section 143(j), Internal revenue Code of 1986.

SECTION 6. Amends Sections 1372.0231(d), (g), and (i), Government Code, as follows:

(d) Requires BRB, except as provided by Subsection (i), before March, rather than May, 1, to apportion the amount of the state ceiling set aside under Subsection (a)(2) (relating to availability of the state ceiling to finance corporations) among the uniform state service regions according to the percentage of the state's population that resides in each of those regions.

(g)-(i) Makes conforming changes.

SECTION 7. Amends Sections 1372.024(a) and (b), Government Code, as follows:

(a) Provides that if, before January 2, applications received for reservations for state-voted issues total more than 10, rather than eight, percent of the available state ceiling for that program year, the percentage of state-voting ceiling requested that is more than 10, rather than eight, percent of the state ceiling:

(1)-(2) makes no changes to these subdivisions.

(b) Makes a conforming change to this subsection.

SECTION 8. Amends Sections 1372.026(b), Governmental Code, as follows:

(b) Prohibits a housing finance corporation from receiving an allocation for the issuance of qualified mortgage bonds in an amount that exceeds the greater of:

(1) \$50, rather than \$40, million; or

(2) 1.70 percent of the state ceiling.

SECTION 9. Amends Sections 1372.0261(d) and (g), Government Code, as follows:

(d) Prohibits a housing finance corporation from being penalized under Subsection (c) (relating to a penalty if a housing finance corporation's utilization percentage is between 25 and 80 percent):

(1)-(2) Makes a nonsubstantive changes to these subdivisions; or

(3) the application is received after July 14.

(g) Provides that an issuer that has carryforward available from the additional state ceiling, rather than the state ceiling created by the Housing and Economic Recovering, Act of 2008 (Pub. L. No. 110-289), is not restricted by project limits for the state ceiling.

SECTION 10. Amends Section 1372.0281, Government Code, as follows:

Sec. 1372.0281. INFORMATION REQUIRED OF ISSUERS OF CERTAIN QUALIFIED STUDENT LOAN BONDS. (a) Requires an issuer of qualified student loan bonds authorized by Section 53B.47, rather than 53.47, Education Code, to provide to BRB together with its application for a reservation information required by BRB rule.

(b) Authorizes BRB to require an issuer described by Subsection (a) to provide information with its application, or to supplement the application with information, that includes:

(1)–(3) makes no changes to these subdivisions;

(4) descriptions of how bond proceeds, rather than student loans, are being used or spent; and

(5) other information required by BRB, rather than information about the issuer's client agencies.

SECTION 11. Amends Sections 1372.031(a) and (b), Government Code, to make conforming changes.

SECTION 12. Amends Sections 1372.033(a), (d), and (g), Government Code, as follows:

(a) Redefines "qualified nonprofit corporation" to have the meaning assigned by Section 53B.02(11), Education Code. Deletes existing text defining "student loan bond allocation."

(d) Entitles each qualified nonprofit corporation that applies for a student loan bond allocation in compliance with all applicable application requirements for a program year to receive a student loan bond allocation prioritized in the order that the application was received by the board for that year.

(g) Prohibits a qualified nonprofit corporation that receives a student loan bond allocation from:

(1) makes no changes to this subdivision; or

(2) loaning to another entity, other than a qualified borrower, rather than loaning to another entity other than a student, proceeds of bonds issued under the allocation.

SECTION 13. Amends Section 1372.037(a), Government Code, as follows:

(a) Prohibits BRB before August 15, rather than prohibiting BRB except as provided by Subsection (b) before August 15, from granting for any single project a reservation for that year that is greater than:

(1) if the issuer is an issuer of qualified mortgage bonds, other than TDHCA or the Texas State Affordable Housing Corporation, the greater of \$50 million or 1.70 percent of the available state ceiling, rather than \$40 million.

(2) if the issuer is an issuer of a state-voted issue, other than THECB, the greater of \$100 million or 3.40 percent of the available state ceiling, rather than \$50 million;

- (3) if the issuer of a state-voted issue is THECB, the greater of \$200 million; or 6.80 percent of the available state ceiling, rather than \$75 million;
- (4) if the issuer is an issuer of qualified small issue bonds and enterprises zone facility bonds, the amount to which the Internal Revenue Code limits issuers of those bonds;
- (5) if the issuer is an issuer of qualified residential rental project bonds, the greater of \$50 million or 1.70 percent of the available state ceiling; or
- (6) if the issuer is any other issuer of bonds that require an allocation, the greater of \$100 million or 3.40 percent of the available state ceiling, rather than \$50 million.

Deletes existing text of Subdivision (4) relating to a certain allocation issuers of qualified residential rental project bonds and deletes existing text of Subdivision (5) relating to a certain allocation for an issuer authorized by Section 53B.47, Education Code, to issue qualified student loan bonds. Creates Subdivision (4) from existing text, redesignates existing Subdivisions (4)–(5) as Subdivisions (5)–(6), and makes nonsubstantive changes throughout.

SECTION 14. Amends Sections 1372.042(a), (a-1), (b), and (c), Government Code, as follows:

(a) Requires an issuer other than an issuer of qualified residential rental project bonds, an issuer of state-voted issues, a qualified nonprofit corporation issuer of qualified student loan bonds, or an issuer of qualified mortgage bonds to close on the bonds for which the reservation was granted not later than the 150th day, rather than requiring an issuer other than an issuer of qualified mortgage bonds to close on the bonds for which the reservation was granted not later than the 120th day, after the reservation date.

(a-1) Requires an issuer of qualified residential rental project bonds to close on the bonds for which the reservation was granted not later than the 180th, rather than 150th, day after the reservation date. Requires an issuer, if an issuer of qualified residential rental project bonds fails to close on the bonds for which a reservation was granted, the issuer to pay the full closing fee provided by Section 1372.006(b) (relating to a required a closing fee) if the application is not withdrawn before the 150th, rather than 120th, day after the reservation date.

(b) Requires an issuer of state-voted issues, a qualified nonprofit corporation issuer of qualified student loan bonds, or an issuer of qualified mortgage revenue bonds to close on the bonds for which the reservation was granted not later than the 210th day after the reservation date, rather than requiring an issuer of state-voted issues or an issuer of qualified mortgage revenue bonds to close on the bonds for which the reservation was granted not later than the 180th day after the reservation date.

(c) Makes conforming changes to this subsection.

SECTION 15. Amends Section 1372.043, Government Code, to make conforming changes.

SECTION 16. Amends Section 1372.069, Government Code, by amending Subsection (c) and adding Subsection (e), as follows:

(c) Creates Subdivision (1) from existing text and authorizes an issuer to apply for the carryforward designation of an amount that is not more than, rather than prohibiting an issuer from applying for the carryforward designation of an amount that is greater than:

- (1) \$50 million; or
- (2) 1.70 percent of the available state ceiling.

(e) Requires a carryforward designation granted under this section (Application for Carryforward Designation; Limitations) to comply with the Internal Revenue Code of 1986.

SECTION 17. Amends Section 1372.073, Government Code, as follows:

Sec. 1372.073. DESIGNATION BY BOARD OF UNENCUMBERED STATE CEILING. Authorizes BRB on the last business day of the year to assign as carryforward to a state agency or to an issuer that was created to act on behalf of this state at the request of the issuer, rather than to state agencies at their request, and in the order received any state ceiling that is not reserved or designated as carryforward and for which no application for carryforward is pending.

SECTION 18. Amends Subchapter C, Chapter 1372, Government Code, by adding Section 1372.074, as follows:

Sec. 1372.074. REASSIGNMENT OF CARRYFORWARD DESIGNATION. (a) Authorizes an issuer, after one year from the initial carryforward designation, to reassign all or part of the carryforward designation to a new project if the issuer provides:

- (1) the designation on a form described by Section 1372.070 (Form and Contents of Application for Carryforward Application);
- (2) a written request signed by an authorized representative of the issuer;
- (3) the issuing board resolution authorizing the carryforward designation reassignment with an original signature by an officer of the issuer;
- (4) applicable fees under Section 1372.006 (Fees);
- (5) an opinion of legal counsel stating that the carryforward designation reassignment does not conflict with Section 146, Internal Revenue Code of 1986; and
- (6) any other information required by BRB.

(b) Requires a new project that is reassigned a carryforward designation under this section to close within the time period allowed by the Internal Revenue Code of 1986.

(c) Authorizes an unutilized carryforward designation available after a project closes on a carryforward designation under Section 1372.069 to be used by the issuer for other projects subject to Subsection (b) and Subsection 1372.061(b) (relating to a limitation on issuance of bonds).

SECTION 19. Amends Sections 53B.02(2) and (7), Education Code, as follows:

(2) Defines "alternative education loan" as a loan other than a guaranteed student loan that is made to a student, a former student, or any other person for the benefit of the student or former student for the purpose of financing or refinancing all or part of the student's or former student's cost of attendance at an accredited institution, rather than a loan other than a guaranteed student loan that is made to or for the benefit of a student for the purpose of financing all or part of the student's cost of attendance at an accredited institution. Provides that the term includes:

- (A) indebtedness that meets the definition of a qualified education loan under Section 221(d)(1), Internal Revenue Code of 1986; and
- (B) indebtedness used to refinance indebtedness that meets the definition of a qualified education loan under Section 221(d)(1), Internal Revenue Code of 1986.

(7) Defines "cost of attendance" as all costs of a student or former student incurred in connection with that student's or former student's program of study at an accredited institution, as determined by the institution, including certain expenses, rather than all costs of a student incurred in connection with a program of study at an accredited institution, as determined by the institution, including certain expenses.

SECTION 20. Amends Sections 53B.47(b), (d), and (h), Education Code, as follows:

(b) Authorizes an authority to cause money to be expended to make or purchase for its account guaranteed student loans that are guaranteed by the Texas Guaranteed Student Loan Corporation, other guaranteed student loans, or alternative education loans that are executed by or on behalf of students or former students, rather than on behalf of students, who:

(1) makes no changes to this subdivision; or

(2) have been admitted to attend or who attended, rather than admitted to attend, an accredited institution within this state.

(d) Prohibits this section from being construed as a prohibition against establishing policies to limit the purchase of guaranteed student loans or alternative education loans executed by or on behalf of students or former students who are attending or who attended school in a certain geographical area or by or on behalf of students or former students who are residents of the area, rather than requiring that nothing in this section be construed as a prohibition against establishing policies to limit the purchase of guaranteed student loans or alternative education loans executed by students attending school in a certain geographical area or by students who are residents of the area.

(h) Prohibits an alternative education loan from being in an amount that exceeds the amount permitted under Section 144(b)(1)(B), Internal Revenue Code of 1986, rather than from being in an amount in excess of the difference between the cost of attendance and the amount of other student assistance to the student, other than loans under Section 428B(a)(1), Higher Education Act of 1965 (20 U.S.C. Section 1078-2) (relating to parent loans), for which the student borrower may be eligible.

SECTION 21. Repealer: Section 1372.001(18) (relating to defining "water development issue"), Government Code.

Repealer: Section 1372.0231(c) (relating to requiring BRB to grant reservations, with respect to a certain amount of the state ceiling set aside, in a manner that ensures that not more than 50 percent of the set-aside amount is used for proposed projects that are located in qualified census tracts as defined by the most recent publication by the United States Department of Housing and Urban Development), Government Code.

Repealer: Section 1372.0231(e) (relating to requiring BRB, until March 1 of each year, for each of the uniform state service regions containing Dallas or Houston, to reserve a total of \$15 million of the state ceiling set aside for the region for certain projects), Government Code.

Repealer: Section 1372.037(b) (relating to authorizing BRB, in addition to certain reservations, to grant to the Texas Water Development Board a reservation for not more than \$100 million of the available state ceiling for a water development issue), Government Code.

SECTION 22. Provides that Chapter 1372, Government Code, as amended by this Act, applies to the allocation of the available state ceiling under that chapter beginning with the 2020 program year.

SECTION 23. Effective date: September 1, 2019.