

BILL ANALYSIS

C.S.S.B. 1664
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Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Private Activity Bond Program is a federal program administered by the Texas Bond Review Board (“the board”) to assist in financing eligible privately owned public-purpose projects. Eligible projects include housing, student loans, industrial development, pollution control, and certain “state-voted” issues which have been approved by Texas voters. Each year, Texas is permitted to authorize an amount of private activity bonds based on the state’s population. In 2002, the state volume cap was almost \$1.6 billion, and the amount will continue to grow because of Texas’ population growth and inflationary adjustments. This state volume cap is allocated among categories of projects based on statutory formulas, and the board holds a lottery to determine which projects are funded within each category. Applications for reservations of the state volume cap far exceed the amounts available every year. For 2002, there were more than \$2.2 billion in unsatisfied requests.

C.S.S.B. 1664 is the result of the recommendations of the Joint Interim Committee on Private Activity Bonds. The bill changes the allocation among categories to better reflect the current needs of the state and makes numerous changes to the administration of the program so that it may be more fairly and efficiently operated.

RULEMAKING AUTHORITY

It is the committee’s opinion that rulemaking authority is expressly granted to the Texas Bond Review Board in SECTION 8 (Section 1372.0281, Government Code) of this bill.

ANALYSIS

C.S.S.B. 1664 reenacts and amends Section 1372.022, Government Code, as amended, to change the allocation of the state ceiling, when computed on the basis of at least \$75 per capita. Specifically, the bill adjusts the allocation of reservations for

- Mortgage bonds to 28 percent from 29.6 percent;
- Small issue and enterprise zone facility bonds to 2 percent from 4.6 percent;
- Residential rental project bonds to 22 percent from 23 percent;
- Student loan bonds to 10.5 percent from 8.8 percent; and
- Other bonds to 29.5 percent from 26 percent.

The allocation of the state ceiling for state-voted issues is unchanged by the bill at 8 percent. The bill deletes language relating to bonds issued before September 1, 2003.

Mortgage Bonds

C.S.S.B. 1664 reduces the allocation of the state ceiling for qualified mortgage bonds to 28 percent from 29.6 percent.

The bill amends Section 1372.028, Government Code to permit an issuer that did not receive a reservation at the time of application for the lottery to file a statement explaining any changes to its application in lieu of filing a new complete application for the next program year. Such an issuer must nonetheless pay the same application fee. The bill exempts the Texas State Affordable Housing Corporation from certain

requirements to reserve half of its allocated funds for certain purposes for six months.

Residential Rental Project Bonds

C.S.S.B. 1664 reduces the allocation of the state ceiling for qualified residential rental project bonds to 22 percent from 23 percent. The bill retains the current law set aside of 25 percent of this amount to the Texas Department of Housing and Community Affairs (TDHCA) and 75 percent to local housing finance corporations.

The bill amends Section 1372.0231, Government Code to alter the allocation of private activity bonds allocated to local housing finance corporations for reservations of issuers of qualified residential rental project bonds. Before June 1 of each year, the board shall allocate the set aside to the uniform state service regions on the basis of population, but only among those regions within which an issuer has submitted an application on or before March 1. Until May 15, for any such region which includes Austin, Dallas, or Houston, the board shall reserve \$15 million of the set aside for each region for areas that lie outside of the applicable metropolitan statistical area. The bill deletes language which required this reservation to be population-based. The bill provides that an application for an issuer that is submitted after the deadline shall have a lower priority than every application submitted by that deadline.

The bill reenacts and amends Section 1372.0321, Government Code to alter the criteria for which the board gives first priority in granting reservations to issuers of qualified residential rental project bonds. In lieu of the current criteria, the bill provides three specific types of projects eligible for first-priority status based on maximum allowable rent, occupant income limitations, and/or location, as applicable. The bill retains the current criteria for second- and third-priority designations.

The bill amends Section 1372.006, Government Code to increase the nonrefundable fee that must accompany applications for qualified residential rental project bonds \$5,000 from \$500. The board shall retain \$1,000 of this fee to offset the costs of administering the private activity bond program and shall transfer the remaining \$4,000 to TDHCA for use in the affordable housing research and information program. The bill clarifies that qualified residential rental project bonds, subject to the priority system, are among the categories for which the board shall grant reservations in the order determined by lot.

The bill extends the date by which an issuer of qualified residential rental project bonds must close on the bonds by 30 days to the 150th day after the reservation. The issuer must pay the full closing fee if the bond is not issued and the application is not withdrawn before the 120th day after the reservation.

Student Loan Bonds

C.S.S.B. 1664 increases the allocation of the state ceiling for qualified student loan bonds to 10.5 percent from 8.8 percent.

The bill amends Section 1372.033, Government Code to provide that only a qualified nonprofit corporation may apply for a student loan bond allocation. The bill requires applications for a student loan bond allocation to include an audited statement certified by an officer of the applicant and notarized, and the bill outlines the content of this statement. Each qualified nonprofit corporation applying for an allocation is entitled to receive a floor allocation, with certain exceptions. If the sum of all floor allocations is less than the total amount to be allocated, each qualified applicant will receive a share of the remaining allocation based on specified criteria. The bill prohibits a recipient of a student loan bond allocation from transferring it to another entity or loaning to any other entity (other than a student) any proceeds from the allocation. The bill adds several definitions to Section 1372.033, and it deletes all current language in Section 1372.033.

The bill adds new Section 1372.0281 to the Government Code to require issuers of qualified student loan bonds to provide additional information together with their applications, in accordance with a rule issued by the board. The bill identifies additional information which may be required by the board. The bill

repeals Section 53.47(k), Education Code, which would have sunset Subsection (a)(6) of that section, which defines “qualified nonprofit corporation,” and expanded the term to mean any nonprofit entity authorized by a city to perform the functions of a qualified nonprofit corporation.

State-Voted Issues

C.S.S.B. 1664 maintains the allocation of the state ceiling for state-voted issues at 8 percent. The bill clarifies that any percentage of state-voted issues requested in excess of 8 percent, and not 13 percent, is removed from other issuers and available for issuers of state-voted issues. The bill reduces the maximum additional allocation for state-voted issues to 8 percent from 13 percent of the state ceiling.

The bill amends Section 1372.037, Government Code to permit the board to grant to the Texas Water Development Board a reservation of not more than \$100 million of the available state ceiling for a water development issue, in addition to the \$50 million currently permitted for a state-voted issue. The bill adds a definition for “water development issue.”

The bill extends the date by which an issuer of qualified residential rental project bonds must close on the bonds by 60 days to the 180th day after the reservation.

Research

C.S.S.B. 1664 adds new Section 2306.259 to the Government Code to establish an affordable housing research and information program and require TDHCA to contract for various periodic market studies and other research. The research program is to be funded from the increased application fees paid by issuers of qualified residential rental project bonds.

Other Administration

C.S.S.B. 1664 amends Section 1372.036, Government Code to permit the board to offer partial reservations once to each applicant until it is accepted or additional volume is returned in an amount sufficient to grant a full reservation.

The bill amends Section 1372.028, Government Code to move forward by five days to October 5 the date after which an issuer may apply for a reservation for the following program year. The bill amends Section 1372.039, Government Code to provide a three-day extension to the 35-day period within which an issuer to certify the principal of the bonds. Evidence regarding extenuating circumstances which prevented a timely filing must be included, and the board may, upon reviewing the evidence, permit the late filing.

The bill amends Section 1372.027, Government Code to require the board to publish certain information about the state ceiling on its Internet site at least weekly. The bill deletes the current requirement that it publish this information at least biweekly in the *Texas Register*.

EFFECTIVE DATE

September 1, 2003. The bill’s provisions apply to a reservation of the state ceiling granted on or after January 1, 2004.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds language amending Section 1372.033, Government Code regarding the priorities and reservations of qualified student loan bonds. The substitute adds language amending Section 1372.036(b), Government Code regarding the offering of partial reservations. The substitute adds the exemption of the Texas State Affordable Housing Corporation from the requirements of Section 1372.040, Government Code. The substitute adds language moving the application date forward five days to October 5. The substitute adds language requiring the board to publish certain information on its Internet site. The substitute

makes numerous other technical corrections and clarifications.