

By: Menendez, Chisum

H.B. No. 3874

Substitute the following for H.B. No. 3874:

By: Swinford

C.S.H.B. No. 3874

A BILL TO BE ENTITLED

AN ACT

relating to the issuance of private activity bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1372.002, Government Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) For purposes of this chapter, a project is:

(1) an eligible facility or facilities that are [~~is~~] proposed to be financed, in whole or in part, by an issue of qualified residential rental project bonds; [~~or~~]

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

(3) an eligible facility that is proposed to be financed, in whole or in part, by an issue of bonds other than bonds described by Subdivision (1) or (2).

(c) For purposes of Subsection (a)(1), an application under this chapter may include either the rehabilitation 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 with a population of less than 75,000;

1 or

2 (2) in a county where the area median income is less
3 than the area median income for the state, provided that the units
4 are located in that portion of the county that is not included in a
5 metropolitan statistical area containing one or more projects that
6 are proposed to be financed, in whole or in part, by an issuance of
7 bonds.

8 (d) For purposes of Subsection (c), in an application for a
9 reservation, the number of sites may be reduced as needed without
10 affecting their status as a project for purposes of the
11 application, provided that the final application for a reservation
12 contains at least two sites.

13 SECTION 2. Section 1372.006(a), Government Code, is amended
14 to read as follows:

15 (a) An application for a reservation under Subchapter B or a
16 carryforward designation under Subchapter C must be accompanied by
17 a nonrefundable fee in the amount of \$500, except that for issuers
18 of qualified residential rental project bonds the application must
19 be accompanied by:

20 (1) a nonrefundable fee of \$1,000 payable to the board
21 [\$5,000, of which the board shall retain \$1,000] to offset the costs
22 of the private activity bond allocation program and the
23 administration of that program; and

24 (2) a nonrefundable fee of [which the board shall
25 transfer] \$4,000 payable [through an interagency agreement] to the
26 Texas Department of Housing and Community Affairs to be used for
27 marketing, research, or educational awareness programs concerning

1 low-income housing in this state [~~for use in the affordable housing~~
2 ~~research and information program as provided by Section 2306.259~~].

3 SECTION 3. Section 1372.022, Government Code, is amended to
4 read as follows:

5 Sec. 1372.022. AVAILABILITY OF STATE CEILING TO ISSUERS.

6 (a) If the state ceiling is computed on the basis of \$75 per capita
7 or a greater amount, before August 1 [~~15~~] of each year:

8 (1) 28.0 percent of the state ceiling is available
9 exclusively for reservations by issuers of qualified mortgage
10 bonds;

11 (2) 8 percent of the state ceiling is available
12 exclusively for reservations by issuers of state-voted issues;

13 (3) 2.0 percent of the state ceiling is available
14 exclusively for reservations by issuers of qualified small issue
15 bonds and enterprise zone facility bonds;

16 (4) 22.0 percent of the state ceiling is available
17 exclusively for reservations by issuers of qualified residential
18 rental project bonds;

19 (5) 10.5 percent of the state ceiling is available
20 exclusively for reservations by issuers of qualified student loan
21 bonds authorized by Section 53.47, Education Code, that are
22 nonprofit corporations able to issue a qualified scholarship
23 funding bond as defined by Section 150(d)(2), Internal Revenue Code
24 (26 U.S.C. Section 150(d)(2)); and

25 (6) 29.5 percent of the state ceiling is available
26 exclusively for reservations by any other issuer of bonds that
27 require an allocation.

1 (b) On and after August 1 [~~15~~] but before September 1, that
2 portion of the state ceiling available for reservations, except as
3 provided by Subsection (c), becomes available exclusively for [~~all~~
4 ~~applications for~~] reservations by issuers of qualified residential
5 rental project bonds in the order determined by the board by lot,
6 subject to Section 1372.0321. On and after September 1, that
7 portion of the state ceiling available for reservations becomes
8 available to any issuer for any bonds that require an allocation,
9 subject to the provisions of this subchapter.

10 (c) Any reservations granted to qualified residential
11 rental project bond issuers under Subsection (b) on or after August
12 1 and before September 1 must be made in addition to any other
13 specific set-aside otherwise indicated in this chapter.

14 SECTION 4. Section 1372.023, Government Code, is amended to
15 read as follows:

16 Sec. 1372.023. DEDICATION OF PORTIONS OF STATE CEILING TO
17 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS. (a) Until
18 August 1 [~~15~~], of that portion of the state ceiling that is
19 available exclusively for reservations by issuers of qualified
20 mortgage bonds, one-third is available exclusively to the Texas
21 Department of Housing and Community Affairs for the purpose of
22 issuing qualified mortgage bonds.

23 (b) Until August 1 [~~15~~], of that portion of the state
24 ceiling that is available exclusively for reservations by issuers
25 of qualified residential rental project bonds, one-fifth is
26 available exclusively to the Texas Department of Housing and
27 Community Affairs in the manner described by Section 1372.0231.

1 (c) Before August 1, the [~~The~~] Texas Department of Housing
2 and Community Affairs may not reserve a portion of the state ceiling
3 that is available exclusively for reservations by issuers of
4 qualified residential rental project bonds other than the portion
5 dedicated to the department under Subsection (b) and Section
6 1372.0231(a).

7 SECTION 5. Sections 1372.0231(a), (e), (f), and (i),
8 Government Code, are amended to read as follows:

9 (a) Until August 1 [~~15~~], of that portion of the state
10 ceiling that is available exclusively for reservations by issuers
11 of qualified residential rental project bonds:

12 (1) 20 percent is available exclusively to the Texas
13 Department of Housing and Community Affairs in the manner described
14 by Subsection (b);

15 (2) 70 percent is available exclusively to housing
16 finance corporations in the manner described by Subsections
17 (c)-(f); and

18 (3) 10 percent is available exclusively to the Texas
19 State Affordable Housing Corporation in the manner described by
20 Subsection (b-1).

21 (e) Until March 1 [~~May 15~~] of each year, for each of the
22 uniform state service regions containing [~~Austin,~~] Dallas[~~7~~] or
23 Houston, the board shall reserve \$15 million of the state ceiling
24 set aside for the region under Subsection (d) for the areas in the
25 region that are located outside of a metropolitan statistical area.

26 (f) In each area described by Subsection (d) [~~or (e)~~], the
27 board shall grant reservations based on the priority levels of

1 proposed projects as described by Section 1372.0321.

2 (i) Before June 1, the board shall apportion the amount of
3 the state ceiling set aside under Subsection (a)(2) only among
4 uniform state service regions with respect to which an issuer has
5 submitted an application for a reservation of the state ceiling on
6 or before February [~~March~~] 1.

7 SECTION 6. Section 1372.0231(b), Government Code, as
8 amended by Section 4, Chapter 1329, Acts of the 78th Legislature,
9 Regular Session, 2003, is amended to read as follows:

10 (b) With respect to the amount of the state ceiling set
11 aside under Subsection (a)(1), after the board's review and
12 approval, the board shall grant reservations at the direction of
13 the Texas Department of Housing and Community Affairs in accordance
14 with Section 1372.0321 and criteria established by rules of that
15 department. Subsequent allocations the board makes on behalf of
16 that department are subject to review and approval by the board in
17 accordance with Section 1231.041. Subject to Sections 1372.0321(a)
18 and (b), the board shall grant reservations:

19 (1) in a manner that ensures that:

20 (A) the set-aside amount is used for proposed
21 projects that are located throughout the state; and

22 (B) not more than 50 percent of the set-aside
23 amount is used for proposed projects that are located in qualified
24 census tracts as defined by Section 143(j), Internal Revenue Code
25 of 1986; and

26 (2) in the order determined by lot, but only for those
27 reservations granted between August 1 [~~15~~] and November 30 of the

1 program year.

2 SECTION 7. Section 1372.026(a), Government Code, is amended
3 to read as follows:

4 (a) The maximum amount of the state ceiling that may be
5 reserved before August 1 [~~15~~] by a housing finance corporation for
6 the issuance of qualified mortgage bonds may not exceed the amount
7 computed as follows:

8 (1) if the local population of the housing finance
9 corporation is 300,000 or more, \$22.5 million plus the product of
10 the amount by which the local population exceeds 300,000 multiplied
11 by \$11.25;

12 (2) if the local population of the housing finance
13 corporation is 200,000 or more but less than 300,000, \$20 million
14 plus the product of the amount by which the local population exceeds
15 200,000 multiplied by \$22.5;

16 (3) if the local population of the housing finance
17 corporation is 100,000 or more but less than 200,000, \$15 million
18 plus the product of the amount by which the local population exceeds
19 100,000 multiplied by \$50; or

20 (4) if the local population of the housing finance
21 corporation is less than 100,000, the product of the local
22 population multiplied by \$150.

23 SECTION 8. Section 1372.0321, Government Code, is amended
24 by amending Subsections (a) and (b) and adding Subsections (c) and
25 (d) to read as follows:

26 (a) In granting reservations to issuers of qualified
27 residential rental project issues, the board shall give [~~first~~]

1 priority as follows [~~to~~]:

2 (1) first priority to:

3 (A) any project that qualifies under Section
4 1372.002(c);

5 (B) any single site qualified residential rental
6 project that is located in a county with a population of less than
7 75,000; or

8 (C) any project that is located in a county where
9 the area median income is less than the area median income for the
10 state and that is not located in a metropolitan statistical area or
11 primary metropolitan statistical area;

12 (2) second priority to projects in which:

13 (A) 15 [~~50~~] percent or more of the [~~residential~~]
14 units [~~in the project~~] are:

15 (i) under the restriction that the maximum
16 allowable rents are an amount equal to 30 percent of 30 [~~50~~] percent
17 of the area median family income minus an allowance for utility
18 costs authorized under the federal low-income housing tax credit
19 program; and

20 (ii) reserved for families or [~~and~~]
21 individuals with incomes that do [~~earning~~] not exceed 30 [~~more than~~
22 ~~50~~] percent of the area median income of the county; [~~and~~]

23 (B) 83 [~~the remaining 50~~] percent or more of the
24 [~~residential~~] units [~~in the project~~] are:

25 (i) under the restriction that the maximum
26 allowable rents are an amount equal to 30 percent of 60 percent of
27 the area median family income minus an allowance for utility costs

1 authorized under the federal low-income housing tax credit program;
2 and

3 (ii) reserved for families or [~~and~~]
4 individuals with incomes that do [~~earning~~] not exceed [~~more than~~]
5 60 percent of the area median income of the county; and

6 (C) two percent or less of the units are not rent
7 or income restricted units;

8 (3) third priority to [(2)] projects in which:

9 (A) 49 [~~15~~] percent or more of the [~~residential~~]
10 units [~~in the project~~] are:

11 (i) under the restriction that the maximum
12 allowable rents are an amount equal to 30 percent of 50 [~~30~~] percent
13 of the area median family income minus an allowance for utility
14 costs authorized under the federal low-income housing tax credit
15 program; and

16 (ii) reserved for families or [~~and~~]
17 individuals with incomes that do [~~earning~~] not exceed 50 [~~more than~~]
18 ~~30~~] percent of the area median income; [~~and~~]

19 (B) 49 [~~the remaining 85~~] percent or more of the
20 [~~residential~~] units [~~in the project~~] are:

21 (i) under the restriction that the maximum
22 allowable rents are an amount equal to 30 percent of 60 percent of
23 the area median family income minus an allowance for utility costs
24 authorized under the federal low-income housing tax credit program;
25 and

26 (ii) reserved for families or [~~and~~]
27 individuals with incomes that do [~~earning~~] not exceed [~~more than~~]

1 60 percent of the area median income; and

2 (C) two percent or less of the units are not rent
3 or income restricted units;

4 (4) fourth priority to [(3)] projects in which:

5 (A) the development is located in a census tract
6 in which the area median income is higher than the area median
7 income for the county in which the tract is located;

8 (B) 98 [in which 100] percent or more of the
9 [residential] units [in the project] are:

10 (i) under the restriction that the maximum
11 allowable rents are an amount equal to 30 percent of 60 percent of
12 the area median family income minus an allowance for utility costs
13 authorized under the federal low-income housing tax credit program;
14 and

15 (ii) reserved for families or [~~and~~]
16 individuals with incomes that do [earning] not exceed [more than]
17 60 percent of the area median income of the county; and

18 (C) two percent or less of the units are not rent
19 or income restricted units [(B) which are located in a census tract
20 in which the median income, based on the most recent information
21 published by the United States Bureau of the Census, is higher than
22 the median income for the county, metropolitan statistical area,
23 or primary metropolitan statistical area in which the census tract
24 is located as established by the United States Department of
25 Housing and Urban Development]; [or]

26 (5) fifth priority to projects in which:

27 (A) 98 percent or more of the units are:

1 (i) under the restriction that the maximum
2 allowable rents are an amount equal to 30 percent of 60 percent of
3 the area median family income minus an allowance for utility costs
4 authorized under the federal low-income housing tax credit program;
5 and

6 (ii) reserved for families or individuals
7 with incomes that do not exceed 60 percent of the area median income
8 of the county; and

9 (B) two percent or less of the units are not rent
10 or income restricted units; and

11 (6) sixth priority to any other qualified residential
12 rental project [~~(4) on or after June 1, projects that are located in~~
13 counties, metropolitan statistical areas, or primary metropolitan
14 statistical areas with area median family incomes at or below the
15 statewide median family income established by the United States
16 Department of Housing and Urban Development].

17 (b) The board may not reserve a portion of the state ceiling
18 for a first through fifth [~~or second~~] priority project described by
19 this section unless the board receives evidence that an application
20 has been filed with the Texas Department of Housing and Community
21 Affairs for the low-income housing tax credit that is available for
22 multifamily transactions that are at least 51 percent financed by
23 tax-exempt private activity bonds.

24 (c) Applicants who qualify under Section 1372.0231(b-1) or
25 (e) are not eligible for consideration as a first priority.

26 (d) For the purposes of Subsections (a)(1)-(5), the area
27 median income must be based on the most recent information

1 published by the United States Census Bureau.

2 SECTION 9. Section 1372.037(a), Government Code, is amended
3 to read as follows:

4 (a) Except as provided by Subsection (b), before September 1
5 the board may not grant for any single project a reservation for
6 that year that is greater than:

7 (1) \$25 million, if the issuer is an issuer of
8 qualified mortgage bonds, other than the Texas Department of
9 Housing and Community Affairs;

10 (2) \$50 million, if the issuer is an issuer of a
11 state-voted issue, other than the Texas Higher Education
12 Coordinating Board, or \$75 million, if the issuer is the Texas
13 Higher Education Coordinating Board;

14 (3) the amount to which the Internal Revenue Code
15 limits issuers of qualified small issue bonds and enterprise zone
16 facility bonds, if the issuer is an issuer of those bonds;

17 (4) the lesser of \$20 [~~\$15~~] million or 15 percent of
18 the amount set aside for reservation by issuers of qualified
19 residential rental project bonds with respect to a single site, if
20 the issuer is an issuer of those bonds;

21 (5) the lesser of \$25 million or 15 percent of the
22 amount set aside for reservation by issuers of qualified
23 residential rental project bonds with respect to multiple sites as
24 described by Section 1372.002(c), if the issuer is an issuer of
25 those bonds;

26 (6) the amount as prescribed in Sections 1372.033(d),
27 (e), and (f), if the issuer is an issuer authorized by Section

1 53.47, Education Code, to issue qualified student loan bonds; or

2 (7) [~~(6)~~] \$50 million, if the issuer is any other
3 issuer of bonds that require an allocation.

4 SECTION 10. Section 1372.042, Government Code, is amended
5 by amending Subsections (a-1) and (c) and adding Subsections (a-2)
6 through (a-4) to read as follows:

7 (a-1) An issuer of qualified residential rental project
8 bonds shall close on the bonds for which the reservation was granted
9 for a single site application not later than the 150th day after the
10 reservation date. If the [an] issuer to which this subsection
11 applies [~~of qualified residential rental project bonds~~] fails to
12 close on the bonds for which a reservation was granted, the issuer
13 shall pay the full closing fee provided by Section 1372.006(b) if
14 the application is not withdrawn before the 120th day after the
15 reservation date.

16 (a-2) An issuer of qualified residential rental project
17 bonds shall close on the bonds for which the reservation was granted
18 for a project described by Section 1372.002(c) not later than the
19 180th day after the reservation date. If the issuer fails to close
20 on the bonds for which a reservation was granted, the issuer shall
21 pay the full closing fee provided by Section 1372.006(b) if the
22 application is not withdrawn before the 150th day after the
23 reservation date.

24 (a-3) Notwithstanding Subsections (a-1) and (a-2), an
25 issuer of qualified residential rental project bonds may request
26 the following three extensions, subject to the payment of the
27 following fees by the issuer directly to the housing trust fund

1 administered under Subchapter I:

2 (1) one extension of not more than 30 days for a fee of
3 \$20,000;

4 (2) after the expiration of an extension under
5 Subdivision (1), a second extension of not more than 30 days for a
6 fee of \$40,000; and

7 (3) after the expiration of an extension under
8 Subdivision (2), a third extension of not more than 30 days for a
9 fee of \$60,000.

10 (a-4) Each extension or extension fee described by
11 Subsection (a-3) is independent from any other extension or fee
12 described by that subsection and may not be aggregated with the
13 other extensions and fees, as applicable, for purposes of making a
14 single request for multiple 30-day extensions.

15 (c) Notwithstanding Subsections (a), (a-1), (a-2), (a-3),
16 and (b) if the 120-day period, the 150-day period, [~~or~~] the 180-day
17 period, or any extension period granted, as applicable, expires on
18 or after December 24 of the year in which the reservation was
19 granted, the issuer shall close on the bonds before December 24,
20 except that if the applicable period expires after December 31 of
21 that year, the issuer may notify the board in writing before
22 December 24 of the issuer's election to carry forward the
23 reservation and of the issuer's expected bond closing date. In
24 compliance with the requirements of Section 146(f), Internal
25 Revenue Code of 1986, the board shall file in a timely manner a
26 carryforward election with respect to any bonds expected to close
27 after December 31 to permit the bonds to close by the expected date,

1 except that the board may not file the carryforward election after
2 February 15 of the year following the year in which the reservation
3 was granted. The grant of the reservation for the balance of the
4 120-day period, the 150-day period, or the 180-day period, as
5 applicable, is automatically and immediately reinstated on the
6 board's filing of a carryforward election with respect to the
7 reservation.

8 SECTION 11. Section 1372.043, Government Code, is amended
9 to read as follows:

10 Sec. 1372.043. CANCELLATION OF RESERVATION ON ISSUER'S
11 FAILURE TO TIMELY CLOSE ON BONDS. (a) If an issuer of qualified
12 residential rental project bonds does not close on the issuer's
13 bonds as required by Section 1372.042:

14 (1) the reservation for the issue is canceled; and
15 (2) for the period beginning on the reservation date
16 and ending on the last allowable date under that section, including
17 any qualified extensions:

18 (A) the issuer may not submit an application for
19 a reservation for the same project; and

20 (B) the issuer is eligible for a carryforward
21 designation for the project only as provided by Subchapter C.

22 (b) If an issuer does not close on the issuer's bonds as
23 required by Section 1372.042:

24 (1) the reservation for the issue is canceled; and

25 (2) for the period beginning on the reservation date
26 and ending on the 150th day after the reservation date or on the
27 210th day after the reservation date if the issuer is an issuer of

1 qualified mortgage bonds:

2 (A) no issuer may submit an application for a
3 reservation for the same project; and

4 (B) the issuer is eligible for a carryforward
5 designation for the project only as provided by Subchapter C.

6 SECTION 12. The following sections of the Government Code
7 are repealed:

8 (1) Sections 1372.0321(a-1), as added by Section 28,
9 Chapter 330, Acts of the 78th Legislature, Regular Session, 2003;
10 and

11 (2) Sections 1372.0321(a-1) and (a-2), as added by
12 Section 10, Chapter 1329, Acts of the 78th Legislature, Regular
13 Session, 2003.

14 SECTION 13. The change in law made by this Act in amending
15 Chapter 1372, Government Code, applies only to a reservation of
16 state ceiling granted on or after January 1, 2008.

17 SECTION 14. This Act takes effect September 1, 2007.