

By: Menendez

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 an eligible group of facilities that is proposed to be financed, in whole or in part, by an issue of 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.

(c) For purposes of Subsection (a), a group of eligible facilities includes an application under this chapter that includes both 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;  
or

(2) in a county where the area median income is less than the area median income for the state, provided that the units are located in that portion of the county that is not included in a

1 metropolitan statistical area containing one or more projects that  
2 are proposed to be financed, in whole or in part, by an issuance of  
3 bonds.

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

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

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

16 (1) a nonrefundable fee of \$1,000 payable to the board  
17 [\$5,000, of which the board shall retain \$1,000] to offset the costs  
18 of the private activity bond allocation program and the  
19 administration of that program; and

20 (2) a nonrefundable fee of [which the board shall  
21 transfer] \$4,000 payable [through an interagency agreement] to the  
22 Texas Department of Housing and Community Affairs to be used for  
23 marketing, research, or educational awareness programs concerning  
24 low-income housing in this state [for use in the affordable housing  
25 research and information program as provided by Section 2306.259].

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

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

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

4           (1) 28.0 percent of the state ceiling is available  
5 exclusively for reservations by issuers of qualified mortgage  
6 bonds;

7           (2) 8 percent of the state ceiling is available  
8 exclusively for reservations by issuers of state-voted issues;

9           (3) 2.0 percent of the state ceiling is available  
10 exclusively for reservations by issuers of qualified small issue  
11 bonds and enterprise zone facility bonds;

12           (4) 22.0 percent of the state ceiling is available  
13 exclusively for reservations by issuers of qualified residential  
14 rental project bonds;

15           (5) 10.5 percent of the state ceiling is available  
16 exclusively for reservations by issuers of qualified student loan  
17 bonds authorized by Section 53.47, Education Code, that are  
18 nonprofit corporations able to issue a qualified scholarship  
19 funding bond as defined by Section 150(d)(2), Internal Revenue Code  
20 (26 U.S.C. Section 150(d)(2)); and

21           (6) 29.5 percent of the state ceiling is available  
22 exclusively for reservations by any other issuer of bonds that  
23 require an allocation.

24       (b) On and after August 1 [~~15~~] but before September 1, that  
25 portion of the state ceiling available for reservations, except as  
26 provided by Subsection (c), becomes available exclusively for [~~all~~  
27 ~~applications for~~] reservations by issuers of qualified residential

1 rental project bonds in the order determined by the board by lot,  
2 subject to Section 1372.0321. On and after September 1, that  
3 portion of the state ceiling available for reservations becomes  
4 available to any issuer for any bonds that require an allocation,  
5 subject to the provisions of this subchapter.

6 (c) Any reservations granted to qualified residential  
7 rental project bond issuers under Subsection (b) on or after August  
8 1 and before September 1 must be made in addition to any other  
9 specific set-aside otherwise indicated in this chapter.

10 SECTION 4. Section 1372.023, Government Code, is amended to  
11 read as follows:

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

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

24 (c) Before August 1, the [~~The~~] Texas Department of Housing  
25 and Community Affairs may not reserve a portion of the state ceiling  
26 that is available exclusively for reservations by issuers of  
27 qualified residential rental project bonds other than the portion

1 dedicated to the department under Subsection (b) and Section  
2 1372.0231(a).

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

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

8 (1) 20 percent is available exclusively to the Texas  
9 Department of Housing and Community Affairs in the manner described  
10 by Subsection (b);

11 (2) 70 percent is available exclusively to housing  
12 finance corporations in the manner described by Subsections  
13 (c)-(f); and

14 (3) 10 percent is available exclusively to the Texas  
15 State Affordable Housing Corporation in the manner described by  
16 Subsection (b-1).

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

22 (f) In each area described by Subsection (d) [~~or (e)~~], the  
23 board shall grant reservations based on the priority levels of  
24 proposed projects as described by Section 1372.0321.

25 (i) Before June 1, the board shall apportion the amount of  
26 the state ceiling set aside under Subsection (a)(2) only among  
27 uniform state service regions with respect to which an issuer has

1 submitted an application for a reservation of the state ceiling on  
2 or before February [~~March~~] 1.

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

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

15 (1) in a manner that ensures that:

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

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

22 (2) in the order determined by lot, but only for those  
23 reservations granted between August 1 [~~15~~] and November 30 of the  
24 program year.

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

27 (a) The maximum amount of the state ceiling that may be

1 reserved before August 1 [~~15~~] by a housing finance corporation for  
2 the issuance of qualified mortgage bonds may not exceed the amount  
3 computed as follows:

4 (1) if the local population of the housing finance  
5 corporation is 300,000 or more, \$22.5 million plus the product of  
6 the amount by which the local population exceeds 300,000 multiplied  
7 by \$11.25;

8 (2) if the local population of the housing finance  
9 corporation is 200,000 or more but less than 300,000, \$20 million  
10 plus the product of the amount by which the local population exceeds  
11 200,000 multiplied by \$22.5;

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

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

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

22 (a) In granting reservations to issuers of qualified  
23 residential rental project issues, the board shall give [~~first~~]  
24 priority as follows [~~to~~]:

25 (1) first priority to:

26 (A) any project that qualifies under Section  
27 1372.002(c);

1                    (B) any single site qualified residential rental  
2 project that is located in a county with a population of less than  
3 75,000; or

4                    (C) any project that is located in a county where  
5 the area median income is less than the area median income for the  
6 state and that is not located in a metropolitan statistical area or  
7 primary metropolitan statistical area;

8                    (2) second priority to projects in which:

9                    (A) 15 ~~[50]~~ 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 30 ~~[50]~~ 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 30 ~~[more than~~  
18 ~~50]~~ percent of the area median income of the county; ~~[and]~~

19                    (B) 83 ~~[the remaining 50]~~ 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 of the county; and

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

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

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

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

12 (ii) reserved for families or [and]  
13 individuals with incomes that do [earning] not exceed 50 [more than  
14 30] percent of the area median income; [~~and]~~

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

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

22 (ii) reserved for families or [and]  
23 individuals with incomes that do [earning] not exceed [more than]  
24 60 percent of the area median income; and

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

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

1           (A) the development is located in a census tract  
2 in which the area median income is higher than the area median  
3 income for the county in which the tract is located;

4           (B) 98 [~~in which 100~~] percent or more of the  
5 [~~residential~~] units [~~in the project~~] are:

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

11           (ii) reserved for families or [~~and~~]  
12 individuals with incomes that do [~~earning~~] not exceed [~~more than~~]  
13 60 percent of the area median income of the county; and

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

22           (5) fifth priority to projects in which:

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

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

1 and

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

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

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

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

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

22 (d) For the purposes of Subsections (a)(1)-(5), the area  
23 median income must be based on the most recent information  
24 published by the United States Census Bureau.

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

27 (a) Except as provided by Subsection (b), before September 1

1 the board may not grant for any single project a reservation for  
2 that year that is greater than:

3 (1) \$25 million, if the issuer is an issuer of  
4 qualified mortgage bonds, other than the Texas Department of  
5 Housing and Community Affairs;

6 (2) \$50 million, if the issuer is an issuer of a  
7 state-voted issue, other than the Texas Higher Education  
8 Coordinating Board, or \$75 million, if the issuer is the Texas  
9 Higher Education Coordinating Board;

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

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

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

22 (6) the amount as prescribed in Sections 1372.033(d),  
23 (e), and (f), if the issuer is an issuer authorized by Section  
24 53.47, Education Code, to issue qualified student loan bonds; or

25 (7) [~~6~~] \$50 million, if the issuer is any other  
26 issuer of bonds that require an allocation.

27 SECTION 10. Section 1372.042, Government Code, is amended

1 by amending Subsections (a-1) and (c) and adding Subsections (a-2)  
2 through (a-4) to read as follows:

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

12 (a-2) An issuer of qualified residential rental project  
13 bonds shall close on the bonds for which the reservation was granted  
14 for a project described by Section 1372.002(c) not later than the  
15 180th day after the reservation date. If the issuer fails to close  
16 on the bonds for which a reservation was granted, the issuer shall  
17 pay the full closing fee provided by Section 1372.006(b) if the  
18 application is not withdrawn before the 150th day after the  
19 reservation date.

20 (a-3) Notwithstanding Subsections (a-1) and (a-2), an  
21 issuer of qualified residential rental project bonds may request  
22 the following three extensions, subject to the payment of the  
23 following fees by the issuer directly to the housing trust fund  
24 administered under Subchapter I:

25 (1) one extension of not more than 30 days for a fee of  
26 \$20,000;

27 (2) after the expiration of an extension under

1 Subdivision (1), a second extension of not more than 30 days for a  
2 fee of \$40,000; and

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

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

11 (c) Notwithstanding Subsections (a), (a-1), (a-2), (a-3),  
12 and (b), if the 120-day period, the 150-day period, ~~or~~ the 180-day  
13 period, or any extension period granted, as applicable, expires on  
14 or after December 24 of the year in which the reservation was  
15 granted, the issuer shall close on the bonds before December 24,  
16 except that if the applicable period expires after December 31 of  
17 that year, the issuer may notify the board in writing before  
18 December 24 of the issuer's election to carry forward the  
19 reservation and of the issuer's expected bond closing date. In  
20 compliance with the requirements of Section 146(f), Internal  
21 Revenue Code of 1986, the board shall file in a timely manner a  
22 carryforward election with respect to any bonds expected to close  
23 after December 31 to permit the bonds to close by the expected date,  
24 except that the board may not file the carryforward election after  
25 February 15 of the year following the year in which the reservation  
26 was granted. The grant of the reservation for the balance of the  
27 120-day period, the 150-day period, or the 180-day period, as

1 applicable, is automatically and immediately reinstated on the  
2 board's filing of a carryforward election with respect to the  
3 reservation.

4 SECTION 11. Section 1372.043, Government Code, is amended  
5 to read as follows:

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

10 (1) the reservation for the issue is canceled; and  
11 (2) for the period beginning on the reservation date  
12 and ending on the last allowable date under that section, including  
13 any qualified extensions:

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

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

18 (b) If an issuer of qualified mortgage bonds does not close  
19 on the issuer's bonds as required by Section 1372.042:

20 (1) the reservation for the issue is canceled; and  
21 (2) for the period beginning on the reservation date  
22 and ending on the 150th day after the reservation date or on the  
23 210th day after the reservation date [~~if the issuer is an issuer of~~  
24 ~~qualified mortgage bonds~~]:

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

27 (B) the issuer is eligible for a carryforward

1 designation for the project only as provided by Subchapter C.

2 SECTION 12. The following sections of the Government Code  
3 are repealed:

4 (1) Sections 1372.0321(a-1) and (a-2), as added by  
5 Section 28, Chapter 330, Acts of the 78th Legislature, Regular  
6 Session, 2003; and

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

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

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