

By: Lucio, et al.
(Murphy)

S.B. No. 1474

A BILL TO BE ENTITLED

AN ACT

relating to private activity bonds.

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

SECTION 1. Sections 1372.001(1) and (2), Government Code, are amended to read as follows:

(1) "Additional state ceiling" means authorization under federal law for the issuance of bonds that are tax-exempt private activity bonds subject to the limits imposed by Section 146, Internal Revenue Code (26 U.S.C. Section 146), in an amount in addition to the state ceiling[~~, including 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) "Bonds" means all obligations, including bonds, certificates, or notes, that are:

(A) authorized to be issued by:

(i) the constitution or a statute of this state; or

(ii) the charter of a home-rule municipality; and

(B) either:

(i) subject to the limitations of Section 146, Internal Revenue Code (26 U.S.C. Section 146); or

(ii) with respect to Subchapter D, otherwise entitled to a federal subsidy only if designated for the

1 exemption, credit, or other subsidy, or allocated a portion of a
2 limited amount of obligations for which the exemption, credit, or
3 other subsidy is authorized, by this state or an applicable
4 official or by an issuer to which this state or the applicable
5 official has made an allocation, including exemptions, credits, and
6 other subsidies authorized by~~+~~

7 ~~[(a) the Heartland Disaster Tax~~
8 ~~Relief Act of 2008 (Pub. L. No. 110-343), regarding Hurricane Ike~~
9 ~~disaster area bonds;~~

10 ~~[(b) the American Recovery and~~
11 ~~Reinvestment Act of 2009 (Pub. L. No. 111-5); or~~

12 ~~[(c)] any [other] federal law~~
13 authorizing a federal subsidy.

14 SECTION 2. Sections 1372.002(a) and (c), Government Code,
15 are amended to read as follows:

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

17 (1) an eligible facility or facilities that are
18 proposed to be financed, in whole or in part, by an issue of
19 qualified residential rental project bonds;

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

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

26 (A) if the issuer is the Texas Higher Education
27 Coordinating Board, the provision of financial assistance to

1 students; or

2 (B) if an issuer is authorized by Section 53B.47,
3 Education Code, the provision of guaranteed student loans or
4 alternative education loans that satisfy the requirements of
5 Section 53B.47(b), Education Code; or

6 (4) an eligible facility or facilities that are
7 proposed to be financed, in whole or in part, by an issue of bonds
8 other than bonds described by Subdivision (1), ~~or~~ (2), or (3).

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

15 (1) in a county with a population of less than 100,000
16 [75,000]; or

17 (2) in a county in which the median income is less than
18 the median income for the state, provided that the units are located
19 in that portion of the county that is not included in a metropolitan
20 statistical area containing one or more projects that are proposed
21 to be financed, in whole or in part, by an issuance of bonds.

22 SECTION 3. Section 1372.006(a), Government Code, is amended
23 to read as follows:

24 (a) An application for a reservation under Subchapter B or a
25 carryforward designation under Subchapter C must be accompanied by
26 a nonrefundable fee in the amount of \$500, except that:

27 (1) for projects that include multiple facilities

1 authorized under Section 1372.002(e), the application must be
2 accompanied by a nonrefundable fee in an amount of \$500 for each
3 facility included in the application for the project;

4 (2) for issuers of qualified residential rental
5 project bonds the application must be accompanied by a
6 nonrefundable fee of \$5,000, of which the board shall retain \$1,000
7 to offset the costs of the private activity bond allocation program
8 and the administration of that program and of which the board shall
9 transfer \$4,000 through an interagency agreement to the Texas
10 Department of Housing and Community Affairs for use in the
11 affordable housing research and information program as provided by
12 Section 2306.259; and

13 (3) for a ~~[combined]~~ project that includes multiple
14 qualified residential rental projects authorized under Section
15 1372.002(f), the application must be accompanied by a nonrefundable
16 fee in an amount of \$5,000 for each qualified residential rental
17 project included in the application for the ~~[combined]~~ project,
18 with a maximum total fee of \$25,000. The ~~[the total amount of which~~
19 ~~the]~~ board shall retain 20 percent to offset the costs of the
20 private activity bond allocation program and the administration of
21 that program. The ~~[and of which the]~~ board shall transfer 80
22 percent through an interagency agreement to the Texas Department of
23 Housing and Community Affairs for use in the affordable housing
24 research and information program as provided by Section 2306.259.

25 SECTION 4. Section 1372.022(a), Government Code, is amended
26 to read as follows:

27 (a) 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 ~~[28.0]~~ percent of the state ceiling is available exclusively for reservations by issuers of qualified mortgage bonds;

(2) 10.0 ~~[8]~~ percent of the state ceiling is available exclusively for reservations by issuers of state-voted issues;

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

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

~~(5) [10.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified student loan bonds authorized by Section 53B.47, Education Code, that are nonprofit corporations able to issue a qualified scholarship funding bond as defined by Section 150(d)(2), Internal Revenue Code (26 U.S.C. Section 150(d)(2)), and~~

~~[4.6]~~ 29.5 percent of the state ceiling is available exclusively for reservations by any other issuer of bonds that require an allocation.

SECTION 5. 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, is reenacted and amended to read as follows:

(b) With respect to the amount of the state ceiling set aside under Subsection (a)(1), the board shall grant reservations

1 at the direction of the Texas Department of Housing and Community
2 Affairs as provided by Section 2306.359 and in a manner that ensures
3 that[÷

4 [(1)] the set-aside amount is used for proposed
5 projects that are located throughout the state[, and

6 [(2) not more than 50 percent of the set-aside amount
7 is used for proposed projects that are located in qualified census
8 tracts as defined by Section 143(j), Internal Revenue Code of
9 1986].

10 SECTION 6. Sections 1372.0231(d), (g), and (i), Government
11 Code, are amended to read as follows:

12 (d) Except as provided by Subsection (i), before March [~~May~~]
13 1, the board shall apportion the amount of the state ceiling set
14 aside under Subsection (a)(2) among the uniform state service
15 regions according to the percentage of the state's population that
16 resides in each of those regions.

17 (g) On or after March [~~May~~] 1, the board may not grant
18 available reservations to housing finance corporations described
19 by Subsection (a) based on uniform state service regions or any
20 segments of those regions.

21 (i) Before March [~~May~~] 1, the board shall apportion the
22 amount of the state ceiling set aside under Subsection (a)(2) only
23 among uniform state service regions with respect to which an issuer
24 has submitted an application for a reservation of the state ceiling
25 [~~on or~~] before March 1.

26 SECTION 7. Sections 1372.024(a) and (b), Government Code,
27 are amended to read as follows:

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

(1) is removed from the state ceiling available to other issuers on January 2; and

(2) is available for those applications for reservations for state-voted issues.

(b) The amount removed under Subsection (a) may not exceed 10 ~~[eight]~~ percent of the state ceiling.

SECTION 8. Section [1372.026](#)(b), Government Code, is amended to read as follows:

(b) A housing finance corporation may not receive an allocation for the issuance of qualified mortgage bonds in an amount that exceeds the greater of:

(1) \$50 ~~[\$40]~~ million; or

(2) 1.70 percent of the state ceiling.

SECTION 9. Sections [1372.0261](#)(d) and (g), Government Code, are amended to read as follows:

(d) A housing finance corporation may not be penalized under Subsection (c) if:

(1) the corporation fails to use:

(A) bond proceeds recycled from previous allocations of the state ceiling; or

(B) taxable bond proceeds; ~~[or]~~

(2) as the result of an issuance of bonds, the

corporation's utilization percentage is 80 percent or greater; or

(3) the application is received after July 14.

(g) An issuer that has carryforward available from the additional state ceiling [~~created by the Housing and Economic Recovery Act of 2008 (Pub. L. No. 110-289)~~] is not restricted by project limits for the state ceiling. An issuer who uses the carryforward to issue qualified mortgage bonds or mortgage credit certificates is not subject to the utilization percentage calculation in determining the amount of the issuer's reservation request.

SECTION 10. Section [1372.0281](#), Government Code, is amended to read as follows:

Sec. 1372.0281. INFORMATION REQUIRED OF ISSUERS OF CERTAIN QUALIFIED STUDENT LOAN BONDS. (a) An issuer of qualified student loan bonds authorized by Section [53B.47](#) [~~53.47~~], Education Code, shall provide to the board together with its application for a reservation information required by board rule.

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

(1) financial statements;

(2) portfolio amounts;

(3) default rates;

(4) descriptions of how bond proceeds [~~student loans~~] are being used or spent; and

(5) other information required by the board [~~about the issuer's client agencies~~].

SECTION 11. Sections 1372.031(a) and (b), Government Code, are amended to read as follows:

(a) Except as provided by Subsection (b) and subject to Sections 1372.0321, 1372.0231, and 1372.035(c), if, on or before October 20, more than one issuer in a category described by Section 1372.022(a)(2), (3), (4), or (5) ~~[(6)]~~ applies for a reservation of the state ceiling for the next program year, the board shall grant reservations in that category in the order determined by the board by lot.

(b) Until August 1 of the program year, within the category described by Section 1372.022(a)(5) ~~[1372.022(a)(6)]~~, the board shall grant priority to the Texas Economic Development Bank for projects that the Texas Economic Development and Tourism Office determines meet the governor's criteria for funding from the Texas Enterprise Fund. Notwithstanding the priority, the Texas Economic Development Bank may not receive an amount greater than one-sixth of the portion of the state ceiling available under Section 1372.022(a)(5) ~~[1372.022(a)(6)]~~ on January 1 of the program year.

SECTION 12. Sections 1372.033(a), (d), and (g), Government Code, are amended to read as follows:

(a) In this section, "qualified nonprofit corporation" ~~[(1) "Qualified nonprofit corporation"]~~ has the meaning assigned by Section 53B.02(11), Education Code.

~~[(2) "Student loan bond allocation" means the total amount of the allocation for private activity bonds under Section 1372.022(a)(5) for a program year divided by the number of qualified nonprofit corporation applicants that comply with all~~

~~applicable application requirements for that year.]~~

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

(g) A qualified nonprofit corporation that receives a student loan bond allocation may not:

(1) transfer the allocation to another entity; or

(2) loan to another entity, other than a qualified borrower, ~~[student]~~ proceeds of bonds issued under the allocation.

SECTION 13. Section [1372.037](#)(a), Government Code, is amended to read as follows:

(a) Before ~~[Except as provided by Subsection (b), before]~~ August 15 the board may not grant for any single project a reservation for that year that is greater than:

(1) ~~[\$40 million]~~ if the issuer is an issuer of qualified mortgage bonds, other than the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation, the greater of:

(A) \$50 million; or

(B) 1.70 percent of the available state ceiling;

(2) ~~[\$50 million]~~ if the issuer is an issuer of a state-voted issue, other than the Texas Higher Education Coordinating Board, the greater of:

(A) \$100 million; or

(B) 3.40 percent of the available state ceiling;

(3) ~~[or \$75 million,~~ if the issuer of a state-voted issue is the Texas Higher Education Coordinating Board, the greater of:

(A) \$200 million; or

(B) 6.80 percent of the available state ceiling;

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

(5) ~~[(4) the lesser of \$20 million or 15 percent of the amount set aside for reservation by issuers of qualified residential rental project bonds,~~ if the issuer is an issuer of qualified residential rental project [those] bonds, the greater of:

(A) \$50 million; or

(B) 1.70 percent of the available state ceiling;

~~[(5) the amount as prescribed in Sections 1372.033(d), (e), and (f), if the issuer is an issuer authorized by Section 53B.47, Education Code, to issue qualified student loan bonds,~~ or

(6) ~~[\$50 million,~~ if the issuer is any other issuer of bonds that require an allocation, the greater of:

(A) \$100 million; or

(B) 3.40 percent of the available state ceiling.

SECTION 14. Sections [1372.042](#)(a), (a-1), (b), and (c), Government Code, are amended to read as follows:

(a) 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 shall close on the bonds for which the reservation was granted not later than the 150th [~~120th~~] day after the reservation date.

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

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

(c) Notwithstanding Subsections (a), (a-1), and (b), if the 150-day [~~120-day~~] period, the 180-day [~~150-day~~] period, or the 210-day [~~180-day~~] period, as applicable, expires on or after December 24 of the year in which the reservation was granted, the issuer shall close on the bonds before December 24, except that if the applicable period expires after December 31 of that year, the issuer may notify the board in writing before December 24 of the issuer's election to carry forward the reservation and of the issuer's expected bond closing date. In compliance with the requirements of Section 146(f), Internal Revenue Code of 1986, the

1 board shall file in a timely manner a carryforward election with
2 respect to any bonds expected to close after December 31 to permit
3 the bonds to close by the expected date, except that the board may
4 not file the carryforward election after February 15 of the year
5 following the year in which the reservation was granted. The grant
6 of the reservation for the balance of the 150-day [~~120-day~~] period,
7 the 180-day [~~150-day~~] period, or the 210-day [~~180-day~~] period, as
8 applicable, is automatically and immediately reinstated on the
9 board's filing of a carryforward election with respect to the
10 reservation.

11 SECTION 15. Section [1372.043](#), Government Code, is amended
12 to read as follows:

13 Sec. 1372.043. CANCELLATION OF RESERVATION ON ISSUER'S
14 FAILURE TO TIMELY CLOSE ON BONDS. If an issuer does not close on the
15 issuer's bonds as required by Section [1372.042](#):

16 (1) the reservation for the issue is canceled; and
17 (2) for the period beginning on the reservation date
18 and ending on the 150th day, the 180th day, or the 210th day after
19 the reservation date, as applicable under Section [1372.042](#), or on
20 the 210th day after the reservation date if the issuer is an issuer
21 of qualified mortgage bonds:

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

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

26 SECTION 16. Section [1372.069](#), Government Code, is amended
27 by amending Subsection (c) and adding Subsection (e) to read as

1 follows:

2 (c) An issuer may ~~[not]~~ apply for the carryforward
3 designation of an amount that is not more ~~[greater]~~ than the greater
4 of:

5 (1) \$50 million; or

6 (2) 1.70 percent of the available state ceiling.

7 (e) A carryforward designation granted under this section
8 must comply with the Internal Revenue Code of 1986.

9 SECTION 17. Section 1372.073, Government Code, is amended
10 to read as follows:

11 Sec. 1372.073. DESIGNATION BY BOARD OF UNENCUMBERED STATE
12 CEILING. Notwithstanding any other provision of this chapter, the
13 board on the last business day of the year may assign as
14 carryforward to a state agency or to an issuer that was created to
15 act on behalf of this state ~~[agencies]~~ at the ~~[their]~~ request of the
16 issuer and in the order received any state ceiling that is not
17 reserved or designated as carryforward and for which no application
18 for carryforward is pending.

19 SECTION 18. Subchapter C, Chapter 1372, Government Code, is
20 amended by adding Section 1372.074 to read as follows:

21 Sec. 1372.074. REASSIGNMENT OF CARRYFORWARD DESIGNATION.

22 (a) After one year from the initial carryforward designation, an
23 issuer may elect to reassign all or part of the carryforward
24 designation to a new project if the issuer provides:

25 (1) the designation on a form described by Section
26 1372.070;

27 (2) a written request signed by an authorized

1 representative of the issuer;

2 (3) the issuing board resolution authorizing the
3 carryforward designation reassignment with an original signature
4 by an officer of the issuer;

5 (4) applicable fees under Section 1372.006;

6 (5) an opinion of legal counsel stating that the
7 carryforward designation reassignment does not conflict with
8 Section 146, Internal Revenue Code of 1986; and

9 (6) any other information required by the board.

10 (b) A new project that is reassigned a carryforward
11 designation under this section must close within the time period
12 allowed by the Internal Revenue Code of 1986.

13 (c) An unutilized carryforward designation available after
14 a project closes on a carryforward designation under Section
15 1372.069 may be used by the issuer for other projects subject to
16 Subsection (b) and Section 1372.061(b).

17 SECTION 19. Sections 53B.02(2) and (7), Education Code, are
18 amended to read as follows:

19 (2) "Alternative education loan" means a loan other
20 than a guaranteed student loan that is made to a student, a former
21 student, or any other person ~~[or]~~ for the benefit of the ~~[a]~~ student
22 or former student for the purpose of financing or refinancing all or
23 part of the student's or former student's cost of attendance at an
24 accredited institution. The term includes:

25 (A) indebtedness that meets the definition of a
26 qualified education loan under Section 221(d)(1), Internal Revenue
27 Code of 1986; and

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

4 (7) "Cost of attendance" means all costs of a student
5 or former student incurred in connection with that student's or
6 former student's [a] program of study at an accredited institution,
7 as determined by the institution, including tuition and
8 instructional fees, the cost of room and board, books, computers,
9 and supplies, and other related fees, charges, and expenses.

10 SECTION 20. Sections 53B.47(b), (d), and (h), Education
11 Code, are amended to read as follows:

12 (b) An authority may cause money to be expended to make or
13 purchase for its account guaranteed student loans that are
14 guaranteed by the Texas Guaranteed Student Loan Corporation, other
15 guaranteed student loans, or alternative education loans that are
16 executed by or on behalf of students or former students who:

17 (1) are residents of this state; or

18 (2) have been admitted to attend or who attended an
19 accredited institution within this state.

20 (d) The authority, as a municipal corporation of the state,
21 is charged with a portion of the responsibility of the state to
22 provide educational opportunities in keeping with all applicable
23 state and federal laws. This [~~Nothing in this~~] section may not
24 [~~shall~~] be construed as a prohibition against establishing policies
25 to limit the purchase of guaranteed student loans or alternative
26 education loans executed by or on behalf of students or former
27 students who are attending or who attended [~~attending~~] school in a

certain geographical area or by or on behalf of students or former
students who are residents of the area.

(h) An alternative education loan may be made under this section only by or on behalf of a qualified alternative education loan lender. An alternative education loan may not be in an amount that exceeds the amount permitted under Section 144(b)(1)(B), Internal Revenue Code of 1986 ~~[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]~~. An alternative education loan covered by this subsection is subject to Chapter 342, Finance Code, as applicable, except that:

(1) the maximum interest rate on the loan may not exceed the rate permitted under Subchapter A, Chapter 303, Finance Code; and

(2) application and origination fees may be agreed to by the parties and assessed at the inception of the loan, provided that if any such fees constitute additional interest under applicable law, the effective rate of interest agreed to over the stated term of the loan may not exceed the rate allowed by Subchapter A, Chapter 303, Finance Code, and accrued unpaid interest may be added to unpaid principal at the beginning of the agreed repayment period at the borrower's option and in accordance with the terms of the agreement for purposes of determining the total principal amount due at the inception of the repayment period.

1 SECTION 21. The following provisions of the Government Code
2 are repealed:

3 (1) Section 1372.001(18);

4 (2) Sections 1372.0231(c) and (e); and

5 (3) Section 1372.037(b).

6 SECTION 22. The change in law made by this Act to Chapter
7 1372, Government Code, applies to the allocation of the available
8 state ceiling under that chapter beginning with the 2020 program
9 year.

10 SECTION 23. This Act takes effect September 1, 2019.