

BILL ANALYSIS

C.S.H.B. 1766

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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Housing in many parts of Texas is becoming increasingly unaffordable. One driver of this unaffordability is the lack of available housing stock. Freddie Mac estimates a current shortage of more than 500,000 homes in Texas alone.

The Texas Department of Housing and Community Affairs (TDHCA) administers a Non-Competitive (4%) Low-Income Housing Tax Credit program. This program, which, according to TDHCA, directs capital toward the development and preservation of affordable rental housing for low-income households, is critical in addressing the ongoing housing crisis in Texas. A prerequisite to receiving one of these tax credits is that at least 50 percent of the funding for the project comes from private activity bonds, which, in Texas, are issued annually by the Bond Review Board.

Currently, no limit exists for how much of the total cost of a project may be financed using these private activity bonds, which can lead to developers using the bonds to cover far more than the 50 percent of costs required to receive the tax credit. This dilutes the pool of available private activity bond funding and in turn reduces the number of projects ultimately built in Texas. Instituting a cap on the percentage of a project's costs that may be financed with private activity bonds could result in more vital housing projects being built with the same amount of bond funding. C.S.H.B. 1766 seeks to institute a conditional 55 percent bond financing cap applicable in a year when demand for these bonds is high.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1766 amends the Government Code to add a new first order of priority for the Bond Review Board in granting reservations to issuers of qualified residential rental project issues for a portion of the state ceiling on the amount of tax-exempt private activity bonds that may be issued during a calendar year in Texas. This first priority is for projects that, as follows:

- during the four-year period preceding the date of the application, have both filed an application for a low-income housing tax credit with the Texas Department of Housing and Community Affairs (TDHCA) and closed on a previous reservation of bonds in accordance with applicable state law, as determined based on the date of allocation of those bonds;

- require a subsequent issuance of bonds to maintain compliance with the financing percentage requirements to qualify for the low-income housing tax credit available for multifamily transactions that are at least 51 percent financed by tax-exempt private activity bonds; and
- have not previously applied for a subsequent issuance of bonds.

C.S.H.B. 1766, with respect to a project financed by an issuer of qualified residential rental project bonds that is granted a reservation of a portion of the available state ceiling for a program year in which the total amount of such bonds for which reservations are sought exceeds, as of October 20 of the preceding year, 55.75 percent of the state ceiling, caps the amount of bonds that may be issued to each such project at 55 percent of the reasonably expected aggregate basis of the project and the land on which the project is or will be located. The bill requires the attorney general to certify an issuer's compliance with this provision before approving the issuance of the bonds, if applicable. The bill authorizes such certification to be based solely on a written verification provided by the issuer on request of the attorney general.

C.S.H.B. 1766 applies to the allocation of the available state ceiling beginning with the 2024 program year.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1766 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

With respect to the new first priority for granting reservations established by the bill, the substitute makes the following changes to the introduced:

- increases from three years to four years the period preceding the date of the application within which the project must have closed on a previous reservation of bonds and includes an additional requirement that, during such period, the project has filed an application for a low-income housing tax credit with TDHCA; and
- includes as an additional condition that must be satisfied for a project to receive this first priority that the project has not previously applied for a subsequent issuance of bonds.

The introduced included a provision that, with respect to a project financed by an issuer of qualified residential rental project bonds that is granted a reservation of a portion of the available state ceiling for a program year in which the total amount of such bonds for which reservations are sought exceeds, as of October 31, 55.75 percent of the portion of the state ceiling available for that year exclusively for reservations by issuers of these bonds, capped the amount of bonds that may be used to finance each such project and requested in an application for a reservation at 55 percent of the reasonably expected aggregate basis of the project and the land on which the project is or will be located. The substitute revises this provision as follows:

- changes the date on which the 55.75 percent threshold is measured to determine the applicability of the 55 percent cap from October 31 to October 20 of the preceding year;
- makes the 55.75 percent threshold applicable with respect to the entire state ceiling by omitting the language making that threshold calculable against only the portion of the ceiling available for that year exclusively for reservations by issuers of qualified residential rental project bonds; and
- makes the 55 percent cap applicable to the amount of bonds issued to each project, rather than the amount of bonds used to finance each project and requested in an application.

The substitute includes a provision not in the introduced authorizing the certification by the attorney general of issuer compliance with the cap set by the bill to be based solely on a written verification provided by the issuer on request of the attorney general.