SUBJECT: Issuance of private activity bonds for affordable housing development.

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 8 ayes — Swinford, Paxton, Van Arsdale, Christian, Farrar, Flynn, Parker, Veasey

0 nays

1 absent — B. Cook

WITNESSES: For — (*Registered, but did not testify*: Jim T. Brown, Texas Affiliation of Affordable Housing; Eric Opiela)

Against — None

On — Rob Latsha, Texas Bond Review Board (*Registered, but did not testify*: Jeff Smith, Houston Housing Finance Corporation)

BACKGROUND: Government Code, ch. 1372 governs private activity bonds administered by the Bond Review Board (BRB). A private activity bond (PAB) is a bond issued by the state that allows private interests to benefit from the bond. The amount of tax-exempt PABs that may be issued during a calendar year is subject to a cap, referred to as the “state ceiling.” Sec. 1372.022(a) allots portions of the state ceiling to several different purposes, including qualified mortgage bonds and residential rental project bonds.

The Texas Department of Housing and Community Affairs (TDHCA) is the agency responsible for affordable housing and housing-related and community service programs, as well as the regulation of the state’s manufactured housing industry. TDHCA serves the state’s extremely low-income to moderate-income populations by addressing a broad spectrum of housing and community affairs issues. Government Code, sec. 1372.0321 requires the BRB to give priority in granting reservations of qualified residential rental project issuances to projects such as those planned for low-income areas of the state or those in which rents will remain below 50 percent of area median family income.

In 2006, the House Urban Affairs Committee appointed a task-force to address problems related to use of private activity bond financing for the development of affordable housing. The task force was comprised of members from the TDHCA, the BRB, the Texas State Affordable Housing Corporation, local bond issuers, developers, rural counties, and affordable housing advocates.

DIGEST:

CSHB 3874 would amend the Government Code to add a mechanism for using the private activity bond financing system for affordable housing development. The bill would allow projects to submit for multiple sites as long as the county had a population less than 75,000 or was classified as lower income. The BRB could grant any single multi-site project no more than the lesser of $25 million or 15 percent of the reservation amount. A single site project would be capped at $20 million.

Applications for bond financing. The bill would expand the definition of an eligible facility to include a group of facilities. Applications for residential bond financing for a group of facilities could include either rehabilitation or new construction, or both rehabilitation and new construction of multi-site qualified residential rental facilities where 51 percent or more of the units were in a county with a population of less than 75,000 or the units were in a county where the median income was less than the median state income. Applications for a reservation of a portion of the state bond ceiling could reduce the number of sites for residential rental facilities without affecting the state of the project, as long as the project still contained at least two sites.

Applications would include a nonrefundable fee of $1,000 payable to the BRB and a nonrefundable fee of $4,000 payable to TDHCA for marketing and education about the availability of low-income housing in the state.

Reservation priorities among qualified residential rental projects. CSHB 3874 would amend the priority for projects seeking a reservation of a portion of the state bond ceiling. The priorities would proceed from first to sixth, as follows:

1. facilities financed by qualified residential rental project bonds or other bonds; single site residential projects in a county with less than 75,000 people; or a project in a county where the area median income (AMI) was less than the state median income (SMI);

2. projects in which 15 percent or more of the units were reserved for low income families and had a rental restriction of 30 percent of the area median family income (AMFI); or 83 percent or more of the units were reserved for families with low incomes and had a rent restriction ranging from 30 percent to 60 percent of AMFI and 2 percent or fewer of the units were not rent or income restricted;
3. projects where at least 49 percent of the units were low-income units, had a rent restriction ranging from 30 percent to 60 percent of AMFI and 2 percent or fewer of the units were not rent or income restricted;
4. the development was located in a census tract in which the area median income was higher than the area median income for the county, 98 percent or more of the units are reserved for low income families, had a rent restriction ranging from 30 percent to 60 percent of AMFI and 2 percent or fewer of the units were not rent or income restricted;
5. projects where 98 percent of the units had a rent restriction of 30 to 60 percent of AMFI, were reserved for low income families, and 2 percent or fewer of the units had no rent restriction; and
6. any other qualified residential rental project.

The bill would prohibit the BRB from reserving a portion of the state ceiling for a first through fifth priority project. Projects in Dallas or Houston and certain specialized housing developments would not be eligible for consideration as a first priority.

Closing of bonds and deadlines. An issuer of qualified bonds would have to close on the bonds no later than 180 days after the reservation date. If the issuer failed to close on the bonds, the issuer would have to pay the full closing fee, if the application were not withdrawn before the 150th day. However, an issuer could request three extensions:

- a 30-day extension, with a fee of $20,000 paid to the housing trust fund;
- a second 30-day extension, with a fee of $40,000 paid to the housing trust fund; and
- a third 30-day extension, with a fee of $60,000 paid to the housing trust fund.

Each extension would be independent from any other extension or fee and could not be aggregated.

An issuer that did not close on the bonds could have the reservation for the project canceled, and the issuer would be prohibited from submitting an application for reservation for the same project. The issuer would be eligible only for a carryforward designation for the project.

CSHB 3874 also would repeal Government Code, secs. 1372. 0321(a-1) and (a-2), which grant second and third priority, respectively, to projects in which 100 percent of the units have a low-income rent restriction or otherwise are qualified projects.

The bill would take effect September 1, 2007, and would apply only to a reservation granted on or after January 1, 2008.