

BILL ANALYSIS

Senate Research Center

S.B. 2064
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Finance
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Texas Bond Review Board (TBRB) has a perennial task of collecting, analyzing, and formulating reports on the state debt, including debt that has been approved and issued, and TBRB is required to provide time-sensitive reports to the legislature.

S.B. 2064 amends current law relating to the issuance of state and local government securities, including the powers and duties of TBRB and the issuance of private activity bonds.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Bond Review Board in SECTION 14 (Section 1372.045, Government Code) and SECTION 16 (Section 1372.102, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1231.062, Government Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires the Texas Bond Review Board (TBRB), not later than December 31, rather than October 31, of each even-numbered year, to submit to the legislature a statistical report relating to state securities and bonds and other debt obligations issued by local governments.

(d) Authorizes TBRB to enter into a contract for the procurement of services related to the collection and maintenance of information on the indebtedness of local governments and state agencies necessary to prepare the statistical report.

SECTION 2. Amends Section 1231.063(c), Government Code, to require TBRB, not later than February 15, rather than December 1, of each year, to submit the annual study to certain persons.

SECTION 3. Amends the heading to Chapter 1372, Government Code, to read as follows:

CHAPTER 1372. PRIVATE ACTIVITY BONDS AND CERTAIN OTHER BONDS

SECTION 4. Amends Section 1372.001, Government Code, by amending Subdivisions (1) and (2) and adding Subdivisions (1-a), (1-b), (4-a), and (8-a), as follows:

(1) Defines "additional state ceiling."

(1-a) Defines "applicable official."

(1-b) Creates this subdivision from existing text.

(2) Redefines "bonds."

(4-a) Defines "federal subsidy."

(8-a) Defines "miscellaneous bond ceiling."

SECTION 5. Amends Section 1372.002, Government Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Provides that for purposes of this chapter, a project is:

- (1) an eligible facility or facilities that are proposed to be financed, in whole or in part, by an issue of qualified residential rental project bonds;
- (2) in connection with an issue of qualified mortgage bonds or qualified student loan bond, the providing of financial assistance to qualified mortgagors or students located in all or any part of the jurisdiction of the issue; or
- (3) an eligible facility or facilities that are, rather than 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).

(e) Authorizes an application under this chapter, for purposes of Subsection (a)(3), and only for applications for the financing of sewage facilities, solid waste disposal facilities, and qualified hazardous waste facilities, to include multiple facilities in multiple jurisdictions. Authorizes the number of facilities, in such an application, to be reduced as needed without affecting their status as a project for purposes of the application.

SECTION 6. Amends Section 1372.006(a), Government Code, as follows:

(a) Requires that an application for a reservation under Subchapter B (Allocation and Reservation of State Ceiling) or a carryforward designation under Subchapter C (Carryforward of State Ceiling) be accompanied by a nonrefundable fee in the amount of \$500, except in certain cases, including for projects that include multiple facilities authorized under Section 1372.002(e), the application is required to be accompanied by a nonrefundable fee in an amount of \$500 for each facility included in the application for the project. Makes nonsubstantive changes.

SECTION 7. Amends Section 1372.022, Government Code, as follows:

Sec. 1372.022. AVAILABILITY OF STATE CEILING TO ISSUERS. (a) Provides that if the state ceiling is computed on the basis of \$75 per capita or a greater amount, before August 15 of each year, certain percentages of the state ceiling are available exclusively for certain reservations by issuers. Provides that 10.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified student loan bonds authorized by Section 53B.47 (Guaranteed Student Loans and Alternate Education Loans; Bonds for the Purchase of Education Loan Notes), rather than Section 53.47 [*repealed*], 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)).

(b) Provides that on and after August 15, rather than on and after August 15 but before September 1, that portion of the state ceiling available for reservations becomes available for all applications for reservations in the order determined by TBRB by lot. Requires TBRB, if all applicants for a reservation have been offered a portion of the available state ceiling, to grant reservations in the order in which the applications for those reservations are received. Deletes existing text requiring TBRB, if all applicants for a reservation have been offered a portion of the available state ceiling, to grant reservations in the order in which the applications for those reservations are received, subject to Section 1372.0321 (Priorities for Reservations Among Issuers of Qualified Residential Rental Project Issues). Deletes existing text providing that on and after September 1, that portion of the state ceiling available for reservations becomes available to any issuer for any bonds that require an allocation, subject to the provisions of this subchapter.

SECTION 8. Amends Section 1372.026, Government Code, as follows:

Sec. 1372.026. LIMITATION ON AMOUNT OF STATE CEILING AVAILABLE TO HOUSING FINANCE CORPORATIONS. (a) Prohibits the maximum amount of the state ceiling that may be reserved before August 15 by a housing finance corporation for the issuance of qualified mortgage bonds from exceeding the amount computed as follows:

(1) if the local population of the housing finance corporation is 300,000 or more, \$36 million, rather than \$22.5 million, plus the product of the amount by which the local population exceeds 300,000 multiplied by \$40, rather than \$11.25;

(2) if the local population of the housing finance corporation is 200,000 or more but less than 300,000, \$32 million, rather than \$20 million, plus the product of the amount by which the local population exceeds 200,000 multiplied by \$40, rather than \$22.5;

(3) if the local population of the housing finance corporation is 100,000 or more but less than 300,000, \$24 million, rather than \$15 million, plus the product of the amount by which the local population exceeds 100,000 multiplied by \$80, rather than \$50; or

(4) if the local population of the housing finance corporation is less than 100,000, the product of the local population multiplied by \$240, rather than \$150.

(b) Prohibits a housing finance corporation from receiving an allocation for the issuance of qualified mortgage bonds in an amount that exceeds \$40 million, rather \$25 million.

(c) Provides that for purposes of this section, the local population of a housing finance corporation is the population of the local government or local governments on whose behalf a housing finance corporation is created. Provides that if two local governments that have a population of at least 50,000, rather than 20,000, each and that have overlapping territory have created housing finance corporations that have the power to issue bonds to provide financing for home mortgages, the population of the housing finance corporation created on behalf of the larger local government is computed by subtracting from the population of the larger local government the population of the part of the smaller local government that is located in the larger local government. Provides that the reduction of population provided by this subsection is not required if the smaller local government assigns its authority to issue bonds, based on its population, to the larger local government.

SECTION 9. Amends Section 1372.0261, Government Code, by amending Subsections (c) and (d) and adding Subsections (e), (f), and (g), as follows:

(c) Provides that if a housing finance corporation's utilization percentage is less than 80 percent, rather than 95 percent, but at least 25 percent, the next time the corporation becomes eligible for a reservation of the state ceiling, the maximum amount of the state ceiling that is authorized to be reserved for the corporation is equal to the amount for which the corporation would otherwise be eligible under Section 1372.026 (Limitation on Amount of State Ceiling Available to Housing Finance Corporations) multiplied by the utilization percentage of the corporation's last bond issue that used an allocation of the state ceiling.

(d) Prohibits a housing finance corporation from being penalized under Subsection (c) if the corporation fails to use bond proceeds recycled from previous allocations of the state ceiling; or taxable bond proceeds; or as the result of an issuance of bonds, the corporation's utilization percentage is 80 percent, rather than 95 percent, or greater.

(e) Provides that if a housing finance corporation's utilization percentage is less than 25 percent, the next time the corporation becomes eligible for a reservation of the state ceiling, the maximum amount of the state ceiling that may be reserved for the corporation is equal to the amount for which the corporation would otherwise be eligible under Section 1372.026 multiplied by 25 percent.

(f) Prohibits a housing finance corporation from being penalized under Subsection (c) in a program year if, by December 31 of the preceding program year, an amount equal to or less than 50 percent of the aggregate state ceiling available for reservations by issuers of qualified mortgage bonds under Section 1372.022(a)(1) (relating to a percentage of the state ceiling available exclusively for reservations by issuers of qualified mortgage bonds) has been used in connection with bond issues that have closed on or before that date, or has had carryforward elections filed on or before that date.

(g) Provides that an issuer that has carryforward available from the 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. Provides that 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. Amends Section 1372.028(b), Government Code, to prohibit an issuer from submitting an application for a program year after November 15, rather than December 1, of that year.

SECTION 11. Amends Section 1372.035(a), Government Code, to prohibit TBRB from granting a reservation of a portion of the state ceiling for a program year before January 2 or after November 15, rather than December 1, of that year.

SECTION 12. Amends Section 1372.037(a), Government Code, as follows:

(a) Prohibits TBRB before August 15, except as provided by Subsection (b) (relating to TBRB being authorized to grant a portion of the ceiling for a water development issue), from granting for any single project a reservation for that year that is greater than \$40 million, rather than \$25 million, if the issuer is an issuer of qualified mortgage bonds, other than the Texas Department of Housing and Community Affairs (TDHCA) or the Texas State Affordable Housing Corporation; the lesser of \$20 million, rather than \$15 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 those bonds; or the amount as prescribed in Sections 1372.033(d) (relating to each qualified nonprofit corporation being entitled to receive a floor allocation), (e) (relating to each applicant being entitled to a certain amount), and (f) (relating to an applicant being entitled to a certain percent of the remaining amount to be allocated), if the issuer is an issuer authorized by Section 53B.47, rather than 53.47, Education Code, to issue qualified student loan bonds.

SECTION 13. Amends Section 1372.042, Government Code, by adding Subsection (e), to require an issuer, in addition to any other fees required by this chapter, to submit to TBRB a nonrefundable fee in the amount of \$500 before receiving a carryforward designation under Subsection (c) (relating to requiring the issuer to close on the bonds before a certain date).

SECTION 14. Amends Subchapter B, Chapter 1372, Government Code, by adding Section 1372.045, as follows:

Sec. 1372.045. RESERVATION, ALLOCATION, AND CARRYFORWARD DESIGNATION BY BOARD OF ADDITIONAL STATE CEILING. (a) Authorizes TBRB to establish and administer programs for the reservation, allocation, and carryforward designation of additional state ceiling in accordance with the federal law that establishes the additional state ceiling and, to the extent consistent with the federal law, as TBRB determines will achieve the purposes for which the additional state ceiling is authorized by federal law.

(b) Authorizes TBRB to adopt rules and procedures TBRB considers necessary to effectively administer programs authorized under this section.

(c) Authorizes TBRB to prescribe forms and applications as needed to effectively implement and administer programs authorized under this section.

(d) Authorizes TBRB to adopt emergency rules in connection with the programs authorized under this section when TBRB determines that the emergency rules are necessary for the state to obtain the full benefits of the additional state ceiling.

SECTION 15. Amends Subchapter C, Chapter 1372, Government Code, by adding Section 1372.073, as follows:

Sec. 1372.073. DESIGNATION BY BOARD OF UNENCUMBERED STATE CEILING. Authorizes TBRB on the last business day of the year, notwithstanding any other provision of this chapter, to assign as carryforward to state agencies at their request and in the order received any state ceiling that is not reserved or designated as carryforward and for which no application for carryforward is pending.

SECTION 16. Amends Chapter 1372, Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. ALLOCATION OF MISCELLANEOUS BOND CEILING

Sec. 1372.101. PROGRAM ADMINISTRATION. (a) Authorizes the applicable official to designate bonds as entitled to a portion of a miscellaneous bond ceiling or allocate a portion of a miscellaneous bond ceiling to an issuer of bonds in accordance with the federal law that establishes the federal subsidy for which the miscellaneous bond ceiling is established, and to the extent consistent with the federal law, as the applicable official determines will achieve the purposes for which the federal subsidy is authorized by federal law.

(b) Authorizes TBRB to administer programs established by the applicable official for the allocation of a miscellaneous bond ceiling or the designation of bonds entitled to the federal subsidy limited by a miscellaneous bond ceiling.

Sec. 1372.102. RULES AND PROCEDURES. (a) Authorizes TBRB, unless otherwise provided by law, to adopt rules and procedures TBRB considers necessary to effectively administer programs established by the applicable official for allocation of a miscellaneous bond ceiling or for designating bonds as entitled to the federal subsidy limited by the miscellaneous bond ceiling.

(b) Authorizes TBRB to adopt emergency rules in connection with the programs described in Subsection (a) when TBRB determines that the emergency rules are necessary for the state to obtain the full benefits of the federal subsidy that is limited by the miscellaneous bond ceiling.

(c) Authorizes TBRB to prescribe forms and applications as needed to effectively implement and administer programs described in Subsection (a).

(d) Provides that this section does not prevent an applicable official from adopting rules and procedures in connection with the allocations and designations when required by federal or state law or from administering a program independently of TBRB.

Sec. 1372.103. APPLICATION FEES. Authorizes TBRB, in connection with programs established by the applicable official for the allocation of a miscellaneous bond ceiling or the designation of bonds entitled to the federal subsidy limited by a miscellaneous bond ceiling, to charge an application fee for each application it receives under this subchapter.

SECTION 17. Repealer: Section 1372.0235 (Dedication of Portion of State Ceiling to Texas Agricultural Finance Authority), Government Code.

SECTION 18. Amends Section 2306.6703(a), Government Code, as follows:

(a) Provides that an application is ineligible for consideration under the low income housing tax credit program for certain reasons, including if the applicant proposes to replace in less than 15 years any private activity bond financing of the development described by the application, unless at least one-third of all the units in the development are public housing units or Section 8 project-based units and the applicant proposes to maintain for a period of 30 years or more 100 percent of the units, rather than development units, supported by housing tax credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50 percent of the area median income, adjusted for family size; the applicable private activity bonds will be redeemed only in an amount consistent with their proportionate amortization, rather than at least one-third of all the units in the development are public housing units or Section 8 project-based units; if the redemption of the applicable private activity bonds will occur in the first years of the operation of the development and complies with Section 42(h)(4), Internal Revenue Code of 1986 on the date the certificate of reservation is issued, TBRB determines that there is not a waiting list for private activity bonds in the same priority level established under Section 1372.0321 or, if applicable, in the same uniform state service region, as referenced in Section 1372.0231, that is served by the proposed development and the applicable private activity bonds will be redeemed according to underwriting criteria, if any, established by TDHCA.

SECTION 19. (a) Defines for the purposes of this section "additional state ceiling," "applicable official," and "miscellaneous bond ceiling."

(b) Provides that all reservations, allocations, and carryforward designations by TBRB of additional state ceiling authorized by Section 3021 of the Housing and Economic Recovery Act of 2008 (Pub. L. No. 110-289), and by applicable officials of miscellaneous bond ceiling authorized by the Heartland Disaster Tax Relief Act of 2008 (Pub. L. No. 110-343), regarding Hurricane Ike disaster area bonds, or the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5), before the effective date of this Act are validated.

(c) Provides that an issuer that has carryforward available from additional state ceiling authorized by the Housing and Economic Recovery Act of 2008 (Pub. L. No. 110-289) is not restricted by the project limits for the state ceiling established by Chapter 1372 (Private Activity Bonds), Government Code. Provides that an issuer that uses the carryforward to issue qualified mortgage bonds or mortgage credit certificates is not subject to the utilization percentage calculation established by Chapter 1372, Government Code, in determining the amount of the issuer's reservation request.

SECTION 20. Effective date: upon passage or September 1, 2009.