

- SUBJECT:** Amending state regulation of private activity bonds
- COMMITTEE:** Pensions, Investments and Financial Services — favorable, without amendment
- VOTE:** 9 ayes — Murphy, Vo, Capriglione, Flynn, Gervin-Hawkins, Gutierrez, Lambert, Stephenson, Wu
- 0 nays
- 2 absent — Leach, Longoria
- SENATE VOTE:** On final passage, April 16 — 31-0
- WITNESSES:** For — (*Registered, but did not testify:* Ben Litle and Ricky Turman, Brazos Higher Education Authority; Claire Merritt, Hilltop; Bill Kelly, City of Houston Mayor's Office; Phillip Wambsganss, North Texas Higher Education Authority; Todd Kercheval, Texas Affiliation of Affordable Housing Providers, Texas Association of Local Housing Finance Agencies; Diana McIver and Jeanne Talerico, Texas Association of Local Housing Finance Agencies; Alexis Tatum, Travis County Commissioners Court)
- Against — None
- On — Braxton Parsons, Texas Bond Review Board; Ken Martin, Texas Higher Education Coordinating Board; (*Registered, but did not testify:* Rob Latsha, Texas Bond Review Board; David Cervantes, Texas Department of Housing and Community Affairs; Michael Wilt, Texas State Affordable Housing Corporation)
- BACKGROUND:** According to the Texas Bond Review Board, tax-exempt financing of certain privately owned public purpose projects, or private activity bonds, currently is limited by federal law. The types of issues authorized include mortgage revenue bonds, small-issue industrial development bonds, certain state-voted bond issues, student loan bonds, and those for certain

exempt facilities, such as qualified residential rental projects.

Federal law imposes a ceiling on the total amount of tax-exempt private activity bonds that may be issued annually in each state and provides for each state to establish a process for allocating the state's ceiling.

Government Code ch. 1372 governs private activity bonds in Texas. Under sec. 1372.002, a "project" for which bonds could be issued includes:

- a facility or facilities proposed to be financed by an issue of qualified residential rental project bonds;
- the providing of financial assistance in connection with a mortgage or student loan bond; or
- a facility or facilities proposed to be financed by other bonds.

Ch. 1372, subch. B governs the annual allocation and reservation of the state ceiling to issuers of private equity bonds. Under sec. 1372.022, if the state ceiling is computed on the basis of \$75 per capita or more, before August 15 each year, each ceiling allocation is available as follows:

- 28 percent for reservations by issuers of qualified mortgage bonds;
- 8 percent for reservations by issuers of state-voted issues;
- 2 percent for reservations by issuers of qualified small-issue and enterprise zone facility bonds;
- 22 percent for reservations by issuers of qualified residential rental project bonds;
- 10.5 percent for reservations by certain issuers of qualified student loan bonds; and
- 29.5 percent for reservations by other issuers of bonds.

On and after August 15, unused portions of the state ceiling available for reservations become available for all applications for reservations in the order determined by the Bond Revenue Board by lot, known as "collapse."

Ch. 1372, subch. C governs the carryforward of the state ceiling that was

not reserved. Sec. 1372.061 allows the board to designate as carryforward the amount of the ceiling not reserved before December 15 and any amount that was reserved but became available on or after that date because of a cancellation.

DIGEST:

SB 1474 would expand the use of alternative education loans and revise the regulation of private activity bonds in the state by amending state ceiling allocations, increasing individual project limits for reservations of the state ceiling, extending the day by which a private activity bond had to be closed, and making other revisions.

Alternative education loans. The bill would allow an alternative education loan to be made to a student, former student, or any other person. A loan could be made for the benefit of a former student and could be made to refinance a student or former student's cost of attendance for a program of study at an accredited institution of higher education.

The statutory definition of "alternative education loan" would include indebtedness that met the definition of a qualified education loan and indebtedness used to refinance that debt. An alternative education loan could not exceed the amount permitted under the Internal Revenue Code of 1986, rather than the difference between cost of attendance and the amount of other assistance for which the student was eligible.

Student loan bonds. SB 1474 would expand the definition of a "project" that could be issued private activity or certain other bonds to include a project in connection with an issue of student loan bonds, including:

- providing financial assistance to students, if the issuer was the Texas Higher Education Coordinating Board (THECB); or
- providing guaranteed student loans or alternative education loans, if an issuer was authorized to provide such loans under state law.

The bill would specify that the Bond Review Board could require an issuer of student loan bonds to provide certain information with an application for a reservation of a portion of the state ceiling. Nonprofits

that applied for a student loan bond allocation in compliance with all application requirements would receive the allocation prioritized in the order that the applications were received by the board that year.

Sub-ceiling revisions. The bill would remove from the state ceiling allocations the 10.5 percent for reservations by student loan bonds and would revise the state ceiling allocations by:

- increasing from 28 to 32.25 the percent available for reservations by issuers of qualified mortgage bonds;
- increasing from 8 to 10 the percent available for reservations by issuers of state-voted issues; and
- increasing from 22 to 26.25 the percent available for reservations by issuers of qualified residential rental project bonds.

The bill would revise the amount at which the total applications for reservations for state-voted issues made before January 2 would reduce the ceiling available to other issues after that date. That amount would be increased from 8 to 10 percent of the available state ceiling. The amount reduced for other issuers could not exceed 10 percent of the ceiling.

Single project reservation limits. The bill would increase the limit on the reservations that the Bond Review Board could grant before August 15 for a single project as follows:

- from \$40 million to the greater of \$50 million or 1.7 percent of the available state ceiling for an issuer of mortgage bonds;
- from \$50 million to the greater of \$100 million or 3.4 percent of the available state ceiling for an issuer of a state-voted issue, other than the THECB;
- from \$75 million to the greater of \$200 million or 6.8 percent of the available state ceiling if for a state-voted issue by THECB;
- from the lesser of \$20 million or 15 percent of the amount set aside for reservation by issuers of residential rental project bonds to the greater of \$50 million or 1.7 percent of the available state ceiling for an issuer of residential rental project bonds; and

- from \$50 million to the greater of \$100 million or 3.4 percent of the available state ceiling for any other issuer of bonds.

The single project reservation limit would be the limit under the Internal Revenue Code for an issuer of qualified small-issue bonds and enterprise zone facility bonds.

Closing deadlines. The bill would extend by 30 days the deadline for certain issuers to close on bonds for which a reservation was granted, including an issuer of residential rental project bonds, state-voted issues, mortgage revenue bonds, and other issuers.

The bill would require a nonprofit corporation issuer of student loan bonds to close on bonds for which a reservation was granted by 210 days after the reservation date.

Carryforward designations. SB 1474 would revise the maximum amount for which an issuer could apply for the carryforward designation from \$50 million to the greater of \$50 million or 1.7 percent of the available state ceiling. A granted designation would have to comply with the Internal Revenue Code of 1986.

The bill would allow an issuer, after one year from the initial carryforward designation, to reassign all or part of the designation to a new project if the insurer provided certain information, an authorization, a legal opinion, and applicable fees, as listed in the bill.

A new project that was reassigned a carryforward designation would have to close within the time period allowed by the Internal Revenue Code of 1986. An unutilized carryforward designation available after a project closed on the designation could be used by the issuer for other projects, subject to certain conditions.

The bill would specify that an issuer created to act on behalf of the state, as well as a state agency, could be assigned as carryforward by the Bond Review Board on the last business day of the year.

Residential rental project bonds. SB 1474 would increase from 75,000 to 100,000 the maximum population for a county for the determination of whether a residential facility or facilities proposed to be financed by residential rental project bonds that were mostly located in that county qualified as a project for the issuance of private activity bonds.

A maximum total fee amount of \$25,000 would be set for an application for a reservation or a carryforward designation for a project that included multiple qualified residential rental projects.

The bill would remove the requirement that the Bond Review Board grant certain reservations in a manner that ensured that no more than 50 percent of the amount was used for residential rental projects located in a qualified census tract.

Housing finance corporations. SB 1474 would move from May 1 to March 1 the date by which the board annually would have to apportion the amount of the ceiling set aside for housing finance corporations among the uniform state service regions.

The bill would increase the amount a housing finance corporation could request for mortgage bonds from \$40 million to the greater of \$50 million or 1.7 percent of the state ceiling.

A housing finance corporation could not be penalized for insufficient utilization of the corporation's allocation of the state ceiling if the application for a reservation was received after July 14.

Other provisions. SB 1474 would remove certain references to the federal Housing and Economic Recovery Act of 2008 and other federal laws in certain statutes regarding private activity bonds.

The bill would repeal certain statutes regarding allocations granted for certain water development issues and uniform state service regions containing certain cities.

The bill would take effect September 1, 2019, and apply to the allocation of the available state ceiling beginning with the 2020 program year.

**SUPPORTERS
SAY:**

SB 1474 would update and improve the private activity bond program, which is a critical state program. The program allows federally regulated tax-exempt bonds to be issued for privately owned public use projects in the state, creating affordable housing and jobs and fostering economic development.

The changes made by the bill would not change the amount of state debt issued, but would allow the state ceiling to be allocated with better timing and in a more cost-efficient manner. The bill would increase single project limits on reservations of the available state ceiling on total principal for private activity bonds, revise ceiling allocations for specific bond issuers ("sub-ceilings"), and extend deadlines to close bonds. Additionally, SB 1474 would revise the use of alternative education bonds to allow for refinancing and parent loans.

Single project reservation limits. The bill would make critical updates to increase the per-project reservation amounts across all issuers. The bill would increase the minimum floor on single projects but would establish an index that automatically would adjust the project limits each year in proportion to the overall increase in the state ceiling. For example, the Texas Higher Education Coordinating Board's bonding authority would be increased from \$75 million to either \$200 million or 6.8 percent of the available ceiling, whichever was larger.

This change would prevent the bottle-necking for applications that occurs at the "collapse" date when all reservations become available on August 15. The bill would allow bond issuers to access more necessary funds between January and August so that they did not have to compete with other issuers for funds available after collapse, potentially losing out on funding.

Sub-ceiling revisions. SB 1474 would maximize the traditional use of

sub-ceilings by transferring the percentage available for reservations by issuers of student loan bonds, which for years has been not been utilized, to other sub-ceilings. This transfer would help meet the increased demand for private activity bonds in the more heavily utilized categories.

The removal of this sub-ceiling would not affect higher education authorities that were issuers of student loan bonds, since the bill would amend the definition of a project that could be issued private authority bonds to allow those issuers to instead access the sub-ceiling for "other issuers" of bonds, or reservations for about 30 percent of the state ceiling.

Closing deadlines. SB 1474 would extend the deadlines by which issuers had to close on private activity bonds. This would allow more efficient use of funds and prevent certain funds from being lost because the bonds could not be closed in time.

Carryforward designations. The bill would allow all issuers created on behalf of the state to be treated the same as state agencies in applying for unencumbered carryforward. The bill also would institute procedures to reduce the likelihood of Texas abandoning hundreds of millions of dollars in carryforward, as reported by the Bond Review Board, by allowing issuers to reassign project-specific carryforward.

Residential rental project bonds. SB 1474 would update the rural county definition for qualification to be issued private activity bonds to 100,000 in population. This definition has not been adjusted since it was established, and updating it would enable the greater participation of rural communities as the state population grows overall.

Alternative education loans. SB 1474 also would revise the definition and use of alternative education loans in Education Code to allow those loans to be used by former students, by parents on behalf of current or former students, and to refinance the cost of attendance. It is important to allow higher education authorities to issue refinance and parent loans to make more money available for middle-class students as the population in Texas grows and as the cost of education rises.

OPPONENTS No concerns identified.
SAY: