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AN ACT

1
2 relating to the issuance of state and local government securities,
3 including the powers and duties of the Bond Review Board and the
4 issuance of private activity bonds.

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

6 SECTION 1. Section 1231.062, Government Code, is amended by
7 amending Subsection (a) and adding Subsection (d) to read as
8 follows:

9 (a) Not later than December [~~October~~] 31 of each
10 even-numbered year, the board shall submit to the legislature a
11 statistical report relating to:

- 12 (1) state securities; and
13 (2) bonds and other debt obligations issued by local
14 governments.

15 (d) The board may enter into a contract for the procurement
16 of services related to the collection and maintenance of
17 information on the indebtedness of local governments and state
18 agencies necessary to prepare the statistical report.

19 SECTION 2. Subsection (c), Section 1231.063, Government
20 Code, is amended to read as follows:

21 (c) Not later than February 15 [~~December 1~~] of each year,
22 the board shall submit the annual study to:

- 23 (1) the governor;
24 (2) the comptroller;

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1 (3) the presiding officer of each house of the
2 legislature; and

3 (4) the Senate Committee on Finance and House
4 Appropriations Committee.

5 SECTION 3. The heading to Chapter 1372, Government Code, is
6 amended to read as follows:

7 CHAPTER 1372. PRIVATE ACTIVITY BONDS AND CERTAIN OTHER BONDS

8 SECTION 4. Section 1372.001, Government Code, is amended by
9 amending Subdivisions (1) and (2) and adding Subdivisions (1-a),
10 (1-b), (4-a), and (8-a) to read as follows:

11 (1) "Additional state ceiling" means authorization
12 under federal law for the issuance of bonds that are tax-exempt
13 private activity bonds subject to the limits imposed by Section
14 146, Internal Revenue Code (26 U.S.C. Section 146), in an amount in
15 addition to the state ceiling, including the additional tax-exempt
16 private activity bonds authorized by Section 3021 of the Housing
17 and Economic Recovery Act of 2008 (Pub. L. No. 110-289).

18 (1-a) "Applicable official" means the state official
19 or state agency designated by federal law to allocate a
20 miscellaneous bond ceiling or designate bonds entitled to the
21 federal subsidy limited by a miscellaneous bond ceiling or, in the
22 absence of designation by federal law, the governor.

23 (1-b) "Board" means the Bond Review Board.

24 (2) "Bonds" means all obligations, including bonds,
25 certificates, or notes, that are:

- 26 (A) authorized to be issued by:
27 (i) the constitution or a statute of this

1 state; or

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

4 (B) either:

5 (i) subject to the limitations of Section
6 146, Internal Revenue Code (26 U.S.C. Section 146); or

7 (ii) with respect to Subchapter D,
8 otherwise entitled to a federal subsidy only if designated for the
9 exemption, credit, or other subsidy, or allocated a portion of a
10 limited amount of obligations for which the exemption, credit, or
11 other subsidy is authorized, by this state or an applicable
12 official or by an issuer to which this state or the applicable
13 official has made an allocation, including exemptions, credits, and
14 other subsidies authorized by:

15 (a) the Heartland Disaster Tax Relief
16 Act of 2008 (Pub. L. No. 110-343), regarding Hurricane Ike disaster
17 area bonds;

18 (b) the American Recovery and
19 Reinvestment Act of 2009 (Pub. L. No. 111-5); or

20 (c) any other federal law authorizing
21 a federal subsidy.

22 (4-a) "Federal subsidy" means an exclusion of interest
23 on a bond from gross income for federal income tax purposes, a
24 federal income tax credit associated with a bond, a direct federal
25 subsidy of interest on a bond, or any other federally authorized
26 financial benefit associated with a bond.

27 (8-a) "Miscellaneous bond ceiling" means the maximum

1 amount of bonds of any type that may be issued by issuers in this
2 state during a calendar year, or cumulatively, that are entitled to
3 a federal subsidy only if designated for the federal subsidy, or
4 allocated a portion of a limited amount of bonds other than bonds
5 subject to the limits imposed by Section 146, Internal Revenue Code
6 (26 U.S.C. Section 146), for which the federal subsidy is
7 authorized, by:

8 (A) this state or the applicable official; or

9 (B) an issuer to which this state or the
10 applicable official has made an allocation.

11 SECTION 5. Section 1372.002, Government Code, is amended by
12 amending Subsection (a) and adding Subsection (e) to read as
13 follows:

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

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

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

22 (3) an eligible facility or facilities that are [~~is~~]
23 proposed to be financed, in whole or in part, by an issue of bonds
24 other than bonds described by Subdivision (1) or (2).

25 (e) For purposes of Subsection (a)(3), and only for
26 applications for the financing of sewage facilities, solid waste
27 disposal facilities, and qualified hazardous waste facilities, an

1 application under this chapter may include multiple facilities in
2 multiple jurisdictions. In such an application, the number of
3 facilities may be reduced as needed without affecting their status
4 as a project for purposes of the application.

5 SECTION 6. Subsection (a), Section 1372.006, Government
6 Code, is amended to read as follows:

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

10 (1) for projects that include multiple facilities
11 authorized under Section 1372.002(e), the application must be
12 accompanied by a nonrefundable fee in an amount of \$500 for each
13 facility included in the application for the project; and

14 (2) for issuers of qualified residential rental
15 project bonds the application must be accompanied by a
16 nonrefundable fee of \$5,000, of which the board shall retain \$1,000
17 to offset the costs of the private activity bond allocation program
18 and the administration of that program and of which the board shall
19 transfer \$4,000 through an interagency agreement to the Texas
20 Department of Housing and Community Affairs for use in the
21 affordable housing research and information program as provided by
22 Section 2306.259.

23 SECTION 7. Section 1372.022, Government Code, is amended to
24 read as follows:

25 Sec. 1372.022. AVAILABILITY OF STATE CEILING TO ISSUERS.

26 (a) If the state ceiling is computed on the basis of \$75 per capita
27 or a greater amount, before August 15 of each year:

1 (1) 28.0 percent of the state ceiling is available
2 exclusively for reservations by issuers of qualified mortgage
3 bonds;

4 (2) 8 percent of the state ceiling is available
5 exclusively for reservations by issuers of state-voted issues;

6 (3) 2.0 percent of the state ceiling is available
7 exclusively for reservations by issuers of qualified small issue
8 bonds and enterprise zone facility bonds;

9 (4) 22.0 percent of the state ceiling is available
10 exclusively for reservations by issuers of qualified residential
11 rental project bonds;

12 (5) 10.5 percent of the state ceiling is available
13 exclusively for reservations by issuers of qualified student loan
14 bonds authorized by Section 53B.47 [~~53.47~~], Education Code, that
15 are nonprofit corporations able to issue a qualified scholarship
16 funding bond as defined by Section 150(d)(2), Internal Revenue Code
17 (26 U.S.C. Section 150(d)(2)); and

18 (6) 29.5 percent of the state ceiling is available
19 exclusively for reservations by any other issuer of bonds that
20 require an allocation.

21 (b) On and after August 15 [~~but before September 1~~], that
22 portion of the state ceiling available for reservations becomes
23 available for all applications for reservations in the order
24 determined by the board by lot. If all applicants for a reservation
25 have been offered a portion of the available state ceiling, then the
26 board shall grant reservations in the order in which the
27 applications for those reservations are received[, ~~subject to~~

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1 ~~Section 1372.0321. On and after September 1, that portion of the~~
2 ~~state ceiling available for reservations becomes available to any~~
3 ~~issuer for any bonds that require an allocation, subject to the~~
4 ~~provisions of this subchapter].~~

5 SECTION 8. Section 1372.026, Government Code, is amended to
6 read as follows:

7 Sec. 1372.026. LIMITATION ON AMOUNT OF STATE CEILING
8 AVAILABLE TO HOUSING FINANCE CORPORATIONS. (a) The maximum amount
9 of the state ceiling that may be reserved before August 15 by a
10 housing finance corporation for the issuance of qualified mortgage
11 bonds may not exceed the amount computed as follows:

12 (1) if the local population of the housing finance
13 corporation is 300,000 or more, \$36 [~~\$22.5~~] million plus the
14 product of the amount by which the local population exceeds 300,000
15 multiplied by \$40 [~~\$11.25~~];

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

20 (3) if the local population of the housing finance
21 corporation is 100,000 or more but less than 200,000, \$24 [~~\$15~~]
22 million plus the product of the amount by which the local population
23 exceeds 100,000 multiplied by \$80 [~~\$50~~]; or

24 (4) if the local population of the housing finance
25 corporation is less than 100,000, the product of the local
26 population multiplied by \$240 [~~\$150~~].

27 (b) A housing finance corporation may not receive an

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1 allocation for the issuance of qualified mortgage bonds in an
2 amount that exceeds \$40 [~~\$25~~] million.

3 (c) For purposes of this section, the local population of a
4 housing finance corporation is the population of the local
5 government or local governments on whose behalf a housing finance
6 corporation is created. If two local governments that have a
7 population of at least 50,000 [~~20,000~~] each and that have
8 overlapping territory have created housing finance corporations
9 that have the power to issue bonds to provide financing for home
10 mortgages, the population of the housing finance corporation
11 created on behalf of the larger local government is computed by
12 subtracting from the population of the larger local government the
13 population of the part of the smaller local government that is
14 located in the larger local government. The reduction of
15 population provided by this subsection is not required if the
16 smaller local government assigns its authority to issue bonds,
17 based on its population, to the larger local government.

18 SECTION 9. Section 1372.0261, Government Code, is amended
19 by amending Subsections (c) and (d) and adding Subsections (e),
20 (f), and (g) to read as follows:

21 (c) If a housing finance corporation's utilization
22 percentage is less than 80 [~~95~~] percent but at least 25 percent, the
23 next time the corporation becomes eligible for a reservation of the
24 state ceiling, the maximum amount of the state ceiling that may be
25 reserved for the corporation is equal to the amount for which the
26 corporation would otherwise be eligible under Section 1372.026
27 multiplied by the utilization percentage of the corporation's last

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1 bond issue that used an allocation of the state ceiling.

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

4 (1) the corporation fails to use:

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

7 (B) taxable bond proceeds; or

8 (2) as the result of an issuance of bonds, the
9 corporation's utilization percentage is 80 [~~95~~] percent or greater.

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

17 (f) A housing finance corporation may not be penalized under
18 Subsection (c) in a program year if, by December 31 of the preceding
19 program year, an amount equal to or less than 50 percent of the
20 aggregate state ceiling available for reservations by issuers of
21 qualified mortgage bonds under Section 1372.022(a)(1):

22 (1) has been used in connection with bond issues that
23 have closed on or before that date; or

24 (2) has had carryforward elections filed on or before
25 that date.

26 (g) An issuer that has carryforward available from the state
27 ceiling created by the Housing and Economic Recovery Act of 2008

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1 (Pub. L. No. 110-289) is not restricted by project limits for the
2 state ceiling. An issuer who uses the carryforward to issue
3 qualified mortgage bonds or mortgage credit certificates is not
4 subject to the utilization percentage calculation in determining
5 the amount of the issuer's reservation request.

6 SECTION 10. Subsection (b), Section 1372.028, Government
7 Code, is amended to read as follows:

8 (b) An issuer may apply for a reservation for a program year
9 not earlier than October 5 of the preceding year. An issuer may not
10 submit an application for a program year after November 15
11 [~~December 1~~] of that year.

12 SECTION 11. Subsection (a), Section 1372.035, Government
13 Code, is amended to read as follows:

14 (a) The board may not grant a reservation of a portion of the
15 state ceiling for a program year before January 2 or after November
16 15 [~~December 1~~] of that year.

17 SECTION 12. Subsection (a), Section 1372.037, Government
18 Code, is amended to read as follows:

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

22 (1) \$40 [~~\$25~~] million, if the issuer is an issuer of
23 qualified mortgage bonds, other than the Texas Department of
24 Housing and Community Affairs or the Texas State Affordable Housing
25 Corporation;

26 (2) \$50 million, if the issuer is an issuer of a
27 state-voted issue, other than the Texas Higher Education

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1 Coordinating Board, or \$75 million, if the issuer is the Texas
2 Higher Education Coordinating Board;

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

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

10 (5) the amount as prescribed in Sections 1372.033(d),
11 (e), and (f), if the issuer is an issuer authorized by Section
12 53B.47 [~~53.47~~], Education Code, to issue qualified student loan
13 bonds; or

14 (6) \$50 million, if the issuer is any other issuer of
15 bonds that require an allocation.

16 SECTION 13. Section 1372.042, Government Code, is amended
17 by adding Subsection (e) to read as follows:

18 (e) In addition to any other fees required by this chapter,
19 an issuer shall submit to the board a nonrefundable fee in the
20 amount of \$500 before receiving a carryforward designation under
21 Subsection (c).

22 SECTION 14. Subchapter B, Chapter 1372, Government Code, is
23 amended by adding Section 1372.045 to read as follows:

24 Sec. 1372.045. RESERVATION, ALLOCATION, AND CARRYFORWARD
25 DESIGNATION BY BOARD OF ADDITIONAL STATE CEILING. (a) The board
26 is authorized to establish and administer programs for the
27 reservation, allocation, and carryforward designation of

1 additional state ceiling in accordance with the federal law that
2 establishes the additional state ceiling and, to the extent
3 consistent with the federal law, as the board determines will
4 achieve the purposes for which the additional state ceiling is
5 authorized by federal law.

6 (b) The board may adopt rules and procedures the board
7 considers necessary to effectively administer programs authorized
8 under this section.

9 (c) The board may prescribe forms and applications as needed
10 to effectively implement and administer programs authorized under
11 this section.

12 (d) The board may adopt emergency rules in connection with
13 the programs authorized under this section when the board
14 determines that the emergency rules are necessary for the state to
15 obtain the full benefits of the additional state ceiling.

16 SECTION 15. Subchapter C, Chapter 1372, Government Code, is
17 amended by adding Section 1372.073 to read as follows:

18 Sec. 1372.073. DESIGNATION BY BOARD OF UNENCUMBERED STATE
19 CEILING. Notwithstanding any other provision of this chapter, the
20 board on the last business day of the year may assign as
21 carryforward to state agencies at their request and in the order
22 received any state ceiling that is not reserved or designated as
23 carryforward and for which no application for carryforward is
24 pending.

25 SECTION 16. Chapter 1372, Government Code, is amended by
26 adding Subchapter D to read as follows:

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1 SUBCHAPTER D. ALLOCATION OF MISCELLANEOUS BOND CEILING

2 Sec. 1372.101. PROGRAM ADMINISTRATION. (a) The

3 applicable official may designate bonds as entitled to a portion of
4 a miscellaneous bond ceiling or allocate a portion of a
5 miscellaneous bond ceiling to an issuer of bonds:

6 (1) in accordance with the federal law that
7 establishes the federal subsidy for which the miscellaneous bond
8 ceiling is established; and

9 (2) to the extent consistent with the federal law, as
10 the applicable official determines will achieve the purposes for
11 which the federal subsidy is authorized by federal law.

12 (b) The board is authorized to administer programs
13 established by the applicable official for the allocation of a
14 miscellaneous bond ceiling or the designation of bonds entitled to
15 the federal subsidy limited by a miscellaneous bond ceiling.

16 Sec. 1372.102. RULES AND PROCEDURES. (a) Unless otherwise
17 provided by law, the board may adopt rules and procedures the board
18 considers necessary to effectively administer programs established
19 by the applicable official for allocation of a miscellaneous bond
20 ceiling or for designating bonds as entitled to the federal subsidy
21 limited by the miscellaneous bond ceiling.

22 (b) The board may adopt emergency rules in connection with
23 the programs described in Subsection (a) when the board determines
24 that the emergency rules are necessary for the state to obtain the
25 full benefits of the federal subsidy that is limited by the
26 miscellaneous bond ceiling.

27 (c) The board may prescribe forms and applications as needed

1 to effectively implement and administer programs described in
2 Subsection (a).

3 (d) This section does not prevent an applicable official
4 from adopting rules and procedures in connection with the
5 allocations and designations when required by federal or state law
6 or from administering a program independently of the board.

7 Sec. 1372.103. APPLICATION FEES. In connection with
8 programs established by the applicable official for the allocation
9 of a miscellaneous bond ceiling or the designation of bonds
10 entitled to the federal subsidy limited by a miscellaneous bond
11 ceiling, the board may charge an application fee for each
12 application it receives under this subchapter.

13 SECTION 17. Section 1372.0235, Government Code, is
14 repealed.

15 SECTION 18. Subsection (a), Section 2306.6703, Government
16 Code, is amended to read as follows:

17 (a) An application is ineligible for consideration under
18 the low income housing tax credit program if:

19 (1) at the time of application or at any time during
20 the two-year period preceding the date the application round
21 begins, the applicant or a related party is or has been:

22 (A) a member of the board; or

23 (B) the director, a deputy director, the director
24 of housing programs, the director of compliance, the director of
25 underwriting, or the low income housing tax credit program manager
26 employed by the department;

27 (2) the applicant proposes to replace in less than 15

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1 years any private activity bond financing of the development
2 described by the application, unless:

3 (A) at least one-third of all the units in the
4 development are public housing units or Section 8 project-based
5 units and the applicant proposes to maintain for a period of 30
6 years or more 100 percent of the [~~development~~] units supported by
7 housing tax credits as rent-restricted and exclusively for
8 occupancy by individuals and families earning not more than 50
9 percent of the area median income, adjusted for family size[, and

10 [~~(B) at least one-third of all the units in the~~
11 ~~development are public housing units or Section 8 project-based~~
12 ~~units];~~

13 (B) the applicable private activity bonds will be
14 redeemed only in an amount consistent with their proportionate
15 amortization; or

16 (C) if the redemption of the applicable private
17 activity bonds will occur in the first five years of the operation
18 of the development and complies with Section 42(h)(4), Internal
19 Revenue Code of 1986:

20 (i) on the date the certificate of
21 reservation is issued, the Bond Review Board determines that there
22 is not a waiting list for private activity bonds in the same
23 priority level established under Section 1372.0321 or, if
24 applicable, in the same uniform state service region, as referenced
25 in Section 1372.0231, that is served by the proposed development;
26 and

27 (ii) the applicable private activity bonds

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1 will be redeemed according to underwriting criteria, if any,
2 established by the department;

3 (3) the applicant proposes to construct a new
4 development that is located one linear mile or less from a
5 development that:

6 (A) serves the same type of household as the new
7 development, regardless of whether the developments serve
8 families, elderly individuals, or another type of household;

9 (B) has received an allocation of housing tax
10 credits for new construction at any time during the three-year
11 period preceding the date the application round begins; and

12 (C) has not been withdrawn or terminated from the
13 low income housing tax credit program; or

14 (4) the development is located in a municipality or,
15 if located outside a municipality, a county that has more than twice
16 the state average of units per capita supported by housing tax
17 credits or private activity bonds, unless the applicant:

18 (A) has obtained prior approval of the
19 development from the governing body of the appropriate municipality
20 or county containing the development; and

21 (B) has included in the application a written
22 statement of support from that governing body referencing this
23 section and authorizing an allocation of housing tax credits for
24 the development.

25 SECTION 19. (a) In this section, "additional state
26 ceiling," "applicable official," and "miscellaneous bond ceiling"
27 have the meanings assigned by Section 1372.001, Government Code, as

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1 amended by this Act.

2 (b) All reservations, allocations, and carryforward
3 designations by the Bond Review Board of additional state ceiling
4 authorized by Section 3021 of the Housing and Economic Recovery Act
5 of 2008 (Pub. L. No. 110-289), and by applicable officials of
6 miscellaneous bond ceiling authorized by the Heartland Disaster Tax
7 Relief Act of 2008 (Pub. L. No. 110-343), regarding Hurricane Ike
8 disaster area bonds, or by the American Recovery and Reinvestment
9 Act of 2009 (Pub. L. No. 111-5), before the effective date of this
10 Act are validated.

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

20 SECTION 20. This Act takes effect immediately if it
21 receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for immediate
24 effect, this Act takes effect September 1, 2009.

S.B. No. 2064

David Newhall
President of the Senate

Jim Strawn
Speaker of the House

I hereby certify that S.B. No. 2064 passed the Senate on May 7, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 30, 2009, by the following vote: Yeas 31, Nays 0.

Daisy Grew
Secretary of the Senate

I hereby certify that S.B. No. 2064 passed the House, with amendment, on May 27, 2009, by the following vote: Yeas 146, Nays 2, one present not voting.

Robert Haney
Chief Clerk of the House

Approved:

19 JUN '09

Date

RICK PERRY
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2pm O'CLOCK
JUN 19 2009

Colby Hunter III