

GOVERNMENT CODE
CHAPTER 1372. PRIVATE ACTIVITY BONDS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1372.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Bond Review Board.
 - (2) "Bonds" means all obligations, including bonds, certificates, or notes, that are:
 - (A) authorized to be issued by:
 - (i) the constitution or a statute of this state; or
 - (ii) the charter of a home-rule municipality; and
 - (B) subject to the limitations of Section 146, Internal Revenue Code (26 U.S.C. Section 146).
 - (3) "Closing" means the issuance and delivery of a bond by an issuer in exchange for the required payment for the bond. The term does not include a delivery of a bond if expenditure of the proceeds of the bond is conditioned on obtaining credit enhancement in support of the bond.
 - (4) "Enterprise zone facility bond" means an enterprise zone facility bond under Section 1394, Internal Revenue Code (26 U.S.C. Section 1394).
 - (5) "Housing finance corporation" has the meaning assigned by Section 394.003, Local Government Code.
 - (6) "Internal Revenue Code" means the Internal Revenue Code of 1986 and its subsequent amendments.
 - (7) "Issuer" means:
 - (A) a department, board, authority, agency, subdivision, political subdivision, body politic, or instrumentality of this state; or
 - (B) a nonprofit corporation acting for or on behalf of an entity described by Paragraph (A).
 - (8) "Local government" has the meaning assigned by Section 394.003, Local Government Code.
 - (9) "Mortgage credit certificate" means a certificate of the type described by Section 25, Internal Revenue Code (26 U.S.C. Section 25).
 - (10) "Private activity bond" has the meaning assigned by Section 141(a), Internal Revenue Code (26 U.S.C. Section 141(a)).
 - (11) "Qualified mortgage bond" has the meaning assigned by Section 143(a), Internal Revenue Code (26 U.S.C. Section 143(a)). The term includes a mortgage credit certificate.
 - (12) "Qualified residential rental project bond" means a bond issued for a qualified residential rental project as defined by Section 142(d), Internal Revenue Code (26 U.S.C. Section 142(d)).
 - (13) "Qualified small issue bond" has the meaning assigned by Section 144(a), Internal Revenue Code (26 U.S.C. Section 144(a)).
 - (14) "Qualified student loan bond" has the meaning assigned by Section 144(b), Internal Revenue Code (26 U.S.C. Section 144(b)).
 - (15) "Reservation" means a reservation of a portion of the state ceiling for a specific bond issue.
 - (16) "State-voted issue" means an issue of bonds approved by the voters of this state in a statewide election.
 - (17) "State ceiling" means the maximum amount of tax-exempt private activity bonds that may be issued by all issuers in this state during a calendar year, as computed under Section 146(d), Internal Revenue Code (26 U.S.C. Section 146(d)).
 - (18) "Water development issue" means a bond issued as part of an issue of which 95 percent or more of the net proceeds are to be used to provide facilities for furnishing water, conserving water, developing water resources, or making water available.
- Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 1329, Sec. 1, eff. Sept. 1, 2003.

Sec. 1372.002. "PROJECT". (a) For purposes of this chapter, a project is:

- (1) an eligible facility that is proposed to be financed, in whole or in part, by an issue of bonds; or
- (2) in connection with an issue of qualified mortgage bonds or qualified student loan bonds, the providing of financial assistance to qualified mortgagors or students located in all or

any part of the jurisdiction of the issuer.

(b) For purposes of Subsection (a)(2), the jurisdiction of an issuer is determined on the date the issuer's application for reservation is delivered to the board.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.003. "CLOSING" IN CONNECTION WITH MORTGAGE CREDIT CERTIFICATES. The closing of mortgage credit certificates occurs on the date on which an issuer elects not to issue qualified mortgage bonds and to establish a mortgage credit certificate program under Section 25, Internal Revenue Code (26 U.S.C. Section 25).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.004. RULES. The board may adopt rules necessary to accomplish the purposes of this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.005. DELIVERY OF REQUIRED SUBMISSIONS TO BOARD; ISSUANCE OF RECEIPTS. (a) A submission required by this chapter must be delivered to the board at its Austin office during normal business hours.

(b) The board shall:

(1) note on the face of the document delivered the date and time of delivery; and

(2) provide the submitting issuer with a receipt that:

(A) describes the document delivered; and

(B) states the date and time of delivery.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.006. FEES. (a) An application for a reservation under Subchapter B or a carryforward designation under Subchapter C must be accompanied by a nonrefundable fee in the amount of \$500, except that for issuers of qualified residential rental project bonds the application must be accompanied by a nonrefundable fee of \$5,000, of which the board shall retain \$1,000 to offset the costs of the private activity bond allocation program and the administration of that program and of which the board shall transfer \$4,000 through an interagency agreement to the Texas Department of Housing and Community Affairs for use in the affordable housing research and information program as provided by Section 2306.259.

Text of subsec. (a-1) effective until February 1, 2007

(a-1) In addition to being used in the affordable housing research and information program under Section 2306.259, money transferred to the Texas Department of Housing and Community Affairs may be used by the department to conduct the study regarding residential foreclosures, as provided by Section 2306.260. This subsection expires February 1, 2007.

(b) An issuer, other than an issuer under Section 1372.022(a)(2), shall submit to the board a closing fee in an amount that is equal to the greater of:

(1) \$1,000; or

(2) 0.025 percent of the principal amount of the bonds certified as provided by Section 1372.039(a)(1).

(c) An issuer exchanging a portion of the state ceiling for mortgage credit certificates shall submit to the board a closing fee in an amount that is equal to the greater of:

(1) \$1,000; or

(2) 0.0125 percent of the amount of the state ceiling exchanged.

(d) Of each fee required by Subsection (b) or (c):

(1) one-third must be submitted not later than the 35th day after the reservation date for the issue; and

(2) the remainder must be submitted at the time of closing.

(e) An issuer receiving a carryforward designation shall submit to the board a fee in an amount that is equal to the greater of:

(1) \$1,000; or

(2) 0.025 percent of the amount of the carryforward designation.

(f) A fee required by Subsection (e) must be submitted not later than the fifth business day following the date of receipt of the carryforward designation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.012(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1329, Sec. 2, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 951, Sec. 2, eff. June 18, 2005.

SUBCHAPTER B. ALLOCATION AND RESERVATION OF STATE CEILING

Sec. 1372.021. ANNUAL ALLOCATION OF STATE CEILING. The state ceiling for each calendar year is allocated to issuers of private activity bonds.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.022. AVAILABILITY OF STATE CEILING TO ISSUERS. (a) If the state ceiling is computed on the basis of \$75 per capita or a greater amount, before August 15 of each year:

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

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

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

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

(5) 10.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified student loan bonds authorized by Section 53.47, 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)); and

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

(b) 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 the board by lot, subject to Section 1372.0321. 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.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.013(a), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1468, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1329, Sec. 3, eff. Sept. 1, 2003.

Sec. 1372.0221. DEDICATION OF PORTION OF STATE CEILING FOR PROFESSIONAL EDUCATORS HOME LOAN PROGRAM. Until August 1, out of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds under Section 1372.022, \$25 million shall be allotted each year and made available exclusively to the Texas State Affordable Housing Corporation for the purpose of issuing qualified mortgage bonds in connection with the professional educators home loan program established under Section 2306.562.

Added by Acts 2001, 77th Leg., ch. 1194, Sec. 1, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 332, Sec. 1, eff. Sept. 1, 2003.

Sec. 1372.0222. DEDICATION OF PORTION OF STATE CEILING FOR FIRE FIGHTER AND LAW ENFORCEMENT OR SECURITY OFFICER HOME LOAN PROGRAM. Until August 1, out of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds under Section 1372.022, \$25 million shall be allotted each year and made available exclusively to the Texas State Affordable Housing Corporation for the purpose of issuing qualified mortgage bonds in connection with the fire fighter, law enforcement officer, and security officer home loan program established under Section 2306.5621.

Added by Acts 2003, 78th Leg., ch. 1050, Sec. 1, eff. June 20, 2003. Amended by Acts 2005, 79th Leg., ch. 196, Sec. 2, eff. May 27, 2005; Acts 2005, 79th Leg., ch. 728, Sec. 23.002(6), eff. Sept. 1, 2005.

Sec. 1372.0223. DEDICATION OF PORTION OF STATE CEILING FOR PROFESSIONAL NURSING PROGRAM FACULTY MEMBER HOME LOAN PROGRAM. Until August 1, out of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds under Section 1372.022, \$5 million shall be allotted each year and made available exclusively to the Texas State Affordable Housing Corporation for the purpose of issuing qualified mortgage bonds in connection with the professional nursing program faculty member home loan program established under

Section 2306.5622.

Added by Acts 2005, 79th Leg., ch. 674, Sec. 9, eff. June 17, 2005.

Sec. 1372.023. DEDICATION OF PORTIONS OF STATE CEILING TO TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS. (a) Until August 15, of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds, one-third is available exclusively to the Texas Department of Housing and Community Affairs for the purpose of issuing qualified mortgage bonds.

(b) Until August 15, of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified residential rental project bonds, one-fifth is available exclusively to the Texas Department of Housing and Community Affairs in the manner described by Section 1372.0231.

(c) The Texas Department of Housing and Community Affairs may not reserve a portion of the state ceiling that is available exclusively for reservations by issuers of qualified residential rental project bonds other than the portion dedicated to the department under Subsection (b).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.32, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 332, Sec. 2, eff. Sept. 1, 2003.

Sec. 1372.0231. DEDICATION OF PORTION OF STATE CEILING AVAILABLE FOR QUALIFIED RESIDENTIAL RENTAL PROJECT BONDS. (a) Until August 15, of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified residential rental project bonds:

(1) 20 percent is available exclusively to the Texas Department of Housing and Community Affairs in the manner described by Subsection (b);

(2) 70 percent is available exclusively to housing finance corporations in the manner described by Subsections (c)-(f); and

(3) 10 percent is available exclusively to the Texas State Affordable Housing Corporation in the manner described by Subsection (b-1).

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 330,
Sec. 27

(b) With respect to the amount of the state ceiling set aside under Subsection (a)(1), the board shall grant reservations at the direction of the Texas Department of Housing and Community Affairs as provided by Section 2306.359 and in a manner that ensures that:

(1) the set-aside amount is used for proposed projects that are located throughout the state; and

(2) not more than 50 percent of the set-aside amount is used for proposed projects that are located in qualified census tracts as defined by Section 143(j), Internal Revenue Code of 1986.

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 1329,
Sec. 4

(b) With respect to the amount of the state ceiling set aside under Subsection (a)(1), after the board's review and approval, the board shall grant reservations at the direction of the Texas Department of Housing and Community Affairs in accordance with Section 1372.0321 and criteria established by rules of that department. Subsequent allocations the board makes on behalf of that department are subject to review and approval by the board in accordance with Section 1231.041. Subject to Sections 1372.0321(a) and (b), the board shall grant reservations:

(1) in a manner that ensures that:

(A) the set-aside amount is used for proposed projects that are located throughout the state; and

(B) not more than 50 percent of the set-aside amount is used for proposed projects that are located in qualified census tracts as defined by Section 143(j), Internal Revenue Code of 1986; and

(2) in the order determined by lot, but only for those reservations granted between August 15 and November 30 of the program year.

(b-1) With respect to the amount of the state ceiling set aside under Subsection (a)(3), the board shall issue qualified residential rental project bonds and allocate bond funds at the direction of the Texas State Affordable Housing Corporation as provided by Section 2306.565. Issuances made by the board under this subsection are subject to review and approval by the board

under Section 1231.041.

(c) With respect to the amount of the state ceiling set aside under Subsection (a)(2), the board shall grant reservations in a manner that ensures that not more than 50 percent of the set-aside amount is used for proposed projects that are located in qualified census tracts as defined by the most recent publication by the United States Department of Housing and Urban Development.

(d) Except as provided by Subsection (i), before June 1, the board shall apportion the amount of the state ceiling set aside under Subsection (a)(2) among the uniform state service regions according to the percentage of the state's population that resides in each of those regions.

(e) Until May 15 of each year, for each of the uniform state service regions containing Austin, Dallas, or Houston, the board shall reserve \$15 million of the state ceiling set aside for the region under Subsection (d) for the areas in the region that are located outside of a metropolitan statistical area.

(f) In each area described by Subsection (d) or (e), the board shall grant reservations based on the priority levels of proposed projects as described by Section 1372.0321.

(g) On or after June 1, the board may not grant available reservations to housing finance corporations described by Subsection (a) based on uniform state service regions or any segments of those regions.

(h) Allocations by the board at the direction of the Texas Department of Housing and Community Affairs under Subsection (b) are subject to review and approval by the board as provided by Section 1231.041.

(i) Before June 1, the board shall apportion the amount of the state ceiling set aside under Subsection (a)(2) only among uniform state service regions with respect to which an issuer has submitted an application for a reservation of the state ceiling on or before March 1.

(j) An application by an issuer of qualified residential rental project bonds that is submitted after the deadline for eligibility to participate in the lottery has a priority lower than that of every application submitted before that date.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 10.02, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 27, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 332, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 969, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 4, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 728, Sec. 23.001(37), eff. Sept. 1, 2005.

Sec. 1372.0235. DEDICATION OF PORTION OF STATE CEILING TO TEXAS AGRICULTURAL FINANCE AUTHORITY. (a) Until June 1, of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified small issue bonds and enterprise zone facility bonds, one-third is available exclusively to the Texas Agricultural Finance Authority for the purpose of issuing qualified small issue bonds and enterprise zone facility bonds in rural areas of the state.

(b) For purposes of this section, the governing body of the Texas Agricultural Finance Authority determines what constitutes a rural area of the state.

Added by Acts 2001, 77th Leg., ch. 1468, Sec. 2, eff. Sept. 1, 2001.

Sec. 1372.024. INCREASE IN AMOUNT OF STATE CEILING AVAILABLE TO ISSUERS OF STATE-VOTED ISSUES. (a) If, before January 2, applications received for reservations for state-voted issues total more than eight percent of the available state ceiling for that program year, the percentage of state-voted ceiling requested that is more than eight percent of the state ceiling:

(1) is removed from the state ceiling available to other issuers on January 2; and

(2) is available for those applications for reservations for state-voted issues.

(b) The amount removed under Subsection (a) may not exceed eight percent of the state ceiling.

(c) The remaining portion of the state ceiling is available in accordance with Section 1372.022(a).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 969, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 5, eff. Sept. 1, 2003.

Sec. 1372.025. REALLOCATION OF STATE CEILING ON FAILURE OF BONDS TO QUALIFY AS TAX-EXEMPT OBLIGATIONS. (a) If a type of bond listed in Section 1372.022(a) does not qualify on January 2 of any

year for treatment as a tax-exempt obligation under the Internal Revenue Code:

(1) Section 1372.022(a) has no effect for that year for that type of bond; and

(2) by March 1, the portion of the state ceiling that but for Subdivision (1) would have been available exclusively for reservations by issuers of that type of bond shall be reallocated proportionately for reservation by each other category of issuer listed in that section.

(b) Subsection (a) does not apply to qualified mortgage bonds or qualified residential rental project bonds made available exclusively to the Texas Department of Housing and Community Affairs under Section 1372.023 or the Texas State Affordable Housing Corporation under Sections 1372.0221 and 1372.0222.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.33, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 196, Sec. 3, eff. May 27, 2005.

Sec. 1372.026. LIMITATION ON AMOUNT OF STATE CEILING AVAILABLE TO HOUSING FINANCE CORPORATIONS. (a) 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 may not exceed the amount computed as follows:

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

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

(3) if the local population of the housing finance corporation is 100,000 or more but less than 200,000, \$15 million plus the product of the amount by which the local population exceeds 100,000 multiplied by \$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 \$150.

(b) A housing finance corporation may not receive an allocation for the issuance of qualified mortgage bonds in an amount that exceeds \$25 million.

(c) 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. If two local governments that have a population of at least 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. 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.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.03, eff. Sept. 1, 2001.

Sec. 1372.0261. FAILURE OF HOUSING FINANCE CORPORATION TO USE AMOUNT OF STATE CEILING ALLOCATED. (a) In this section, "utilization percentage" means that portion of the amount of the state ceiling allocated to a housing finance corporation with respect to which the corporation issues private activity bonds that result in mortgage loans or mortgage credit certificates. A housing finance corporation's utilization percentage for an allocation of the state ceiling is the quotient of:

(1) the amount of the state ceiling used to purchase mortgages or mortgage-backed securities or the amount of the state ceiling used to issue mortgage credit certificates; divided by

(2) the amount of the state ceiling allocated, minus any amounts of the state ceiling required for debt service reserve funds.

(b) If a housing finance corporation's issue of bonds uses a new allocation of the state ceiling in combination with taxable bond proceeds or with bond proceeds recycled from previous

allocations of the state ceiling, the first loans or certificates financed are considered in computing the utilization percentage of the new allocation of the state ceiling.

(c) If a housing finance corporation's utilization percentage is less than 95 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 the utilization percentage of the corporation's last bond issue that used an allocation of the state ceiling.

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

- (1) the corporation fails to use:
 - (A) bond proceeds recycled from previous allocations of the state ceiling; or
 - (B) taxable bond proceeds; or
 - (2) as the result of an issuance of bonds, the corporation's utilization percentage is 95 percent or greater.
- Added by Acts 2001, 77th Leg., ch. 1367, Sec. 10.04, eff. Sept. 1, 2001.

Sec. 1372.027. PUBLICATION OF AVAILABLE STATE CEILING. The board shall publish at least weekly on its Internet site:

- (1) a statement of the amount of the available state ceiling;
- (2) a list of the issues that have received a reservation since the preceding publication, including the amount of each reservation; and
- (3) a list of the issues that had previously received a reservation that have closed since the preceding publication.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 969, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 6, eff. Sept. 1, 2003.

Sec. 1372.028. APPLICATION FOR RESERVATION; FORM AND CONTENT. (a) In this section, "qualified bond" has the meaning assigned by Section 141(e), Internal Revenue Code (26 U.S.C. Section 141(e)).

(b) An issuer may apply for a reservation for a program year not earlier than October 5 of the preceding year. An issuer may not submit an application for a program year after December 1 of that year.

- (c) The application must:
- (1) be on a form prescribed by the board;
 - (2) be signed by a member or officer of the issuer;
- and

(3) state:

- (A) the maximum amount of the bonds in the issue that require an allocation under Section 146, Internal Revenue Code (26 U.S.C. Section 146);

(B) the project or, with respect to an eligible facility, a functional description of the project to be financed by the proceeds, including the identification of the user of the proceeds or project;

(C) whether the bonds are qualified bonds;

(D) if the bonds are qualified bonds:

- (i) the subparagraph of Section 141(e)(1), Internal Revenue Code (26 U.S.C. Section 141(e)(1)), that applies; and

- (ii) if Section 141(e)(1)(A) of that code (26 U.S.C. Section 141(e)(1)(A)) applies, the paragraph of Section 142(a) of that code (26 U.S.C. Section 142(a)) that applies;

(E) if the bonds are not qualified bonds:

- (i) that Section 141(b)(5), Internal Revenue Code (26 U.S.C. Section 141(b)(5)), applies; or

- (ii) for a transition rule project, the paragraph of the Tax Reform Act of 1986 that applies;

(F) that bonds are not being issued for the same stated project for which the issuer has received sufficient carryforward during a previous year or for which there exists unexpended proceeds from, including transferred proceeds representing unexpended proceeds from, one or more prior issues of bonds issued by the same issuer or based on the issuer's population; and

(G) other information that the board may require.

(d) An issuer is not required to provide the statement

required by Subsection (c)(3)(F) if the issuer:

(1) is an issuer of a state-voted issue;
(2) is the Texas Department of Housing and Community Affairs, the Texas Agricultural Finance Authority, or the Texas State Affordable Housing Corporation; or
(3) provides evidence that one or more binding contracts have been entered into, or other evidence acceptable to the board as described by program rule, to spend the unexpended proceeds by the later of:

(A) 12 months after the date the board receives the application; or
(B) December 31 of the program year for which the application is filed.

(e) If an issuer applied the previous year for a reservation for qualified mortgage bonds and has not received the reservation at the time of application for the lottery, the issuer, instead of filing a complete application under Subsection (c), may file a statement explaining whether there are any changes in information from the application information filed the previous year. If there are changes, the statement must specify the current information. An issuer that files a statement under this subsection must pay the same application fee required for a complete application.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.014(a), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1468, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 969, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 7, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 196, Sec. 4, eff. May 27, 2005.

Sec. 1372.0281. INFORMATION REQUIRED OF ISSUERS OF CERTAIN QUALIFIED STUDENT LOAN BONDS. (a) An issuer of qualified student loan bonds authorized by Section 53.47, Education Code, shall provide to the board together with its application for a reservation information required by board rule.

(b) The board may require an issuer described by Subsection (a) to provide information with its application, or to supplement the application with information, that includes:

(1) financial statements;
(2) portfolio amounts;
(3) default rates;
(4) descriptions of how student loans are being used or spent; and
(5) information about the issuer's client agencies.

Added by Acts 2003, 78th Leg., ch. 1329, Sec. 8, eff. Sept. 1, 2003.

Sec. 1372.029. APPLICATIONS FOR MULTIPLE PROJECTS AT SAME SITE PROHIBITED. The board may not accept applications for reservations for more than one project located at, or related to, a business operation at a particular site for any one program year.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.030. GRANTING OF CERTAIN RESERVATIONS PROHIBITED; EXCEPTIONS. (a) The board may not grant a reservation to an issuer to whom proceeds are available from other bonds issued by or on behalf of that issuer for the project stated in the issuer's application for the reservation.

(b) Subsection (a) does not apply to an issuer to which Section 1372.028(d) applies.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.031. PRIORITIES FOR RESERVATIONS AMONG CERTAIN ISSUERS. Subject to Sections 1372.0321 and 1372.0231, if, on or before October 20, more than one issuer in a category described by Section 1372.022(a)(2), (3), (4), or (6) applies for a reservation of the state ceiling for the next program year, the board shall grant reservations in that category in the order determined by the board by lot.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.05, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.015(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 969, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 9, eff. Sept. 1, 2003.

Sec. 1372.032. PRIORITIES FOR RESERVATIONS AMONG ISSUERS OF QUALIFIED MORTGAGE BONDS. (a) If, on or before October 20, more than one housing finance corporation applies for a reservation of the state ceiling for qualified mortgage bonds for the next program year, the board shall give priority in granting reservations in that category to issuers that:

(1) applied before September 1 of the preceding year

for a reservation on behalf of the same local population for that year; but

(2) were not granted a reservation during that year.

(b) The priority of an issuer under Subsection (a) that is composed of more than one jurisdiction is not affected by the issuer's loss of a sponsoring local government and that government's population if the dollar amount of the application has not increased.

(c) Within the group of issuers given priority and within the group not given priority, the board shall grant reservations in reverse order of the date of the most recent closing of qualified mortgage bonds applicable to the housing finance corporations, with a corporation that has never received a reservation for mortgage revenue bonds being the first to receive a reservation and the corporation that had the most recent closing being the last to receive a reservation. If closings occurred on the same date, the board shall grant reservations in the order determined by the board by lot.

(d) For purposes of Subsection (c), the most recent closing applicable to a newly created housing finance corporation sponsored by one or more local governments that had previously sponsored another housing finance corporation, whether existing or not, or to a housing finance corporation sponsored by a local government that has participated in the program of another housing finance corporation is the most recent closing of qualified mortgage bonds the proceeds of which were available to the population of the corporation.

(e) A housing finance corporation or its sponsoring local government may not achieve an advantage in the determination of its most recent closing by creating, dissolving, or withdrawing from a housing finance corporation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.06, eff. Sept. 1, 2001.

Sec. 1372.0321. PRIORITIES FOR RESERVATIONS AMONG ISSUERS OF QUALIFIED RESIDENTIAL RENTAL PROJECT ISSUES. (a) In granting reservations to issuers of qualified residential rental project issues, the board shall give first priority to:

(1) projects in which:

(A) 50 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 50 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 50 percent of the area median income; and

(B) the remaining 50 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 60 percent of the area median income;

(2) projects in which:

(A) 15 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 30 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 30 percent of the area median income; and

(B) the remaining 85 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals

earning not more than 60 percent of the area median income;

(3) projects:

(A) in which 100 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 60 percent of the area median income; and

(B) which are located in a census tract in which the median income, based on the most recent information published by the United States Bureau of the Census, is higher than the median income for the county, metropolitan statistical area, or primary metropolitan statistical area in which the census tract is located as established by the United States Department of Housing and Urban Development; or

(4) on or after June 1, projects that are located in counties, metropolitan statistical areas, or primary metropolitan statistical areas with area median family incomes at or below the statewide median family income established by the United States Department of Housing and Urban Development.

Text of subsec. (a-1) as added by Acts 2003, 78th Leg., ch. 330, Sec. 28

(a-1) In granting reservations to issuers of qualified residential rental project issues, the board shall give second priority to projects in which 100 percent of the residential units in the project are:

(1) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(2) reserved for families and individuals earning not more than 60 percent of the area median income.

Text of subsec. (a-1) as added by Acts 2003, 78th Leg., ch. 1329, Sec. 10

(a-1) In granting reservations to issuers of qualified residential rental project issues, the board shall give second priority to projects in which 100 percent of the residential units in the project are under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program.

(a-2) In granting reservations to issuers of qualified residential rental project issues, the board shall give third priority to any other qualified residential rental project.

(b) The board may not reserve a portion of the state ceiling for a first or second priority project described by this section unless the board receives evidence that an application has been filed with the Texas Department of Housing and Community Affairs for the low-income housing tax credit that is available for multifamily transactions that are at least 51 percent financed by tax-exempt private activity bonds.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 8.015(a), eff. Sept. 1, 2001 and Acts 2001, 77th Leg., ch. 1367, Sec. 10.07(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 28, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 10, eff. Sept. 1, 2003.

Sec. 1372.033. PRIORITIES FOR RESERVATIONS AMONG CERTAIN ISSUERS OF QUALIFIED STUDENT LOAN BONDS. (a) In this section:

(1) "Additional need" means the additional need of a qualified nonprofit corporation determined by subtracting the floor allocation for that qualified nonprofit corporation from that corporation's annual need.

(2) "Annual need" means, for a qualified nonprofit corporation, one-half of the total principal amount of Texas eligible loans the qualified nonprofit corporation purchased in the two most recently completed fiscal years ending June 30.

(3) "Floor allocation" means, for a qualified nonprofit corporation, an allocation in the amount of the lesser of \$27 million or the qualified nonprofit corporation's annual need.

(4) "Qualified nonprofit corporation" has the meaning assigned by Section 53.47, Education Code.

(5) "Remaining amount to be allocated" is the total amount to be allocated under Section 1372.022(a)(5) in a calendar year less the sum of the floor allocations of the qualified nonprofit corporations that have applied for a student loan bond allocation for the calendar year.

(6) "Student loan bond allocation" means an allocation for private activity bonds under Section 1372.022(a)(5).

(7) "Texas eligible loan" means a Texas loan purchased from the originating lender by a nonprofit corporation acting as described by Section 53.47(g), Education Code.

(8) "Texas loan" means a guaranteed student loan, as defined by Section 53.47, Education Code, made on behalf of a borrower who is:

(A) a resident of this state; or
(B) a student attending an accredited institution, as defined by Section 53.47, Education Code, that is located in this state.

(9) "Total amount to be allocated" means the total available under Section 1372.022(a)(5) for all applicants.

(b) Only a qualified nonprofit corporation may apply for a student loan bond allocation.

(c) An application for a student loan bond allocation must include a statement as provided by this subsection. The statement must be certified by an officer of the applicant, whose signature must be notarized. The statement must be audited by an independent auditor, and the report of the independent auditor must be attached to the statement. The statement must list:

(1) the principal amount of Texas eligible loans the applicant purchased in the two most recently completed fiscal years ending June 30;

(2) the agencies that are guaranteeing the Texas eligible loans listed and the amount of Texas eligible loans guaranteed by each agency;

(3) the originating lenders from whom the Texas eligible loans were purchased and the amount of Texas eligible loans each originating lender sold; and

(4) the date of each purchase transaction.

(d) Each qualified nonprofit corporation that applies for a student loan bond allocation in compliance with all applicable application requirements is entitled to receive a floor allocation except as provided by this section. If the total amount to be allocated is less than the sum of the floor allocations for all of the applicants, each applicant is entitled to a proportion of the total amount to be allocated equal to the proportion its floor allocation bears to the total of the floor allocation for all of the applicants. A qualified nonprofit corporation whose annual need is zero is not entitled to apply for a student loan bond allocation.

(e) If, after allocations are computed under Subsection (d), there is a remaining amount to be allocated and there are one or more applicants with additional need, each applicant with additional need is entitled to a proportion of the remaining amount to be allocated equal to the proportion the applicant's additional need bears to the total of the additional need of all applicants but not to exceed the amount of the applicant's additional need. Any amount remaining after distribution to applicants with additional need shall be allocated in equal amounts to the other applicants that have a floor allocation of greater than \$27 million.

(f) Notwithstanding Subsection (e), if an applicant's share of the remaining amount to be allocated is greater than 50 percent, that applicant is entitled to 50 percent of the remaining amount to be allocated. The other 50 percent of the remaining amount to be allocated shall be distributed to the other applicants in proportion to their unmet additional need, except that the allocations may not exceed, for any applicant, the additional need of the applicant. If, after the additional needs of the other applicants are met, there remains any amount of the remaining amount to be allocated available for distribution, that amount shall be distributed to the applicant with the share of more than 50 percent of the remaining amount to be allocated in an amount not to exceed the amount of the applicant's additional need.

(g) A qualified nonprofit corporation that receives a student loan bond allocation may not:

(1) transfer the allocation to another entity; or
(2) loan to another entity other than a student proceeds of bonds issued under the allocation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.08, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1329, Sec. 11, eff. Sept. 1, 2003.

Sec. 1372.034. ORDER OF ACCEPTANCE OF CERTAIN APPLICATIONS FOR RESERVATION. The board shall accept applications for a reservation submitted after October 20 in the order in which they are received.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.035. GRANTING OF RESERVATIONS; ORDER. (a) The board may not grant a reservation of a portion of the state ceiling for a program year before January 2 or after December 1 of that year.

(b) Except as provided by Sections 1372.031-1372.033, the board shall grant reservations in the order in which the applications for those reservations are received, regardless of the amounts of the related bond issues.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.036. RESERVATIONS FROM PORTION OF STATE CEILING SUBSEQUENTLY BECOMING AVAILABLE. (a) If, before June 1, any portion of the state ceiling in a category described by Section 1372.022(a) from which issuers were granted reservations becomes available in that category:

(1) those amounts of the state ceiling shall be aggregated; and

(2) the board shall grant reservations from that category on June 1.

(b) Beginning June 1, partial reservations may be offered once to each applicant in each category described by Section 1372.022(a) until an applicant in the category accepts the partial reservation or until additional volume is returned in an amount sufficient to grant a full reservation.

(c) After January 1, the board may grant a reservation to an issuer if the amount of state ceiling available in a category is greater than the amount of state ceiling applied for in that category.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 969, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 12, eff. Sept. 1, 2003.

Sec. 1372.037. LIMITATIONS ON GRANTING OF RESERVATIONS FOR INDIVIDUAL PROJECTS. (a) Except as provided by Subsection (b), before September 1 the board may not grant for any single project a reservation for that year that is greater than:

(1) \$25 million, if the issuer is an issuer of qualified mortgage bonds, other than the Texas Department of Housing and Community Affairs;

(2) \$50 million, if the issuer is an issuer of a state-voted issue, other than the Texas Higher Education Coordinating Board, or \$75 million, if the issuer is the Texas Higher Education Coordinating Board;

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

(4) the lesser of \$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;

(5) the amount as prescribed in Sections 1372.033(d), (e), and (f), if the issuer is an issuer authorized by Section 53.47, Education Code, to issue qualified student loan bonds; or

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

(b) In addition to a reservation under Subsection (a)(2), the board may grant to the Texas Water Development Board a reservation for not more than \$100 million of the available state ceiling for a water development issue.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1329, Sec. 13, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 600, Sec. 1, eff. June 17, 2005.

Sec. 1372.038. RESERVATION DATE. The reservation date for an issue is the date on which the board notifies an issuer whose application for the reservation has been accepted for filing by the board that a portion of the state ceiling is available to that issue.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.039. CERTIFICATION REQUIRED OF ISSUER;

CANCELLATION ON FAILURE. (a) Not later than the 35th day after an issuer's reservation date, the issuer shall submit to the board:

(1) a certificate signed by an authorized representative of the issuer that certifies the principal amount of the bonds to be issued; and

(2) a list of finance team members and their addresses and telephone numbers.

(b) If the principal amount certified by the issuer is less than the amount stated in the issuer's application for the reservation, the amount of the issuer's reservation is reduced to the amount certified.

(c) If an issuer does not submit the documents as required by this section and the fee as required by Section 1372.006(d)(1):

(1) the reservation is canceled; and

(2) from the reservation date of the canceled reservation until the expiration of the applicable period described by Section 1372.042(a) or (b):

(A) no issuer may submit an application for a reservation for the same project; and

(B) the issuer is eligible for a carryforward designation for the project only as provided by Subchapter C.

(d) If an issuer does not submit the documents during the period provided by Subsection (a), the issuer may submit the documents not later than the third day after the end of the 35-day period together with a statement and evidence regarding extenuating circumstances that prevented a timely filing. The board shall review the statement and the evidence and may, based on the statement and evidence, permit the late filing.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1329, Sec. 14, eff. Sept. 1, 2003.

Sec. 1372.040. RESERVATION BY CERTAIN ISSUERS OF QUALIFIED MORTGAGE BONDS OF MONEY FOR MORTGAGES FOR CERTAIN PERSONS. An issuer of qualified mortgage bonds, other than the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation, shall reserve for six months 50 percent of the funds available for loans outside the federally designated target areas to provide mortgages to individuals and families with incomes below 80 percent of the applicable median family income, as defined by Section 143(f)(4), Internal Revenue Code (26 U.S.C. Section 143(f)(4)).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 969, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1329, Sec. 15, eff. Sept. 1, 2003.

Sec. 1372.041. REFUSAL TO ACCEPT RESERVATION BY ISSUER. (a) An issuer may:

(1) refuse to accept a reservation if the amount of state ceiling available is less than the amount for which the issuer applied; or

(2) refuse to accept a reservation for any amount if the reservation is granted after September 23.

(b) The amount of available state ceiling is subject to the grant of a reservation to each succeeding issuer eligible to be granted a reservation of that available state ceiling in the order of priority under this subchapter.

(c) An issuer's refusal to accept a reservation does not affect the issuer's order of priority for a subsequent grant of a reservation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.042. DEADLINE FOR CLOSING ON BONDS BY ISSUER. (a) An issuer other than an issuer of qualified residential rental project bonds, an issuer of state-voted issues, or an issuer of qualified mortgage bonds shall close on the bonds for which the reservation was granted not later than the 120th day after the reservation date.

(a-1) An issuer of qualified residential rental project bonds shall close on the bonds for which the reservation was granted not later than the 150th day after the reservation date. If an issuer of qualified residential rental project bonds fails to close on the bonds for which a reservation was granted, the issuer shall pay the full closing fee provided by Section 1372.006(b) if the application is not withdrawn before the 120th day after the reservation date.

(b) An issuer of state-voted issues or an issuer of qualified mortgage revenue bonds shall close on the bonds for which

the reservation was granted not later than the 180th day after the reservation date.

(c) Notwithstanding Subsections (a), (a-1), and (b), if the 120-day period, the 150-day period, or the 180-day period, as applicable, expires on or after December 24 of the year in which the reservation was granted, the issuer shall close on the bonds before December 24, except that if the applicable period expires after December 31 of that year, the issuer may notify the board in writing before December 24 of the issuer's election to carry forward the reservation and of the issuer's expected bond closing date. In compliance with the requirements of Section 146(f), Internal Revenue Code of 1986, the board shall file in a timely manner a carryforward election with respect to any bonds expected to close after December 31 to permit the bonds to close by the expected date, except that the board may not file the carryforward election after February 15 of the year following the year in which the reservation was granted. The grant of the reservation for the balance of the 120-day period, the 150-day period, or the 180-day period, as applicable, is automatically and immediately reinstated on the board's filing of a carryforward election with respect to the reservation.

(d) Not later than the fifth business day after the date on which the bonds are closed, the issuer shall submit to the board:

(1) a written notice stating the delivery date of the bonds and the principal amount of the bonds issued;

(2) if the project is a project entitled to first or second priority under Section 1372.0321, evidence from the Texas Department of Housing and Community Affairs that an award of low-income housing tax credits has been approved for the project; and

(3) a certified copy of the document authorizing the bonds and any other document relating to the issuance of the bonds, including a statement of the bonds':

(A) principal amount;

(B) interest rate or formula by which the interest rate is computed;

(C) maturity schedule; and

(D) purchaser or purchasers.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.09, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.016(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1329, Sec. 16, eff. Sept. 1, 2003.

Sec. 1372.043. CANCELLATION OF RESERVATION ON ISSUER'S FAILURE TO TIMELY CLOSE ON BONDS. If an issuer does not close on the issuer's bonds as required by Section 1372.042:

(1) the reservation for the issue is canceled; and

(2) for the period beginning on the reservation date and ending on the 150th day after the reservation date or on the 210th day after the reservation date if the issuer is an issuer of qualified mortgage bonds:

(A) no issuer may submit an application for a reservation for the same project; and

(B) the issuer is eligible for a carryforward designation for the project only as provided by Subchapter C.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.044. ASSIGNMENT OF RESERVATION. A reservation may be assigned only between a governmental unit and an issuer that is authorized to issue private activity bonds on behalf of that governmental unit.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. CARRYFORWARD OF STATE CEILING

Sec. 1372.061. DESIGNATION BY BOARD OF CERTAIN AMOUNTS OF STATE CEILING AS CARRYFORWARD. (a) The board may designate as carryforward:

(1) the amount of the state ceiling that is not reserved before December 15; and

(2) any amount of the state ceiling that:

(A) was reserved before December 15; and

(B) becomes available on or after that date because of the cancellation of a reservation.

(b) The board shall designate as carryforward a reservation amount for which the board receives written notice from an issuer of an election to carry forward the reservation under Section 1372.042(c) if the bonds relating to the reservation are not required to close by December 31 of the year in which the

reservation was granted.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.10, eff. Sept. 1, 2001.

Sec. 1372.062. PRIORITY CLASSIFICATIONS OF CARRYFORWARD DESIGNATIONS. (a) The board shall:

(1) designate amounts as carryforward in accordance with the system of priority classifications specified in Sections 1372.063-1372.068; and

(2) in each classification, make the designations in order of the application for those designations.

(b) Notwithstanding Subsection (a), the board shall designate in compliance with the requirements of Section 146(f), Internal Revenue Code of 1986, a carryforward relating to an issuer's written election under Section 1372.042(c) according to the category of bonds to which the reservation subject to the carryforward relates.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 10.10, eff. Sept. 1, 2001.

Sec. 1372.063. PRIORITY 1 CARRYFORWARD CLASSIFICATION. The priority 1 carryforward classification applies to an issuer of a state-voted issue.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.064. PRIORITY 2 CARRYFORWARD CLASSIFICATION. The priority 2 carryforward classification applies to an issuer of bonds approved by the voters of a political subdivision of this state if:

(1) the bonds will be private activity bonds for which an allocation will be required for the bonds to be tax exempt under the Internal Revenue Code; or

(2) the excess private use of a governmental bond will require allocation so that the bond may retain its tax exempt status under the Internal Revenue Code.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.065. PRIORITY 3 CARRYFORWARD CLASSIFICATION. The priority 3 carryforward classification applies to:

(1) a state agency, other than an issuer of a state-voted issue; and

(2) a political subdivision whose board of directors holds office under Section 30a, Article XVI, Texas Constitution.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.066. PRIORITY 4 CARRYFORWARD CLASSIFICATION. (a) The priority 4 carryforward classification applies to any political subdivision:

(1) that is authorized to issue bonds; and

(2) to which priority carryforward classifications 1-3 do not apply.

(b) A project that is the subject of an application for a priority 4 carryforward classification must be owned by a governmental unit in accordance with applicable provisions of the Internal Revenue Code.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.067. PRIORITY 5 CARRYFORWARD CLASSIFICATION. (a) The priority 5 carryforward classification applies to an issuer that:

(1) was created to act on behalf of this state or one or more political subdivisions of this state; and

(2) is applying for carryforward for a project:

(A) for which there has been an inducement resolution or other comparable preliminary approval; and

(B) with respect to which:

(i) a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before submission of the application;

(ii) significant expenditures for construction, reconstruction, or rehabilitation were readily identifiable with and necessary to carry out a binding contract for the supply of property or services or the sale of output; or

(iii) significant expenditures were paid or incurred before submission of the application.

(b) In this section, "significant expenditures" means expenditures that are greater than the lesser of:

(1) \$1 million; or

(2) 10 percent of the reasonably anticipated cost of

the project.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.068. PRIORITY 6 CARRYFORWARD CLASSIFICATION. The priority 6 carryforward classification applies to an issuer that:

(1) was created to act on behalf of this state or one or more political subdivisions of this state; and

(2) is applying for carryforward for a project that is not eligible for another priority carryforward classification.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.069. APPLICATION FOR CARRYFORWARD DESIGNATION; LIMITATIONS. (a) An issuer may apply for a carryforward designation at any time during the year in which the designation is sought.

(b) An issuer that applies for a carryforward designation may not apply later in the same year for a reservation for the same project.

(c) An issuer may not apply for the carryforward designation of an amount that is greater than \$50 million.

(d) The board by rule shall prevent an issuer from applying for a carryforward designation in an amount that is greater than the amount needed.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.070. FORM AND CONTENTS OF APPLICATION FOR CARRYFORWARD APPLICATION. An application for a carryforward designation must:

(1) be on a form prescribed by the board;

(2) be signed by a member or officer of the issuer and by:

(A) the governor, if the issuer was created to act on behalf of this state; or

(B) the presiding officer or another authorized official of each political subdivision, if the issuer was created to act on behalf of one or more political subdivisions of this state;

(3) state the amount of carryforward sought;

(4) describe the project;

(5) state which priority classification is applicable to the applicant;

(6) include evidence satisfactory to the board that that priority classification is correct; and

(7) contain any other information that the board by rule requires.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.071. ACTION ON APPLICATION FOR CARRYFORWARD DESIGNATION. On receipt of an application for a carryforward designation, the board shall:

(1) determine whether the application complies with the requirements of this chapter and board rules; and

(2) note its determination on the application.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.

Sec. 1372.072. AMENDMENT OR WITHDRAWAL OF APPLICATION FOR CARRYFORWARD DESIGNATION. (a) An issuer may amend or withdraw an application for a carryforward designation by submitting to the board a notice of the amendment or withdrawal.

(b) If an application is amended, the application's place in the order of eligibility for a carryforward designation in a priority classification is determined using the date of the amendment instead of the date of the original application.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1999.