DATE:	**February 24, 2021**
BILL NO.:	**House Bill 1065**
COMMITTEE:	**House Appropriations Committee**
TITLE:	**Bond Authority – Maryland State Ceiling and Housing Bond Allocations**
SPONSORS:	**Del. Holmes**

OPPOSE

Description of Bill:

House Bill 1065 1) allows any issuer of tax exempt Private Activity Bonds to transfer their allocation of "volume cap" or State Ceiling amongst themselves, 2) allocates a set percentage of volume cap in the Secretary's reserve to be designated to a Housing Authority that received an initial allocation of volume cap, and 3) allows Housing Authorities to carry forward unused for the maximum three year period. In addition, this bill 4) requires Department of Commerce to create a database of volume cap information updated in real time.

Background and Analysis:

House Bill 1065 is a well-intentioned bill prompted by a local housing authority that would like to increase their own use of Private Activity Bonds for housing purposes. Unfortunately, the unintended consequences of this bill would likely result only in volume cap aggregating to that one county with capacity to use excess volume cap, and would necessarily result in significantly decreased capacity of the State to finance the production of affordable housing, as well as increased General Fund costs to the State, and a loss of General Assembly oversight of multifamily residential asset management for a significant number of bond-financed properties.

Private Activity Bonds are bonds issued by state and local governments to support certain private activities, as opposed to governmental activities. Those private activities may include such things as airports, docks, mass-transit, or in the case of housing bonds, privately owned and operated multifamily residential housing or single family homeownership programs. Among the limitations Congress has placed on the issuance of these bonds is the so-called "volume cap" or State Ceiling. The volume cap limits the amount of tax-exempt Private Activity Bonds that may be issued by a state.

The Community Development Administration (CDA) is the Division of Development Finance within the Department of Housing and Community Development. CDA serves as an issuer of housing bonds for the benefit of all Maryland jurisdictions.

For 2021, the State of Maryland will receive a volume cap allocation of $665,024,800. By State law, that cap is then divided out into initial allocations to certain parties and for certain purposes. The initial allocation earmarks 50% to Maryland counties on the basis of population, with 70% of that amount reserved for housing purposes. CDA receives its own initial allocation of 25% of the State Ceiling.

Most local jurisdictions do not have the capacity to be able to fully issue their housing allocations and will transfer it to CDA. In fact, only one county has ever used its entire housing bond volume cap in a given year, though in 2020 there were no counties that used the entirety of their allocation. Nonetheless, since 2016, CDA has transferred $127.9 million in volume cap to local jurisdictions based upon need and ability and readiness to deploy, in a spirit of shared purpose.

Initially allocated volume cap that is unused by an issuer before a certain date, and under certain circumstances, is essentially swept back into the Secretary's (of Commerce) reserve at some point in Q4. Once unused volume cap is recaptured by the Secretary's reserve, it is then reallocated by the Secretary with CDA generally receiving the bulk of it. Under federal law, volume cap may be carried forward for up to three years, but in order to be carried forward, an issuer must designate the specific purpose for which that cap will be used. Once carried forward, volume cap cannot be transferred and may only be used for the designated purpose. If cap remains unused at the end of the three year carry forward period, it is abandoned, essentially denying the state a valuable tool. By having CDA carry that cap forward, the possible use of that cap is maximized as 1) CDA may issue bonds for projects throughout the State and 2) CDA has pipeline and capacity that will be able to exhaust available cap for the foreseeable future.

In addition to serving as the primary issuer of housing bonds in Maryland, as the State's Housing Finance Agency, DHCD is also the State's allocating agency for federal Low Income Housing Tax Credits (LIHTC). Under federal law, 4% LIHTC projects must be financed with tax exempt Private Activity Bonds (those subject to volume cap). While DHCD would still be able to issue LIHTC for projects financed by other bond issuers, there are certain structural efficiencies to be had by stacking the various fund sources available to DHCD. Those funding sources may not necessarily follow projects where DHCD is not the bond issuer, as those sources are typically subordinate debt to close the gap in deals financed by DHCD. Should those funding sources be used for projects not financed by DHCD, there may be increased project development costs due to systemic inefficiencies of dealing with multiple lenders. For example, if DHCD has done the underwriting on the bond-financed portion of a deal, the agency would not then need to do further underwriting for subordinate loan products; whereas multiple lenders would each need to do their own diligence in underwriting their portion of a deal. These kinds of inefficiencies would drive up project costs, ultimately resulting in higher project cost and/or fewer units of affordable housing production in the State.

The efficiencies discussed above do not just result in higher costs. Those higher costs result in fewer units of affordable housing produced, particularly when discussing finite resources such as our tax-exempt bonding authority. DHCD estimates that the efficiencies gained by layering DHCD programs results in 10-20% more affordable housing produced on a per dollar basis. DHCD estimates that CDA this bill will result in the diversion of $100m-$350m of PAB volume cap that the agency would otherwise receive, with a $210.5m loss as the most likely scenario. With that $210.5m in volume cap, CDA would produce approximately 2,100 units of affordable housing, while another issuer would likely produce only 1,890-1,680 units, a loss of 210-420 units of affordable housing per year.

While much of our testimony has focused on multifamily affordable rental housing, the impact on single family homeownership programs should not be overlooked. DHCD generally prioritizes its bond funding for multifamily rental projects, so as to maximize the leverage achieved by the federal LIHTC. In the event that CDA experiences a significant reduction in available volume cap, the agency would need to take measures to preserve that cap for the most efficient programs. For perspective, again based upon an estimate of $210.5m in anticipated loss of volume cap, DHCD would be unable to assist approximately 1,000 Maryland households buy their first home.

It is also important to note that DHCD is largely operationally self-sustaining. Revenues generated by these financing activities cover the operating costs of the agency, reducing the need for General Fund appropriations. Any reduction in DHCD loan activity would require an increase in General Funds commensurate with the reduction in Special Fund revenues associated with that loan activity. It is estimated that on a $210.5m loss of volume cap, the agency would require approximately $7.74 million in General Funds to support CDA operations.

Conclusion

It would be difficult for us to overstate the existential impact of this bill to DHCD's mission. In order to maintain the continued support for high-quality, affordable multifamily rental housing and first-time homeownership programs across the State, DHCD strongly urges an **UNFAVORABLE** vote on House Bill 1065.