

CHAPTER 452

H.B. No. 690

An Act relating to allocation of the authority in the state to issue private activity bonds and to bonds issued by an industrial development corporation.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. DEFINITIONS. In this Act:

- (1) "Code" means the Internal Revenue Code of 1954.
- (2) "Commission" means the Texas Economic Development Commission.
- (3) "Large issue" means an issue having a principal amount of more than \$20 million.
- (4) "Private activity bond" has the meaning given that term by Section 103 of the code.
- (5) "Related person" has the meaning given that term by Section 103 of the code.
- (6) "Reservation" means a reservation of a portion of the state's limit for a specific bond issue.
- (7) "State's limit" means the amount of authority in the state to issue tax-exempt private activity bonds during the calendar year, as determined under Section 103 of the code.

SECTION 2. ALLOCATION AND RESERVATION SYSTEM. The state's limit for each year is allocated to governmental units that issue private activity bonds or on whose behalf private activity bonds are issued. Except as provided by Section 3 of this Act, reservations are granted in the order of each issue's application date, regardless of the amount of the issue.

SECTION 3. ALTERNATIVE SYSTEM. (a) If, before October 1, 50 percent or more of the state's limit becomes reserved for large issues, during the period beginning immediately after the time 50 percent or more of the state's limit first becomes reserved for large issues and ending on September 30, the total amount of reservations available for large issues during that period is an amount equal to 50 percent of the portion of the state's limit not reserved when the period began less the result obtained by subtracting the amount equal to 50 percent of the state's limit from the total amount that had been reserved for large issues when the period began. During this period reservations are granted to eligible issues in the order of each issue's application date.

(b) An application for a reservation that would cause a total of 25 percent or more of the state's limit to be reserved for a single user and that user's related persons is considered to have an application date of the later of December 1 or the date that the application is actually submitted, and a portion of the state's limit is not available for that issue before December 1.

SECTION 4. APPLICATION FOR RESERVATION. (a) An application for a reservation under this Act must be on a form prescribed by the commission and signed by a member of the governing body or an officer of the issuer and must state:

- (1) the maximum amount of the bonds in the issue;
 - (2) the purpose of the bonds;
 - (3) whether the bonds are student loan bonds or industrial development bonds;
 - (4) if the bonds are industrial development bonds, the paragraph of Section 103(b) of the code that applies to the bonds;
 - (5) if Section 103(b)(4) of the code applies to the bonds, the specific subparagraph that applies; and
 - (6) other information that the commission by rule requires.
- (b) An application for a reservation may not be submitted after December 14.

SECTION 5. ASSIGNMENT. A reservation may not be assigned except between a governmental unit and an entity authorized to issue private activity bonds on behalf of that governmental unit.

SECTION 6. BOND AUTHORIZATION. (a) Not later than the 15th day after an issue's reservation date, the issuer shall submit to the commission a certified copy of the document authorizing the bonds and other documents relating to the issuance of the bonds. These documents must include a statement of the bonds':

- (1) principal amount;
- (2) interest rate or formula by which the interest rate is calculated;
- (3) maturity schedule; and
- (4) purchaser or purchasers.

(b) If the principal amount authorized is less than 90 percent of the amount stated in the application for a reservation, the reservation is canceled. If the principal amount authorized is at least 90 percent but less than 100 percent of the amount stated in the application for a reservation, the reservation is reduced to the principal amount authorized.

(c) If the issuer does not timely submit the documents required by this section, the issue's reservation is canceled and during the 60-day period beginning on the reservation date of the canceled reservation:

- (1) the issuer may not submit an application for a reservation for the same project; and
- (2) the issuer is eligible for a carryforward designation for the project only as provided by Section 9(b) of this Act.

(d) The reservation date for an issue is the earliest date on which:

- (1) the application for a reservation has been submitted to the commission as provided by this Act; and
- (2) a portion of the state's limit is or becomes available to the issue.

SECTION 7. ISSUANCE AND DELIVERY. (a) Except as provided by Subsection (b) of this section, the issuer shall issue and deliver bonds not later than the 45th day after the day that the documents are submitted under Section 6 of this Act. The 45-day period is extended by 15 days if, before the end of the period, the issuer submits to the commission a written request for the extension. An issuer of bonds to which Section 103(b)(4) of the code applies for a project to be owned by a governmental unit may submit to the commission a request for an exception to the deadline provided by this section. The request must state the specific deadline requested. The commission may approve the request if it considers the requested deadline appropriate.

(b) Regardless of the deadline provided by Subsection (a) of this section, the issuer shall issue and deliver the bonds before December 24.

(c) If the issuer does not timely issue and deliver the bonds, the issue's reservation is canceled and during the 120-day period beginning on the reservation date of the canceled reservation:

- (1) the issuer may not submit an application for a reservation for the same project; and
- (2) the issuer is eligible for a carryforward designation for the project only as provided by Section 9(b) of this Act.

(d) Not later than the fifth day after the day on which the bonds are delivered, the issuer shall submit to the commission a written notice stating the delivery date of the bonds and the principal amount of the bonds issued. Failure of the issuer to submit this notice before this deadline does not affect the issue's reservation, except that if the issuer does not submit the notice before December 29, the issue's reservation is canceled.

SECTION 8. PUBLICATION. The commission shall publish weekly in the *Texas Register* a statement of the amount of the state's limit remaining unreserved, a list of the issues receiving a reservation since the last publication, including the amount of each reservation, and a list of

issues that had previously received a reservation that have been issued and delivered since the last publication.

SECTION 9. CARRYFORWARD. (a) The amount of the state's limit that has not been reserved before December 15 and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation may be designated by the commission as carryforward for specific projects. An issuer may submit an application for a carryforward designation at any time during the year in which the carryforward designation is sought, but an issuer who submits an application for a carryforward designation may not submit an application for a reservation for the same project later in the same year. Issuers are eligible to receive a carryforward designation according to a system of priority classifications established by commission rule. The commission shall establish priority classifications that give preference to projects in advanced stages of construction or planning and to issuers that will use the carryforward sooner. The commission shall publish the priority classifications in the *Texas Register*. Within each classification issuers are eligible to receive a designation of carryforward in the order of each application for a carryforward designation.

(b) During a period specified in Section 6(c) or 7(c) of this Act, an issuer to which the section applies may not receive a carryforward designation unless all other eligible applicants have received a carryforward designation.

(c) An application for a carryforward designation must be on a form prescribed by the commission and signed by a member of the governmental body or an officer of the entity developing the project. The application must:

- (1) state the amount of carryforward sought;
- (2) describe the project; and
- (3) contain other information that the commission by rule requires.

(d) On submission of an application, the commission shall determine whether the application satisfies the requirements of this Act and commission rules and shall note its determination on the application.

(e) An application may be withdrawn or amended by submitting to the commission a notice of the withdrawal or amendment. If the application is amended, the application's place in the order of eligibility for a carryforward designation within a classification is determined by the date of the amendment rather than the date that the application was originally submitted.

(f) The commission shall adopt rules to prevent issuers from requesting a carryforward designation in excess of the amount needed.

SECTION 10. SUBMISSION. A submission required by this Act must be delivered to the commission at its Austin office during normal business hours. The commission shall note on the face of the document the date and time that it is delivered and provide the issuer with a receipt describing the document delivered and the date and time of delivery.

SECTION 11. RULES. The commission may adopt rules necessary to carry out the purposes of this Act.

SECTION 12. FEE. An application for a reservation or carryforward designation must be accompanied by a fee in the amount specified by the General Appropriations Act. The commission shall deposit the proceeds of the fees in the general revenue fund. The legislature shall appropriate to the commission the amount equal to the amount collected as fees under this Act to be used by the commission in administering this Act.

SECTION 13. PRIOR ALLOCATION OR RESERVATION. (a) This Act applies only to the disposition of the amount of the state's limit that has not been reserved before the effective date of this Act or for which a reservation is canceled on or after that date.

(b) This Act does not affect an allocation or reservation that is made before its effective date and that is not canceled on or after that date. Such an allocation or reservation is governed by the law in effect when the allocation or reservation was made, and that law is continued in effect for that purpose.

SECTION 14. Section 24(b), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The corporation may submit a transcript of proceedings in connection with the issuance of the bonds to the commission and request that the commission approve the bonds. On filing a request for the commission's approval of issuance of the bonds, the corporation shall pay to the commission a nonrefundable filing fee. The commission shall set the amount of the fee *equal to one-tenth of one percent of the face amount of each bond issue, but not less than \$500 [at an amount reasonable in relation to the costs of administration, but not greater than \$1,500]*. If the commission refuses to approve the bond issue solely on the basis of law, the

corporation may seek a writ of mandamus from the Supreme Court, and for this purpose the chair of the commission shall be considered a state officer as provided in Article 1733, Revised Civil Statutes of Texas, 1925.

SECTION 15. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 6, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 690 on May 23, 1985, by a non-record vote.; passed by the Senate, with amendments, on May 21, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 11, 1985

Effective: August 26, 1985