

CHAPTER 1092

S.B. No. 1382

AN ACT

relating to allocation of the authority in the state to issue private activity bonds.

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

SECTION 1. DEFINITIONS. For purposes of this Act:

- (1) "Available" means any amount of the state ceiling set aside for reservations by an issuer upon compliance with the terms of this Act.
- (2) "Bonds" means and includes all bonds, certificates, notes, and other obligations authorized to be issued by any issuer by any statute, city home-rule charter, or the Texas Constitution and which are subject to the limitations of Section 146 of the code.
- (3) "Close" or "closing" means the issuance and delivery of bonds by an issuer in exchange for the required payment therefor, or in the case of mortgage credit certificates, the date when an issuer elects not to issue qualified mortgage bonds and establish a mortgage credit certificate program under Section 25 of the code.
- (4) "Code" means the Internal Revenue Code of 1986, as the same from time to time may be amended.
- (5) "Commission" means the Texas Economic Development Commission or any successor agency thereto.
- (6) "Housing finance corporation" means a corporation created under the Texas Housing Finance Corporations Act (Article 12691-7, Vernon's Texas Civil Statutes).
- (7) "Issuer" means any department, board, authority, agency, subdivision, municipal corporation, political subdivision, body politic, or instrumentality of the State of Texas of every kind or type whatsoever and any nonprofit corporation acting for or on behalf of any of the foregoing.
- (8) "Local population" means the population in the local governmental unit or units on whose behalf the housing finance corporation is created as determined in the most recent federal census. If two local governmental units which overlap have created housing finance corporations that have the power to issue bonds to provide financing for home mortgages, prior to the sale of housing bonds by either corporation there shall be excluded from the population of the larger local governmental unit that portion of the population of any smaller local governmental unit having a population as determined in the most recent federal census of 20,000 or more which is within the larger local governmental unit, unless the smaller local governmental unit assigns its authority to issue bonds, based upon its population, to the larger local governmental unit. For purposes of this Act, the term "local governmental unit" shall have the same meaning as in the Texas Housing Finance Corporations Act (Article 12691-7, Vernon's Texas Civil Statutes).
- (9) "Locally voted issue" means an issue of bonds which has been authorized pursuant to a referendum approved by the voters of a political subdivision of the State of Texas.
- (10) "Mortgage credit certificate" means a certificate of the nature described in Section 25 of the code.
- (11) "Private activity bond" has the meaning given that term under Section 141(a) of the code.
- (12) "Qualified bond" has the meaning given that term under Section 141(d) of the code.
- (13) "Qualified mortgage bond" has the meaning given that term under Section 143(a) of the code; and for the purposes of this Act, the term "qualified mortgage bond" shall include mortgage credit certificates.
- (14) "Related person" has the meaning given that term under Section 144(a)(3) of the code.

(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 which has been authorized pursuant to a statewide referendum approved by the voters of the State of Texas.

(17) "State ceiling" means the amount of authority in the State of Texas to issue tax-exempt private activity bonds during the calendar year, as determined under Section 146(d) of the code.

**SECTION 2. ALLOCATION AND RESERVATION SYSTEM.** (a) The state ceiling for each calendar year is allocated to issuers that issue private activity bonds. Except as provided by Section 3 of this Act, reservations are granted in the order of receipt by the commission of an application for a reservation, regardless of the amount of the issue.

(b) Prior to October 1, (1) one-third of the state ceiling is available exclusively for reservations by issuers of qualified mortgage bonds, (2) one-fourth of the state ceiling is available exclusively for reservations by issuers of state-voted issues, and (3) the balance of the state ceiling is available for reservations by all other issuers of bonds requiring an allocation.

(c) Of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds, one-third of said portion shall be made available exclusively to the Texas Housing Agency for the purpose of issuing qualified mortgage bonds.

(d) On and after October 1, that portion of the state ceiling available for reservations shall become available to any issuer for any bonds requiring an allocation, subject to the provisions of Section 3 of this Act.

(e) If qualified mortgage bonds no longer qualify for treatment as tax-exempt obligations under the provisions of the code, then the provisions of Subsections (b)(1) and (c) of this section shall be null and void.

**SECTION 3. LIMITATIONS ON ALLOCATIONS AND RESERVATIONS.** (a) For any one project, no issuer (1) prior to October 1, shall receive reservations in excess of \$100,000,000, and (2) prior to December 1, shall receive reservations in excess of \$200,000,000.

(b) The maximum amount of the state ceiling which may be reserved by a housing finance corporation for the issuance of qualified mortgage bonds may not exceed \$50 times the local population of such housing finance corporation, except (1) if the local population is 200,000 or more but less than 300,000, the maximum amount of the state ceiling which may be reserved may not exceed \$75 times that local population, (2) if the local population is 100,000 or more but less than 200,000, the maximum amount of the state ceiling which may be reserved may not exceed \$100 times the local population, and (3) if the local population is less than 100,000, the maximum amount of the state ceiling which may be reserved prior to the foregoing dates may not exceed \$150 times the local population. Anything to the contrary notwithstanding, no housing finance corporation shall receive an allocation for the issuance of qualified mortgage bonds in excess of \$50,000,000.

(c) The commission shall not grant a reservation of a portion of the state ceiling described in Subsection (b)(1) of Section 2 of this Act to a housing finance corporation prior to January 15. If two or more housing finance corporations apply for a reservation for qualified mortgage bonds on or before January 15, reservations shall be granted according to the following categories of priority: (1) the first category of priority shall include those applications for a reservation filed by housing finance corporations which filed an application for a reservation on behalf of the same local population during the previous calendar year, but which did not receive a reservation during such year; (2) the second category of priority shall include those applications for a reservation not included in the first category of priority; and (3) within each category of priority, reservations shall be granted in an order determined by the commission by lot. All applications for a reservation filed after January 15 by a housing finance corporation for the issuance of qualified mortgage bonds shall be accepted by the commission in their order of receipt.

(d) An application for a reservation may not be submitted after December 14.

**SECTION 4. APPLICATION FOR RESERVATION.** (a) An application for a reservation may be filed by an issuer on or after January 2 and must be on a form prescribed by the commission and signed by a member or officer of the issuer and must state:

- (1) the maximum amount of the bonds in the issue requiring an allocation pursuant to Section 146 of the code;
- (2) the purpose of the bonds or a functional description of the project, including the identification of the user of the proceeds or project financed thereby;
- (3) whether the bonds are qualified bonds;
- (4) if the bonds are qualified bonds, the paragraph of Section 141(d)(1) of the code that applies, and if Section 141(d)(1)(A) of the code applies, the paragraph of Section 142(a) of the code that applies;
- (5) if the bonds are not qualified bonds, that Section 141(b)(5) of the code applies, or in the case of transition rule projects, the paragraph of the Tax Reform Act of 1986 that applies;
- (6) a statement by the issuer, other than an issuer of a state-voted issue, that bonds are not being issued for the same stated purpose for which the issuer has received sufficient carryforward during a prior year or for which there exists unexpended proceeds from a prior issue or issues of bonds issued by the same issuer, unless such issuer provides evidence that it has entered into a binding contract or binding contracts to expend the unexpended proceeds within 12 months after the date of receipt by the commission of an application for a reservation; and
- (7) other information that the commission may require.

(b) The commission shall not reserve a portion of the state ceiling for an issuer, other than an issuer of a state-voted issue, to whom proceeds are available from other bonds issued by or on behalf of such issuer for the same stated purpose for which such issuer is applying for reservation, except as otherwise provided for in Subsection (a)(6) of this section.

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

**SECTION 6. BOND AUTHORIZATION.** (a) Not later than the 20th day after an issuer'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. Subject to the provisions of Sections 2 and 3 of this Act, an issuer may receive a reservation in excess of 100 percent of the amount stated in the application if state ceiling is available.

(c) If the issuer does not timely submit the documents required by this section, the issuer's reservation is canceled and during the 90-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 of this Act.

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

(1) the application for a reservation has been accepted for filing by the commission as provided by this Act; and

(2) the issuer is notified by the commission that a portion of the state ceiling is or becomes available to the issue.

(e)(1) Notwithstanding the foregoing, Subsections (a), (b), and (c) of this section shall not apply to issuers of qualified mortgage bonds.

(2) Notwithstanding the provisions of Subsection (d) of this section, the reservation date for those housing finance corporations which receive a reservation pursuant to Subsection (c) of Section 3 of this Act is the date on which the housing finance corporation is notified by the commission that a portion of the state ceiling is or becomes available to the issue, but in no event shall such reservation date precede February 1.

**SECTION 7. ISSUANCE AND DELIVERY.** (a) Except as provided in Subsection (b) of this section, the issuer shall issue and deliver bonds not later than the 60th day after the reservation date. The 60-day period may be extended by 15 days if, before the end of the 60-day period, the issuer submits to the commission a written request for the extension. 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 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 the 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 available state ceiling, 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 ceiling 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. 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 described in Subsection (b) of this section. Within each classification issuers are eligible to receive a designation of carryforward in the order of each application for a carryforward designation.

(b) Priority classifications for carryforward are as follows:

(1) Priority 1 — Issuers of state-voted issues.

(2) Priority 2 — Projects for which issuers of locally voted issues apply, in such cases where the bonds will be private activity bonds for which an allocation will be required in order for the bonds to be tax exempt under relevant provisions of the code, and in such cases where the excess private use of a governmental bond will require allocation in order that the bond can retain its tax-exempt status under provisions of the code.

(3) Priority 3 — State agencies, other than issuers of state-voted issues, and political subdivisions whose boards of directors are constituted pursuant to Article XVI, Section 30a, of the Texas Constitution.

(4) Priority 4 — All other political subdivisions which have authority to issue bonds. Projects for which carryforward is applied must be owned by a governmental unit, pursuant to relevant provisions of the code.

(5) Priority 5 — Issuers created to act on behalf of the State of Texas, or on behalf of one or more political subdivisions of the State of Texas, which are applying for carryforward for projects for which (A) there was an inducement resolution or other comparable preliminary approval prior to submission of an application for carryforward, and (B) with respect to which either a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into prior to submission of an application for carryforward (or were readily identifiable with and necessary to carry out a binding contract for the supply of property or services or the sale of output thereto or thereof), or significant expenditures were paid or incurred prior to submission of an application for carryforward. For purposes of this subdivision, the term "significant expenditures" means expenditures greater than the lesser of \$1,000,000 or 10 percent of the reasonably anticipated cost of the project.

(6) Priority 6 — Issuers created to act on behalf of the State of Texas or on behalf of one or more political subdivisions of the State of Texas, which are applying for carryforward for projects not described in any other priority classification.

(c) An application for a carryforward designation must be on a form prescribed by the commission and signed by a member or officer of the issuer. If the issuer is an issuer created to act on behalf of the State of Texas, or on behalf of one or more political subdivisions of the State of Texas, the application for carryforward designation shall also be signed (1) in the case of an issuer created to act on behalf of the State of Texas, by the governor or (2) in the case of an issuer created to act on behalf of one or more political subdivisions of the State of Texas, by the chairman or any other authorized official of each political subdivision. The application must:

- (A) state the amount of carryforward sought;
- (B) describe the project;
- (C) state which priority classification is applicable to the applicant, together with evidence satisfactory to the commission that the priority classification is correct; and
- (D) 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 priority classification is determined by the date of the amendment rather than the date 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.

(g) No application for carryforward designation shall exceed \$100 million.

**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 documents 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 of \$500. 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 ceiling 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. REPEAL OF CONFLICTING LAWS. Sections 1, 2, 3, 5, 6, 7, 9, and 10, Chapter 852, Acts of the 67th Legislature, 1981 (Article 12691-8, Vernon's Texas Civil Statutes), and Sections 1 through 13, Chapter 452, Acts of the 69th Legislature, Regular Session, 1985 (Article 5190.9, Vernon's Texas Civil Statutes), are repealed, and any other law which is in conflict with the provisions of this Act is hereby superseded by this Act, and such other law shall be of no force or effect.

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 the Senate on May 7, 1987, by a viva-voce vote; and that the Senate concurred in House amendment on June 1, 1987, by the following vote: Yeas 31, Nays 0.

Passed the House, with amendment, on May 29, 1987, by the following vote: Yeas 146, Nays 1, one present not voting.

Approved June 20, 1987.

Effective June 20, 1987.