

ENROLLED HOUSE
BILL NO. 1238

By: Crocker, McCorkell,
Glover, Smith (Dale),
Dunegan, Staggs and
Deutschendorf of the
House

and

Easley of the Senate

An Act relating to public finance; amending 62 O.S. 1991, Section 695.25, as amended by Section 7, Chapter 233, O.S.L. 1993 (62 O.S. Supp. 1995, Section 695.25), which relates to applications for certain state ceiling; modifying content required for application; requiring certain disclosures; requiring statement regarding conflict of interest; defining terms; prohibiting allocations based upon certain conditions related to federal, state or local officials; specifying content of completed application; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 62 O.S. 1991, Section 695.25, as amended by Section 7, Chapter 233, O.S.L. 1993 (62 O.S. Supp. 1995, Section 695.25), is amended to read as follows:

Section 695.25 A. On January 1 of each calendar year or the first business day thereafter, the State Bond Advisor shall determine the maximum total volume of private activity bonds that may be issued pursuant to federal law by the state during that year.

B. On or before February 15 of each calendar year, the State Bond Advisor shall cause to be published in The Oklahoma Register, or any successor publication, a notice specifying the amount of the state ceiling for the calendar year.

C. Allocations from the Qualified Small Issue Pool, Beginning Agricultural Producer Pool, Exempt Facility Pool, Student Loan Pool, State Issuer Pool, and Local Issuer Pool will be processed on the basis of the chronological order of receipt of completed applications for state ceiling allocation and on the basis of the information and provisions set forth in subsections D, E, F and G of this section. Allocations from the Consolidated Pool will be processed on the basis of the system set out in subsection G of Section 4 695.24 of this ~~act~~ title and on the basis of information and provisions set forth in subsections D, E, F and G of this section.

D. An issuer which proposes to issue private activity bonds for a specific project or purpose shall make application for an allocation of a portion of the state ceiling for the particular project or purpose by submitting to the State Bond Advisor an application for state ceiling allocation together with copies of the following:

1. A certified copy of the resolution or other action adopted by the issuer for the purpose of taking "official action" as required by the Treasury Regulations relating to Section 103 of the Internal Revenue Code, if the issuer of private activity bonds for which the allocation is requested requires "official action" under applicable Treasury Regulations and the Internal Revenue Code; and

2. A final resolution of the beneficiary of the issuer evidencing its approval of the issuance of the issuer's obligations, if the issuer is a municipal or county public trust, or a certificate signed by the Governor of the state evidencing his approval of the issuance of the issuer's obligations, to the extent required under the Internal Revenue Code, if the issuer is a public trust having the state as its beneficiary.

E. The application for state ceiling allocation shall contain the following information:

1. The name and mailing address of the issuer, the beneficiary and jurisdiction thereof, the name of the presiding officer of the issuer and the respective pool from which an allocation is requested;

2. The name and mailing address or other definitive description of the location of the project or bonds and the purpose for which an allocation of the state ceiling is requested, the name and mailing address of both the initial owner or operator of the project, where applicable, and an appropriate person from whom information regarding the project or bonds can be obtained, and the name and address of the person to whom the confirmation should be sent;

3. The identity of any public official who is an owner or operator of the project or who is a principal of any legal entity which owns or operates or which will own or operate the project or who has any financial interest, whether direct or indirect, in the project. If the public official is a principal of a legal entity, the official shall disclose the identity of all other principals of the entity. As used in this paragraph, "principal" with respect to:

- a. a general partnership means any general partner,
- b. a limited partnership means any general partner or any limited partner if there are fewer than fifty (50) limited partners; however, if there are fifty (50) or more limited partners only a limited partner owning five percent (5%) or more of the total interest in the limited partnership must be disclosed,
- c. a limited liability company means any manager or any member if there are fewer than fifty (50) members; however, if there are fifty (50) or more members only a member owning five percent (5%) or more of the total interest in the limited liability company must be disclosed,
- d. a corporation means any president, vice-president, secretary, treasurer, or other corporate officer, however denominated, and all shareholders of the corporation if there are fewer than fifty (50) shareholders; however, if there are fifty (50) or more shareholders only a shareholder owning five percent (5%) or more of the voting stock of the corporation must be disclosed,
- e. a trust means all trustees and beneficiaries, and
- f. any other legal entity means any person with the authority, pursuant to the instrument organizing the entity, general laws governing the legal relationship between principals and agents, or otherwise, to act on behalf of another person or legal entity in a manner

which affects the economic benefit to be derived from the activities of the entity.

As used in this paragraph, "public official" means any person holding a federal, state or local office elected by the voters of the State of Oklahoma or a political subdivision thereof;

4. A letter from any public official who is an owner or operator or who is a principal, as defined by paragraph 3 of this subsection, of any legal entity which owns or operates a project or who has any financial interest, whether direct or indirect, in the project that no conflict of interest exists because of the public official's business relationship either as an owner, operator, principal or person with a financial interest. As used in this paragraph, "public official" means any person holding a federal, state or local office elected by the voters of the State of Oklahoma or a political subdivision thereof;

5. The amount of the state ceiling which the Issuer is requesting;

4. 6. A statement of bond counsel for the issuer that the proposed issue requires, pursuant to Section 103, Section 146 or such other applicable sections of the Internal Revenue Code, an allocation of a portion of the state ceiling; and

5. 7. Where applicable, the intention to exchange single-family mortgage bond authority for mortgage credit certificates.

F. 1. Applications for single family mortgage bonds or mortgage credit certificate programs shall also include the submission of information demonstrating a reasonable expectation to use an allocation of the state ceiling for its intended purpose. This information shall include historical usage of mortgage revenue bond proceeds or mortgage credit certificates in the geographic area subject to an application over the previous twenty-four-month period and the impact of known or possible competing programs that would act to reduce demand. This information may also include demand surveys. Provided, in cases where historical usage cannot be documented, demand surveys shall be included with an application.

2. Applications for qualified student loan bonds shall also include the submission of information showing a reasonable expectation to use the state ceiling for its intended purpose. This information shall include historical lending activity over the previous twenty-four-month period as well as a demonstration of need based upon such factors as increased enrollment costs, enrollment increases, or new federal regulations that act to increase demand by making changes to eligibility requirements to certain federally guaranteed or subsidized student loan programs. This information may also include demand surveys. Provided, in cases where historical usage cannot be documented, demand surveys shall be included with an application.

3. Applications shall also include evidence of a structure to deliver the financing derived from single-family mortgage bond proceeds or mortgage credit certificates or from qualified student loan bond proceeds to ultimate users, particularly the extent of lender participation in the case of mortgage revenue bonds or mortgage credit certificate programs.

G. 1. Upon receipt of the completed application for state ceiling allocation, copies of the official action and final resolutions or certificates as required by subsection D of this section and the information required by subsections E and F of this section and assuming availability of the sum requested and compliance with the Oklahoma Private Activity Bond Allocation Act, the State Bond Advisor shall send, within five (5) business days of the receipt thereof, a confirmation of the allocation of the state

ceiling for the subject project or purpose to the person designated in the application for state ceiling allocation. No application shall be considered complete if the requirements of paragraphs 3 and 4 of subsection E of this section are not met. Provided, the State Bond Advisor may reject an application or deny a confirmation pursuant to the provisions of this subsection.

2. As used in this paragraph, "principal" and "public official" shall be defined in the same manner as the terms are defined by paragraphs 3 and 4, respectively, of subsection E of this section. As used in this paragraph, "direct or indirect financial interest" shall not include any economic benefit acquired on behalf of a public official or the spouse of a public official if the public official or spouse did not have specific knowledge of the economic interest prior to the acquisition. No allocation of the state ceiling shall be made to an applicant if the applicant is a federal, state or local official or if a federal, state or local official is a principal of the legal entity making the application or if the federal, state or local official has any financial interest, whether direct or indirect, in the project. The provisions of this paragraph shall be applicable if the spouse of a federal, state or local official is a principal or if the spouse has direct or indirect financial interest in the project.

3. The State Bond Advisor may reject any application which is incomplete or filed with insufficient information. The State Bond Advisor may reject any application where, in the State Bond Advisor's judgment, a reasonable likelihood has not been shown that single-family mortgage and student loan bond proceeds or mortgage credit certificates will be used for their intended public purposes. In the event an application or confirmation is denied, within five (5) business days following such denial, the State Bond Advisor shall send the applicant written notice of the denial of an application or confirmation together with the reason or reasons therefor. In the case of disapprovals of applications or confirmations, an applicant may appeal the disapproval by submitting a new application to the Executive and Legislative Bond Oversight Commissions, along with an explanation addressing the reasons for disapproval cited in the State Bond Advisor's letter. The Bond Oversight Commissions, through affirmative action of both Commissions, may accept an application rejected by the State Bond Advisor, or order the State Bond Advisor to issue a confirmation of allocation, subject to provisions of the Oklahoma Private Activity Bond Allocation Act. Applicants may submit only one new application based on an appeal of any specific application previously submitted.

~~3.~~ 4. Only complete applications, as determined by the State Bond Advisor, shall be used to establish the chronological order of applications. In the case of a new application submitted based on an appeal, chronological order shall be established at the time the new application is submitted.

H. An original confirmation shall cease to be effective to assure allocation of any portion of the state ceiling unless the bonds, notes, other evidences of indebtedness, or the appropriate election filed with the Internal Revenue Service exchanging mortgage bond authority for mortgage credit certificate authority have been issued or filed within seventy-five (75) days after the date of such confirmation. No extensions shall be granted. Such issuance shall be evidenced by the mailing, transmittal or delivery of a final certification to the State Bond Advisor within the time specified by this subsection. Receipt by an issuer of a confirmation as contemplated by this section shall entitle the issuer to rely

conclusively upon the accuracy of the State Bond Advisor's mathematical calculation and the allocation for purposes of closing.

I. The confirmation given in advance of bond issuance or mortgage credit certificate election will assure allocation for only the amount of such bonds or mortgage credit certificate authority as is therein set forth, unless a supplementary application for state ceiling allocation for an increase in amount is filed with and a supplementary confirmation is issued by the State Bond Advisor for such requested allocation prior to such bond issuance or such election, pursuant to the Oklahoma Private Activity Bond Allocation Act. The supplementary confirmation shall be effective for the same period as the prior confirmation which it supplements. Provided, however, no supplementary confirmation shall be effective to preempt any intervening confirmation as to allocation of a portion of the state ceiling.

J. Notwithstanding the provisions of this section, all confirmation dates for an issue of private activity bonds or mortgage credit certificate programs expire on December 20 of each calendar year. Final certification of issuance shall be delivered to the State Bond Advisor by 9:00 a.m. on December 20 of each calendar year.

K. On or after 9:00 a.m. on December 20 of each calendar year, issuing authorities may apply to the State Bond Advisor to carry forward a portion of the state ceiling for such calendar year allocated to any qualified carryforward project, as said term is used in Section 103(n)(10) and 146(f) of the Internal Revenue Code and which shall be evidenced by the issuance of confirmations for all carryforward projects within the limitations of the state ceiling. Provided, issuers or projects with more than Twenty Million Dollars (\$20,000,000.00) of carryforward outstanding as of the date of the application for carryforward shall only be eligible for carryforward allocations to the extent other issuers with less than Twenty Million Dollars (\$20,000,000.00) of outstanding carryforward authority do not fully commit the state ceiling. Allocations on carryforward projects shall be processed on the basis of the chronological receipt of applications. No portion of the state ceiling carried forward for any given year may be carried forward for a period in excess of three (3) calendar years following the calendar year in which the carryforward arose, except as otherwise permitted under federal law.

L. The State Bond Advisor shall maintain continuous and cumulative records which shall include a list and cumulative dollar total of the private activity bonds for which:

1. Private activity bonds have been issued or state ceiling exchanged for mortgage credit certificate authority and final certifications have been received by the State Bond Advisor;
2. Confirmations of carryforward have been issued; and
3. Confirmations in effect and outstanding for which no private activity bonds or mortgage credit certificate elections have been issued or filed.

The State Bond Advisor shall keep continuous and cumulative records and totals for each of the categories specified in paragraphs 1, 2 and 3 of this subsection as well as the aggregate total of all categories. The State Bond Advisor shall not give further confirmations at such time as the aggregate amount of bonds, other indebtedness, carryforward or mortgage credit certificate elections specified by paragraphs 1, 2 and 3 of this subsection equals the state ceiling authorized for the applicable year. The State Bond Advisor shall not award a confirmation if such award would cause indebtedness, carryforward or elections as specified by paragraphs

1, 2 and 3 of this subsection to exceed the state ceiling. Confirmation records shall be compiled and furnished to any local issuer and state issuer upon written request and payment of a fee of Fifteen Dollars (\$15.00) which shall be apportioned to the General Revenue Fund. Upon issuance of a confirmation, the amounts of the proposed bond issue, mortgage credit certificate election and carryforward confirmation shall be included in the continuing, mathematical calculation, until the same shall have been terminated in accordance with this section.

M. The person signing any confirmation for any allocations granted pursuant to the Oklahoma Private Activity Bond Allocation Act shall certify under penalty of perjury that such allocation was not made in consideration of any bribe, gift, gratuity or direct or indirect contribution to any political campaign.

N. A state or local issuer administering a Mortgage Credit Certificate Program, who intentionally or unintentionally overissues mortgage credit certificates, shall be prohibited from making application for an allocation of the state ceiling for any purpose for a period of three (3) years following discovery of such overissuance.

SECTION 2. This act shall become effective January 1, 1997.

Passed the House of Representatives the 22nd day of May, 1996.

Speaker of the House of
Representatives

Passed the Senate the 23rd day of May, 1996.

President of the Senate