

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1378

By: Pope (Clay)

COMMITTEE SUBSTITUTE

An Act relating to public finance; amending 62 O.S. 1991, Sections 695.24, as last amended by Section 2, Chapter 342, O.S.L. 1996 and 695.25, as amended by Section 7, Chapter 233, O.S.L. 1993 (62 O.S. Supp. 1996, Sections 695.24 and 695.25), which relate to designation of various pools; providing for reservation of certain state ceiling amount for qualified start-up costs; specifying purpose of funds generated from sale of certain obligations; deleting requirement regarding duration of existence of certain business entities; modifying references; and providing an effective date.

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

SECTION 1. AMENDATORY 62 O.S. 1991, Section 695.24, as last amended by Section 2, Chapter 342, O.S.L. 1996 (62 O.S. Supp. 1996, Section 695.24), is amended to read as follows:

Section 695.24 A. 1. Twenty-five percent (25%) of the state ceiling shall be reserved and placed in a pool to be designated the Qualified Small Issue Pool. Of the amount prescribed by this paragraph, twenty-five percent (25%) shall be reserved for issuers proposing to provide financing for small business equipment. The amount so reserved shall be designated as the Small Business Equipment Pool and shall be available to facilitate either a single issuer or multiple issuers in creating a source of capital at competitive interest rates for the purpose of enabling qualified small businesses to obtain equipment for the formation or expansion of a business enterprise. No applicant for an allocation of the portion of the state ceiling reserved for the Small Business Equipment Pool shall receive an allocation in

excess of Five Million Dollars (\$5,000,000.00) for any calendar year.

The amounts allocated from the Small Business Equipment Pool may be used by the issuer to facilitate acquisition of needed equipment by small businesses based upon such criteria as may be established by the issuer.

As used in this paragraph, "small business" means any legally recognized entity making sales of goods or services for profit:

- a. having less than one hundred (100) employees as of the date that the amount of the state ceiling authorized by this paragraph for the Small Business Equipment Pool is allocated, and
- b. having gross sales or gross revenue not in excess of Five Million Dollars (\$5,000,000.00) for any fiscal year of the business entity prior to the date that the amount of the state ceiling authorized by this paragraph for the Small Business Equipment Pool is allocated.

As used in this paragraph, "equipment" means a device, tool, apparatus, machine or combination of such items used by a small business for the production of income.

2. For the period commencing January 1 through September 1 of each calendar year, the Qualified Small Issue Pool shall be allocated to qualified small issue bond projects undertaken by either state or local issuers. Allocations will be available to issuers on a first-come, first-serve basis. For the period commencing January 1 through September 1 of each calendar year, the Small Business Equipment Pool shall be allocated to qualified issuers. Allocation will be available to issuers on a first-come, first-serve basis.

B. 1. Ten percent (10%) of the state ceiling shall be reserved and placed in a pool to be designated the Beginning Agricultural Producer and Exempt Facility Pools.

2. For the period commencing January 1 through September 1 of each calendar year, the Beginning Agricultural Producer Pool shall be allocated pursuant to the criteria established in Section

5063.23 of Title 74 of the Oklahoma Statutes according to a ratio of fifty percent (50%) of the total amount allocated for the combined purposes, not to exceed Five Million Dollars (\$5,000,000.00), the remainder to be allocated to exempt facility bonds issued by either state or local issuers. Allocations will be available to issuers on a first-come, first-serve basis.

C. Ten percent (10%) of the state ceiling shall be reserved for qualified start-up costs for use by the promoters, investors, agents or other authorized persons acting on behalf of a legal entity which is engaged in any lawful business activity within the state.

D. Five percent (5%) of the state ceiling shall be reserved for facilities owned or operated by a business entity which:

~~1. Has not been legally organized to do business for more than one (1) year prior to the date as of which operations begin at a food processing facility located within the state;~~

~~2.~~ Has an annual gross direct payroll which does not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00); and

~~3.~~ 2. Is engaged in food processing resulting in a final product produced at the facility which consists of at least ninety percent (90%), exclusive of packaging, of agricultural or livestock inputs originating from within the State of Oklahoma. The actual cost incurred by the processor, exclusive of packaging, shall be used for purposes of determining the content of the final product and the processor shall be required to document both the content of the final product for which a reservation of the state ceiling is claimed and the source of the input. As used in this paragraph:

- a. "agricultural input" means severed crops, including, but not limited to, wheat, oats, barley, corn, cotton and rye, peanuts, pecans and other nuts, vegetables, fruits, flowers, herbs, spices, trees, shrubs, and similar flowering or nonflowering woody plants, exclusive of any plant or substance that is illegal to cultivate, and

b. "livestock input" means cattle, horses, sheep, goats, swine, ratite, fish, fowl, reptiles or any other animal or insect raised or bred for sale or any material produced by an animal or insect for sale.

~~D.~~ E. 1. Twenty percent (20%) of the state ceiling shall be reserved and placed in a pool to be designated the Student Loan Pool.

Provided, for any given year the amount of state ceiling reserved shall be reduced by the amount of any existing carryforward issuance authority available to student loan bond issuers.

2. For the period commencing January 1 through September 1 of each calendar year, the Student Loan Pool shall be allocated to qualified student loan bonds issued by eligible state issuers. Allocations will be available to issuers on a first-come, first-serve basis.

~~E.~~ F. 1. From the balance of the state ceiling, thirty percent (30%) shall be reserved and placed in a pool to be designated the State Issuer Pool. For the period commencing January 1 of each calendar year through September 1 of the same year, the State Issuer Pool shall be allocated to those projects undertaken by state issuers on a first-come, first-serve basis. Provided, no single state issuer or project shall receive an allocation in excess of Twenty Million Dollars (\$20,000,000.00) from the State Issuer Pool.

2. Notwithstanding the provisions of this section, a state issuer specifically limited in jurisdiction to one county shall be treated as a local issuer for the purposes of allocation.

~~F.~~ G. From the balance of the state ceiling, seventy percent (70%) shall be reserved and placed in a pool to be designated the Local Issuer Pool. For the period commencing January 1 of each calendar year through September 1 of the same year, the Local Issuer Pool shall be allocated to those projects undertaken by local issuers on a first-come, first-serve basis. Provided, except for local issuers which have a population in excess of three hundred thousand (300,000), no single local issuer or

project shall receive an allocation in excess of Ten Million Dollars (\$10,000,000.00) from the Local Issuer Pool. No single local issuer which has a population in excess of three hundred thousand (300,000), shall receive an allocation in excess of Fifteen Million Dollars (\$15,000,000.00) from the Local Issuer Pool. No more than two fifteen-million-dollar allocations shall be made to local issuers in a calendar year from the Local Issuer Pool.

~~G.~~ H. Allocations of the state ceiling for the period commencing January 1 through September 1 of each calendar year for qualified small issue bonds and qualified student loan bonds may be made only from the respective pools reserved for these types of private activity bonds. Provided, small issue bonds may be funded from the State Issuer Pool or the Local Issuer Pool at such time as all the issuance authority in the Qualified Small Issue Pool has been allocated. Allocations of the state ceiling for the same period for exempt facility bonds may be made from the Exempt Facility Pool, the State Issuer Pool and the Local Issuer Pool; provided, no single issuer or project during any calendar year shall receive an allocation in excess of Twenty-five Million Dollars (\$25,000,000.00) from the three pools combined. The state ceiling for each calendar year shall be allocated within the categories set forth in subsections A, B, C, D, E ~~and~~, F and G of this section to all private activity bonds, as follows:

1. Except as hereinafter provided, the state ceiling shall be allocated in the order in which confirmations are issued;

2. The State Bond Advisor shall issue confirmations in the order in which fully and properly completed applications for state ceiling allocation are received. The State Bond Advisor shall have the limited authority to defer or deny confirmation on applications for state ceiling allocation which appear to be incomplete or premature based upon information submitted or which fail to show demand for funds pursuant to subsections F and G of Section 695.25 of this title; and

3. The State Bond Advisor shall have no discretionary control regarding the issuance of confirmations, except as specifically provided in the Oklahoma Private Activity Bond Allocation Act.

In the event a confirmation or application is denied, the State Bond Advisor, within five (5) business days following such denial, shall send written notice of such denial to the applicant together with a brief recital of the reason therefor.

~~H.~~ I. On September 2 of each calendar year, nonallocated sums remaining in the Qualified Small Issue Pool, the Small Business Equipment Pool, the Beginning Agricultural Producer Pool, the Exempt Facility Pool, the Student Loan Pool, the State Issuer Pool and the Local Issuer Pool shall be consolidated into the Consolidated Pool. All local issuers and state issuers shall be entitled to obtain allocations from the Consolidated Pool for any private activity bond or mortgage credit certificate program based on the following system:

1. Allocations shall be made first to issuers based on the chronological order of completed applications received prior to September 2 of each calendar year who have not received an allocation; provided, seventy-five percent (75%) of the Consolidated Pool shall be allocated first to issuers in this category; provided further, except for issuers which have a population in excess of three hundred thousand (300,000), no single issuer or project shall receive an allocation in excess of Ten Million Dollars (\$10,000,000.00). No single local issuer which has a population in excess of three hundred thousand (300,000), shall receive an allocation in excess of Fifteen Million Dollars (\$15,000,000.00);

2. From the remaining issuance authority, allocations shall be made to issuers based on the chronological order of applications received prior to September 2 of each calendar year who received a partial allocation of a requested allocation, provided the initial allocation was less than the lesser of fifty percent (50%) of the requested allocation or Ten Million Dollars (\$10,000,000.00); provided further, the total amount of

allocations from the Consolidated Pool and all other pools shall not exceed Ten Million Dollars (\$10,000,000.00); and

3. From the remaining issuance authority, allocations shall be made to issuers based on the chronological order of completed applications received from September 2 through November 30 of each calendar year.

SECTION 2. AMENDATORY 62 O.S. 1991, Section 695.25, as amended by Section 7, Chapter 233, O.S.L. 1993 (62 O.S. Supp. 1996, 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~~ I 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 amount of the state ceiling which the Issuer is requesting;

4. 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. 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, Req. No. 6681Page 9

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. Provided, the State Bond Advisor may reject an application or deny a confirmation pursuant to the provisions of this subsection.

2. 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. 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

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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

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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 3. This act shall become effective January 1, 1998.

46-1-6681 MAH