

SHORT TITLE: Public finance; relating to Private Activity Bond allocations; creating Economic Development Pool. Effective date.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1083

By: Fisher

AS INTRODUCED

An Act relating to public finance; amending 62 O.S. 1991, Sections 695.23, as amended by Section 5, Chapter 233, O.S.L. 1993 and 695.24, as last amended by Section 4, Chapter 236, O.S.L. 1997 (62 O.S. Supp. 1997, Sections 695.23 and 695.24), which relate to Private Activity Bond allocations; defining terms; creating Economic Development Pool and providing for allocation to pool; requiring certain recommendation, approval, and finding to qualify for allocations from pool; excluding Economic Development Pool allocation from calculation of state ceiling for certain determinations; conforming language; and providing an effective date.

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

SECTION 1. AMENDATORY 62 O.S. 1991, Section 695.23, as amended by Section 5, Chapter 233, O.S.L. 1993 (62 O.S. Supp. 1997, Section 695.23), is amended to read as follows:

Section 695.23 As used in the Oklahoma Private Activity Bond Allocation Act:

1. "Application for state ceiling allocation" means the written application form provided by the State Bond Advisor which shall be

filed by or on behalf of the issuer in compliance with the requirements of this act;

2. "Balance" means that amount of the state ceiling remaining after deducting the amounts reserved for the Qualified Small Issue Pool, the Exempt Facility Pool and the Student Loan Pool;

3. "Beginning Agricultural Producer Pool" means the portion of the state ceiling reserved for bonds relating to the Oklahoma Beginning Agricultural Producer Pool Act;

4. "Carryforward" shall have the same meaning as in Section 146(f) of the Internal Revenue Code;

5. "Confirmation" means a written confirmation of allocation issued by the State Bond Advisor;

6. "Consolidated Pool" means an aggregation of unallocated sums of the state ceiling derived from Qualified Small Issue, Beginning Agricultural Producer, Exempt Facility, Student Loan, Local Issuer and State Issuer Pools;

7. "Economic Development Pool" means that portion of the state ceiling reserved for projects specifically authorized by the Executive and Legislative Bond Oversight Commissions, as provided for in subsection A of Section 695.24 of this title;

8. "Exempt facility bonds" means exempt facility bonds as defined in Section 142(a) of the Internal Revenue Code;

~~8.~~ 9. "Exempt Facility Pool" means the portion of the state ceiling reserved for exempt facility bonds;

~~9.~~ 10. "Final certification" or "final certificate" means a certification or certificate filed with the State Bond Advisor by or on behalf of the issuer specifying the exact amount of indebtedness issued by an issuer, or, in the case of mortgage credit certificates, a copy of the document or election filed with the Internal Revenue Service exchanging bond issuance authority for mortgage credit certificate issuance authority;

~~10.~~ 11. "Internal Revenue Code" means the Internal Revenue Code of 1986 (26 U.S.C., Section 1 et seq.), as amended;

~~11.~~ 12. "Issued" means any issue of bonds which have been delivered and the purchase price therefor remitted to or for the account of the issuer, or a copy of the document or election filed with the Internal Revenue Service exchanging bond issuance authority for mortgage credit certificate issuance authority;

~~12.~~ 13. "Issuer" or "issuing authority" means any public trust or other public body which is authorized to issue bonds, notes and other like obligations, or has the authority to exchange single-family mortgage bond authority for mortgage credit certificate authority, under the Constitution or laws of the state;

~~13.~~ 14. "Local issuer" means any municipality, county or public trust having counties or municipalities or combinations thereof as beneficiary, or a public trust having the state as beneficiary with jurisdiction limited to one county of the state;

~~14.~~ 15. "Local Issuer Pool" means the portion of the state ceiling reserved for local issuers;

~~15.~~ 16. "Mortgage credit certificate election" means a document or election filed by an issuer with the Internal Revenue Service exchanging single-family mortgage bond issuance authority for mortgage credit certificate issuance authority;

~~16.~~ 17. "Mortgage credit certificates" shall have the same meaning as in Section 25(c) of the Internal Revenue Code;

~~17.~~ 18. "Private activity bonds" or "bonds" means any bonds or notes or other evidence of indebtedness, the interest on which is exempt from tax pursuant to the Internal Revenue Code, and mortgage credit certificates, except those bonds or certificates specifically excluded from the state ceiling under the terms of federal legislation;

~~18.~~ 19. "Qualified small issue" used in the context of "bond" or "bonds" or the "Qualified Small Issue Pool" shall have the meaning as in Section 144(a) of the Internal Revenue Code;

~~19.~~ 20. "Qualified Small Issue Pool" means the portion of the state ceiling reserved for qualified small issue bonds;

~~20.~~ 21. "Qualified student loan bonds" shall have the same meaning as in Section 144(b) of the Internal Revenue Code;

~~21.~~ 22. "State" means the State of Oklahoma;

~~22.~~ 23. "State Bond Advisor" means the Oklahoma State Bond Advisor or his designee;

~~23.~~ 24. "State ceiling" means the limit which is prescribed by the Internal Revenue Code in Section 146 and in such other applicable sections of the Internal Revenue Code on the amount of private activity bonds which may be issued collectively by all of the issuers of the state during a calendar year;

~~24.~~ 25. "State issuer" means any public trust having the state as beneficiary or any state agency with powers to issue private activity bonds, provided that the term shall not include a public trust or any local issuer with the state as beneficiary whose jurisdiction is limited to one county;

~~25.~~ 26. "State Issuer Pool" means the portion of the state ceiling reserved for state issuers; and

~~26.~~ 27. "Student Loan Pool" means the portion of the state ceiling reserved for qualified student loan bonds.

SECTION 2. AMENDATORY 62 O.S. 1991, Section 695.24, as last amended by Section 4, Chapter 236, O.S.L. 1997 (62 O.S. Supp. 1997, Section 695.24), is amended to read as follows:

Section 695.24 A. 1. The first Thirty Million Dollars (\$30,000,000.00) of any portion of the state ceiling which is in excess of One Hundred Seventy Million Dollars (\$170,000,000.00) shall be reserved and placed in a pool designated as the Economic Development Pool. For the period January 1 through September 1 of

each calendar year, allocations from this pool may be made only upon the recommendation of the Director of the Oklahoma Department of Commerce and following review and approval by the Executive and Legislative Bond Oversight Commissions. In order to approve the recommendation, the Bond Oversight Commissions must find that the project seeking an allocation from this pool will result in the creation of manufacturing jobs in this state or will in some other way contribute to an economic development objective of this state.

2. For purposes of this subsection, "manufacturing jobs" means jobs created by manufacturing facilities as that term is defined in subparagraphs a, b, and c of paragraph 1 of subsection B of Section 2902 of Title 68 of the Oklahoma Statutes.

3. The amount reserved and placed in the Economic Development Pool shall be excluded from the calculation of the state ceiling for the purposes of determining the amounts to be reserved and placed in the other Pools set forth in this section.

B. 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.

2. 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.

3. As used in this ~~paragraph~~ subsection, "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.

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

~~2.~~ 5. 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.~~ C. 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.~~ 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. 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 first, Fifteen Million Dollars (\$15,000,000.00) to each public trust created to provide single family housing having a county with a population in excess of three hundred thousand (300,000) as its sole beneficiary and which had

single family housing revenue bonds outstanding on January 1, 1981, or pro rata if the pool contains less than such amounts, then 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 Economic Development Pool, 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 the extent not previously allocated as provided in subsection ~~F~~ G of this section, 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 3. This act shall become effective January 1, 1999.

46-2-1845

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