

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1303

By: Phillips of the House

and

Coffee of the Senate

COMMITTEE SUBSTITUTE

An Act relating to public finance; amending 62 O.S. 1991, Section 695.23, as last amended by Section 3, Chapter 400, O.S.L. 1998, 695.24, as last amended by Section 4, Chapter 400, O.S.L. 1998, and 695.25, as last amended by Section 11, Chapter 351, O.S.L. 2000 (62 O.S. Supp. 2000, Sections 695.23, 695.24 and 695.25), which relate to private activity bond allocations; deleting, modifying and adding definitions; modifying criteria for allocations under the state ceiling for private activity bond allocations; providing method for determination of certain population categories; modifying procedures and deadlines for making allocations; defining terms; providing alternative procedures for entering into certain contracts; requiring certain provisions in such contracts; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 62 O.S. 1991, Section 695.23, as last amended by Section 3, Chapter 400, O.S.L. 1998 (62 O.S. Supp. 2000, 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. "Beginning Agricultural Producer Pool" means the portion of the state ceiling reserved for bonds relating to the Oklahoma Beginning Agricultural Producer Pool Act;

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

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

5. "Consolidated Pool" means an aggregation of unallocated sums of the state ceiling derived from pools as set forth in subsection ~~I~~ J of Section 695.24 of this title;

6. "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;

7. "Exempt facility bonds" means exempt facility bonds as defined in Section 142(a) of the Internal Revenue Code, other than qualified residential rental projects bonds. Exempt facility bonds are eligible for state ceiling allocation from the Qualified Small Issue Pool and the State Issuer Pool;

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

~~9.~~ "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.~~ 9. "Internal Revenue Code" means the Internal Revenue Code of 1986 (26 U.S.C., Section 1 et seq.), as amended;

~~11.~~ 10. "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.~~ 11. "Issuer" or "issuing authority" means any public trust or other entity which is authorized to issue tax-exempt 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.~~ 12. "Local issuer" means Rural Enterprises of Oklahoma, Inc. and any municipality, county or public trust having counties or municipalities or combinations thereof a single county or a single municipality as its beneficiary, or a public trust having the state as beneficiary with jurisdiction limited to one county of the state;

~~14.~~ 13. "Local Issuer Single Family Pool" means the portion of the state ceiling reserved for local issuers of single-family, revenue bonds ~~and~~ or mortgage credit certificates;

~~15.~~ 14. "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.~~ 15. "Mortgage credit certificates" shall have the same meaning as in Section 25(c) of the Internal Revenue Code;

~~17.~~ 16. "Oklahoma Housing Finance Agency Pool" means that portion of the state ceiling reserved for single family bonds, and multifamily bonds, ~~and mortgage credit certificates~~ issued by the Oklahoma Housing Finance Agency;

~~18.~~ 17. "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;

~~19.~~ 18. "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;

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

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

~~22.~~ 21. "Rural Enterprises of Oklahoma, Inc. Pool" means that portion of the state ceiling reserved for single family bonds and multifamily bonds issued by Rural Enterprises of Oklahoma, Inc. for projects in counties with populations of fifty thousand (50,000) or less and mortgage credit certificates issued by Rural Enterprises of Oklahoma, Inc. for projects in any county of this state;

22. "State" means the State of Oklahoma;

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

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;

25. "State issuer" means any public trust having the state as beneficiary or any state agency or other entity 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;

26. "State Issuer Pool" means the portion of the state ceiling reserved for state issuers of qualified small issuer projects and exempt facility bond projects; and

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 400, O.S.L. 1998 (62 O.S. Supp. 2000, 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 the Student Loan Pool.~~

~~2. a. The second Thirty Million Dollars (\$30,000,000.00) which is in excess of One Hundred Seventy Million Dollars (\$170,000,000.00) Two percent (2%) of the state ceiling 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.~~

~~b.~~

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.

~~c. 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.~~

~~3. Any remainder of the state ceiling which is in excess of the amounts reserved pursuant to paragraphs 1 and 2 of this subsection shall be reserved and placed in the Local Issuer Single Family Pool.~~

B. 1. ~~Eighteen and seventy-five one hundredths percent (18.75%)~~ Twelve and five-tenths percent (12.5%) of the state ceiling shall be reserved and placed in a pool to be designated the Qualified Small Issue Pool.

2. For the period January 1 through September 1 of each calendar year, the Qualified Small Issue Pool shall be allocated to qualified small issue bond projects and exempt facility bond projects undertaken by either state or local issuers. Allocations from this pool will be available to issuers ~~on a first-come, first-serve basis~~ upon approval of the State Bond Advisor. Provided, not more than Five Million Two Hundred Thousand Dollars (\$5,200,000.00) may be awarded to exempt facility projects from the Qualified Small Issue Pool and the State Issuer Pool combined.

C. 1. ~~Eight percent (8%)~~ One and twenty-five hundredths percent (1.25%) of the state ceiling shall be reserved and placed in a pool to be designated the Beginning Agricultural Producer ~~and Exempt Facility Pools~~ Pool.

2. For the period 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 Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00), the remainder to be allocated for a period January 1 through September 1 of each calendar year to exempt facility bonds issued by either state or local issuers.~~ Allocations

will be available to issuers ~~on a first-come, first-serve basis upon~~ approval of the State Bond Advisor.

D. 1. ~~In addition to the amount set forth in Section 695.24 of this title, six and twenty-five one-hundredths percent (6.25%)~~ Six percent (6%) of the state ceiling is hereby set aside for student loan bonds and, annually, shall be reserved and placed in a pool to be designated the Student Loan Pool.

2. For the period 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 from this pool will be available to issuers ~~on a first-come, first-serve basis~~ upon approval of the State Bond Advisor.

E. 1. ~~Fourteen and seventy-five one-hundredths percent (14.75%)~~ Twenty-five percent (25%) of the state ceiling shall be reserved and placed in a pool to be designated the Oklahoma Housing Finance Agency Pool.

~~2.~~ a. For the period January 1 through September 1 of each year, the Oklahoma Housing Finance Agency Pool shall be allocated to qualified single family bonds, and multifamily bonds, ~~or mortgage credit certificates~~ issued by the Oklahoma Housing Finance Agency.

~~b. Provided, twenty-five percent (25%) of the allocation from the Oklahoma Housing Finance Agency Pool shall be set aside for at least three (3) months for the origination of single family loans in counties with populations of three hundred thousand (300,000) or less.~~

F. 1. ~~Six percent (6%)~~ Twelve and five-tenths percent (12.5%) of the state ceiling shall be reserved and placed in a pool to be designated the Rural Enterprises of Oklahoma, Inc. Pool.

2. For the period January 1 through September 1 of each year, the Rural Enterprises of Oklahoma, Inc. Pool shall be allocated to

qualified single family bonds and multifamily bonds issued by Rural Enterprises of Oklahoma, Inc. for projects in counties with populations of fifty thousand (50,000) or less and mortgage credit certificates issued by Rural Enterprises of Oklahoma, Inc. for projects in any county of this state.

G. 1. Five percent (5%) of the state ceiling 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 qualified small issuer projects and exempt facility bond projects undertaken by state issuers which have issued in excess of Seventy-five Million Dollars (\$75,000,000.00) in qualified small issue bonds. Provided, not more than Five Million Two Hundred Thousand Dollars (\$5,200,000.00) may be awarded to exempt facility projects from the Qualified Small Issue Pool and the State Issuer Pool combined.

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.

~~G. 1.~~ H. The balance of the state ceiling shall be reserved and placed in a pool to be designated the Local Issuer Single Family Pool. For the period commencing January 1 of each calendar year through September 1 of the same year, the Local Issuer Single Family Pool shall be allocated ~~first Fifteen Million Dollars (\$15,000,000.00)~~ as follows:

1. First, Twenty Million Dollars (\$20,000,000.00), to any 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 has issued tax exempt single family housing revenue bonds in the amount of at least Four Hundred Million Dollars (\$400,000,000.00). Provided, no more than

Twenty Million Dollars (\$20,000,000.00) may be awarded pursuant to this paragraph to any single county.

2. Second, Twelve Million Dollars (\$12,000,000.00) shall be allocated to any public trust created to provide single family housing having a county with a population between two hundred thousand (200,000) and three hundred thousand (300,000) as its sole beneficiary and which has issued tax exempt single family housing revenue bonds. Provided, no more than Twelve Million Dollars (\$12,000,000.00) may be awarded pursuant to this paragraph to any single county.

3. Third:

- a. Eight Million Dollars (\$8,000,000.00) shall be allocated to any public trust created to provide single family housing having a county with a population between one hundred thousand (100,000) and two hundred thousand (200,000) as its sole beneficiary and which has issued tax exempt single family housing revenue bonds. Provided, no more than Eight Million Dollars (\$8,000,000.00) may be awarded pursuant to this paragraph to any single county, and
- b. Eight Million Dollars (\$8,000,000.00) shall be allocated to any public trust created to provide single family housing having multiple counties with a combined population between one hundred thousand (100,000) and two hundred thousand (200,000) as its beneficiaries and which has issued tax exempt single family housing revenue bonds. Provided, no more than Eight Million Dollars (\$8,000,000.00) may be awarded pursuant to this subparagraph.

4. The balance of this pool shall be allocated pursuant to subsection H of Section 695.25 of this title to single family projects undertaken by ~~other local issuers~~ any public trust having a

single county as its sole beneficiary in counties with populations of ~~three hundred thousand (300,000)~~ one hundred thousand (100,000) or less on a first-come, first-serve basis with no single local issuer or project county to receive an allocation in excess of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) from the Local Issuer Single Family Pool. Any county which has received an allocation pursuant to paragraphs 1, 2, or 3 above shall not be eligible to submit an application or receive an allocation pursuant to this paragraph. All population categories in this subsection shall be determined with reference to the annual United States Census Bureau County Population Estimate for July 1 of the year preceding the calendar year of allocation.

~~2. An issuer which has not received any allocation from the State Issuer Pool and having a single family project limited in jurisdiction to twenty counties or less, each of which has a population of three hundred thousand (300,000) or less, shall be considered a local issuer for the purposes of this subsection.~~

H. I. The state ceiling for each calendar year shall be allocated within the categories set forth in subsections A, B, C, D, E, F ~~and~~, G and H of this section ~~to all private activity bonds~~, as follows:

~~1. Except as provided in Section 695.21 et seq. of this title, 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 as provided in Section 695.25 of this title.~~ 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.~~ 2. 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.

~~F.~~ J. 1. On September 2 of each calendar year, nonallocated sums remaining in the Economic Development Pool, Qualified Small Issue Pool, the Beginning Agricultural Producer Pool, ~~the Exempt Facility Pool~~ the Rural Enterprises of Oklahoma, Inc. Pool, the Student Loan Pool, the Oklahoma Housing Finance Agency Pool, the State Issuer Pool and the Local Issuer Single Family Pool shall be consolidated into the Consolidated Pool.

2. 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 chronological order of completed applications received after January 1 of each calendar year which applications have not received an allocation~~ upon approval of the State Bond Advisor.

SECTION 3. AMENDATORY 62 O.S. 1991, Section 695.25, as last amended by Section 11, Chapter 351, O.S.L. 2000 (62 O.S. Supp. 2000, 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 Local Issuer Single Family Pool will be processed on the basis of the information and provisions set forth in subsections D, E, F and H of this section, consistent with the provisions of Section 695.24 of this title. Allocations from ~~the~~ all other pools set forth in Section 695.24 of this title will be processed on the basis of ~~the chronological order of receipt of completed applications for state ceiling allocation unless otherwise provided in said section,~~ 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 ~~F~~ J of Section 695.24 of this 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 from any pool other than the Local Issuer Single Family Pool, 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. 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. 1. On the first business day after February 15 of each year, the State Bond Advisor shall consider all applications received by the State Bond Advisor between January 1 and February 15 of such year for state ceiling allocation from the Local Issuer Single Family Pool, 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 determine which of such applications are in compliance with the Oklahoma Private Activity Bond Allocation Act. The State Bond Advisor may reject an application or deny a confirmation pursuant to the provisions of this section. The State Bond Advisor shall determine whether or not there is a sufficient sum available in the Local Issuer Single Family Pool to meet the requests of all applications for allocation from such pool which are not rejected as provided in this subsection. If a sufficient sum is available, the State Bond Advisor shall send, no later than five (5) business days after the deadline for submission of applications to be considered pursuant to this paragraph, a confirmation of the allocation of the state ceiling for the subject project to the person designated in the application for all applications received between January 1 and February 15 which are not rejected by the State Bond Advisor. If a sufficient sum is not available in the Local Issuer Single Family Pool to meet the requests of all applications for allocation from such pool which are not rejected as provided in this subsection, the State Bond Advisor shall award allocations to all eligible applicants on a pro rata allocation basis determined by the total dollar amount of all applications and the total dollar amount of allocation available in the Local Issuer Single Family Pool. No later than five (5) business days after the deadline for submission of applications to be considered pursuant to this paragraph, a notice of confirmation of the pro rata allocation amount for the subject project shall be sent to the person designated in the application for all applications received between January 1 and February 15 which are not rejected by the State Bond Advisor.

2. On the first business day after April 1 of each year the State Bond Advisor shall repeat the process set out in paragraph 1 of this subsection for all applications received between February 16 and April 1 of such year.

3. On the first business day after July 1 of each year the State Bond Advisor shall repeat the process set out in paragraph 1 of this subsection for all applications received between April 2 and July 1 of such year.

4. On the first business day after September 1 of each year the State Bond Advisor shall repeat the process set out in paragraph 1 of this subsection for all applications received between July 2 and September 1 of such year.

5. Except as provided in paragraphs 1, 2 and 3 of subsection H of Section 695.24 of this title, no allocation of more than Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) shall be made to any single county.

6. Any county which has received an allocation pursuant to paragraphs 1, 2, or 3 of subsection H of Section 695.24 of this title shall not be eligible to submit an application or receive an allocation pursuant to paragraph 4 of subsection H of Section 695.24 of this title.

I. 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 one hundred twenty (120) 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.~~ J. 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.~~ K. 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.~~ L. 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.

~~H.~~ M. 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.~~ N. 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.~~ O. 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 over issuance.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 318 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. For purposes of this section:

1. "Public entity" means any political subdivision of this state, or a public trust which has as a beneficiary a political subdivision of this state, or any institution of higher education which is part of The Oklahoma State System of Higher Education.

2. "Performance-based efficiency contract" means a contract for the design, development, financing, installation and service of any improvement, repair, alteration or betterment of any building or facility owned, operated or planned by a public entity; or any equipment, fixture or furnishing to be added to or used in any such building or facility; or any maintenance or operational strategy that is designed and implemented that will reduce utility consumption or lower operating costs, and may include, but is not limited to, one or more of the following:

a. utility services,

- b. heating, ventilating or air conditioning system modifications or replacements and automated control systems,
- c. replacement or modifications of lighting fixtures,
- d. indoor air quality improvements to increase air quality that conform to the applicable state or local building code requirements when done in conjunction with other cost-saving measures,
- e. any additional building infrastructure improvement, cost saving, life safety or any other improvement that provides long-term operating cost reductions and are in compliance with state and local codes, or
- f. any facility operation and support programs that reduce operating cost.

3. "Qualified provider" means a person or business experienced or trained in the design, analysis and installation of energy conservation and facility management measures. A qualified provider must employ a professional engineer registered in the State of Oklahoma.

B. In addition to any other legally permissible alternatives of entering into contracts, any public entity may enter into performance-based efficiency contracts with a qualified provider pursuant to the provisions of this section. Further, any public entity may enter into an installment contract, lease purchase agreement or other contractual obligation for the purpose of financing performance-based efficiency projects for a term not to exceed twenty (20) years or the useful life of the project. A qualified provider to whom the contract is awarded shall be required to give a sufficient bond to the public entity for its faithful performance of the contract and the accomplishment of guaranteed savings. Multi-year performance bonds covering the aggregate amount of guaranteed savings over the contract term shall be required, and

shall remain in full force and effect until the termination of the contract.

The contract's cost savings to the public entity must be guaranteed each year during the term of the agreement. The savings must be sufficient to offset the annual costs of the contract. The contract shall provide for reimbursement to the public entity annually for any shortfall of guaranteed savings. Savings must be measured, verified and documented during each year of the term and may be utilized to meet the annual debt service. This section shall constitute the sole authority necessary to enter into performance-based efficiency contracts, without regard to compliance with other laws which may specify additional procedural requirements for execution of contracts.

SECTION 5. Sections 1, 2, and 3 of this act shall become effective January 1, 2002.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this resolution shall take effect and be in full force from and after its passage and approval.

48-1-1302

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