

THE STATE SENATE
Monday, April 2, 2001

Committee Substitute for
ENGROSSED
House Bill No. 1303

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1303 - By:
PHILLIPS of the House and COFFEE and FISHER of the Senate.

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

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

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

6 3. "Carryforward" shall have the same meaning as in Section
7 146(f) of the Internal Revenue Code;

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

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

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

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

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

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

8 ~~10.~~ 9. "Internal Revenue Code" means the Internal Revenue Code
9 of 1986 (26 U.S.C., Section 1 et seq.), as amended;

10 ~~11.~~ 10. "Issued" means any issue of bonds which have been
11 delivered and the purchase price therefor remitted to or for the
12 account of the issuer, or a copy of the document or election filed
13 with the Internal Revenue Service exchanging bond issuance authority
14 for mortgage credit certificate issuance authority;

15 ~~12.~~ 11. "Issuer" or "issuing authority" means any public trust
16 or other entity which is authorized to issue tax-exempt bonds, notes
17 and other like obligations, or has the authority to exchange
18 single-family mortgage bond authority for mortgage credit
19 certificate authority, under the Constitution or laws of the state;

20 ~~13.~~ 12. "Local issuer" means Rural Enterprises of Oklahoma,
21 Inc. and any municipality, county or public trust having counties or
22 municipalities or combinations thereof a single county or a single

1 municipality as its beneficiary, or a public trust having the state
2 as beneficiary with jurisdiction limited to one county of the state;

3 ~~14.~~ 13. "Local Issuer Single Family Pool" means the portion of
4 the state ceiling reserved for local issuers of single-family,
5 revenue bonds ~~and~~ or mortgage credit certificates;

6 ~~15.~~ 14. "Mortgage credit certificate election" means a document
7 or election filed by an issuer with the Internal Revenue Service
8 exchanging single-family mortgage bond issuance authority for
9 mortgage credit certificate issuance authority;

10 ~~16.~~ 15. "Mortgage credit certificates" shall have the same
11 meaning as in Section 25(c) of the Internal Revenue Code;

12 ~~17.~~ 16. "Oklahoma Housing Finance Agency Pool" means that
13 portion of the state ceiling reserved for single family bonds, and
14 multifamily bonds, ~~and mortgage credit certificates~~ issued by the
15 Oklahoma Housing Finance Agency;

16 ~~18.~~ 17. "Private activity bonds" or "bonds" means any bonds or
17 notes or other evidence of indebtedness, the interest on which is
18 exempt from tax pursuant to the Internal Revenue Code, and mortgage
19 credit certificates, except those bonds or certificates specifically
20 excluded from the state ceiling under the terms of federal
21 legislation;

1 ~~19.~~ 18. "Qualified small issue" used in the context of "bond"
2 or "bonds" or the "Qualified Small Issue Pool" shall have the
3 meaning as in Section 144(a) of the Internal Revenue Code;

4 ~~20.~~ 19. "Qualified Small Issue Pool" means the portion of the
5 state ceiling reserved for qualified small issue bonds and exempt
6 facility bonds;

7 ~~21.~~ 20. "Qualified student loan bonds" shall have the same
8 meaning as in Section 144(b) of the Internal Revenue Code;

9 ~~22.~~ 21. "Rural Enterprises of Oklahoma, Inc. Pool" means that
10 portion of the state ceiling reserved for single family bonds and
11 multifamily bonds issued by Rural Enterprises of Oklahoma, Inc. for
12 projects in counties with populations of fifty thousand (50,000) or
13 less and mortgage credit certificates issued by Rural Enterprises of
14 Oklahoma, Inc. for projects in any county of this state;

15 22. "State" means the State of Oklahoma;

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

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

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

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

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

11 SECTION 2. AMENDATORY 62 O.S. 1991, Section 695.24, as
12 last amended by Section 4, Chapter 400, O.S.L. 1998 (62 O.S. Supp.
13 2000, Section 695.24), is amended to read as follows:

14 Section 695.24 A. 1. ~~The first Thirty Million Dollars~~
15 ~~(\$30,000,000.00) of any portion of the state ceiling which is in~~
16 ~~excess of One Hundred Seventy Million Dollars (\$170,000,000.00)~~
17 ~~shall be reserved and placed in the Student Loan Pool.~~

18 2. a. ~~The second Thirty Million Dollars (\$30,000,000.00)~~
19 ~~which is in excess of One Hundred Seventy Million~~
20 ~~Dollars (\$170,000,000.00) Two percent (2%) of the~~
21 ~~state ceiling shall be reserved and placed in a pool~~
22 ~~designated as the Economic Development Pool. For the~~
23 ~~period January 1 through September 1 of each calendar~~

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

11 ~~b.~~

12 2. For purposes of this subsection, "manufacturing jobs" means
13 jobs created by manufacturing facilities as that term is defined in
14 subparagraphs a, b, and c of paragraph 1 of subsection B of Section
15 2902 of Title 68 of the Oklahoma Statutes.

16 ~~e. The amount reserved and placed in the Economic~~
17 ~~Development Pool shall be excluded from the~~
18 ~~calculation of the state ceiling for the purposes of~~
19 ~~determining the amounts to be reserved and placed in~~
20 ~~the other Pools set forth in this section.~~

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

1 B. 1. ~~Eighteen and seventy-five one hundredths percent~~
2 ~~(18.75%)~~ Twelve and five-tenths percent (12.5%) of the state ceiling
3 shall be reserved and placed in a pool to be designated the
4 Qualified Small Issue Pool.

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

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

18 2. For the period January 1 through September 1 of each
19 calendar year, the Beginning Agricultural Producer Pool shall be
20 allocated pursuant to the criteria established in Section 5063.23 of
21 Title 74 of the Oklahoma Statutes ~~according to a ratio of fifty~~
22 ~~percent (50%) of the total amount allocated for the combined~~
23 ~~purposes, not to exceed Two Million Seven Hundred Fifty Thousand~~

1 ~~Dollars (\$2,750,000.00), the remainder to be allocated for a period~~
2 ~~January 1 through September 1 of each calendar year to exempt~~
3 ~~facility bonds issued by either state or local issuers. Allocations~~
4 will be available to issuers ~~on a first-come, first-serve basis~~ upon
5 approval of the State Bond Advisor.

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

11 2. For the period January 1 through September 1 of each
12 calendar year, the Student Loan Pool shall be allocated to qualified
13 student loan bonds issued by eligible state issuers. Allocations
14 from this pool will be available to issuers ~~on a first-come, first-~~
15 ~~serve basis~~ upon approval of the State Bond Advisor.

16 E. 1. ~~Fourteen and seventy-five one-hundredths percent~~
17 ~~(14.75%)~~ Twenty-five percent (25%) of the state ceiling shall be
18 reserved and placed in a pool to be designated the Oklahoma Housing
19 Finance Agency Pool.

20 ~~2. a.~~ For the period January 1 through September 1 of each
21 year, the Oklahoma Housing Finance Agency Pool shall
22 be allocated to qualified single family bonds, and

1 multifamily bonds, ~~or mortgage credit certificates~~
2 issued by the Oklahoma Housing Finance Agency.

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

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

12 2. For the period January 1 through September 1 of each year,
13 the Rural Enterprises of Oklahoma, Inc. Pool shall be allocated to
14 qualified single family bonds and multifamily bonds issued by Rural
15 Enterprises of Oklahoma, Inc. for projects in counties with
16 populations of fifty thousand (50,000) or less and mortgage credit
17 certificates issued by Rural Enterprises of Oklahoma, Inc. for
18 projects in any county of this state.

19 G. 1. Five percent (5%) of the state ceiling shall be reserved
20 and placed in a pool to be designated the State Issuer Pool. For
21 the period commencing January 1 of each calendar year through
22 September 1 of the same year, the State Issuer Pool shall be
23 allocated to those qualified small issuer projects and exempt

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

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

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

16 1. First, Twenty Million Dollars (\$20,000,000.00), to any
17 public trust created to provide single family housing having a
18 county with a population in excess of three hundred thousand
19 (300,000) as its sole beneficiary and which has issued tax exempt
20 single family housing revenue bonds in the amount of at least Four
21 Hundred Million Dollars (\$400,000,000.00). Provided, no more than
22 Twenty Million Dollars (\$20,000,000.00) may be awarded pursuant to
23 this paragraph to any single county.

1 2. Second, Twelve Million Dollars (\$12,000,000.00) shall be
2 allocated to any public trust created to provide single family
3 housing having a county with a population between two hundred
4 thousand (200,000) and three hundred thousand (300,000) as its sole
5 beneficiary and which has issued tax exempt single family housing
6 revenue bonds. Provided, no more than Twelve Million Dollars
7 (\$12,000,000.00) may be awarded pursuant to this paragraph to any
8 single county.

9 3. Third:

10 a. Eight Million Dollars (\$8,000,000.00) shall be
11 allocated to any public trust created to provide
12 single family housing having a county with a
13 population between one hundred thousand (100,000) and
14 two hundred thousand (200,000) as its sole beneficiary
15 and which has issued tax exempt single family housing
16 revenue bonds. Provided, no more than Eight Million
17 Dollars (\$8,000,000.00) may be awarded pursuant to
18 this paragraph to any single county, and

19 b. Eight Million Dollars (\$8,000,000.00) shall be
20 allocated to any public trust created to provide
21 single family housing having multiple counties with a
22 combined population between one hundred thousand
23 (100,000) and two hundred thousand (200,000) as its

1 beneficiaries and which has issued tax exempt single
2 family housing revenue bonds. Provided, no more than
3 Eight Million Dollars (\$8,000,000.00) may be awarded
4 pursuant to this subparagraph.

5 4. The balance of this pool shall be allocated pursuant to
6 subsection H of Section 695.25 of this title to single family
7 projects undertaken by ~~other local issuers~~ any public trust having a
8 single county as its sole beneficiary in counties with populations
9 of ~~three hundred thousand (300,000)~~ one hundred thousand (100,000)
10 or less ~~on a first-come, first-serve basis~~ with no single local
11 issuer or project county to receive an allocation in excess of Seven
12 Million Five Hundred Thousand Dollars (\$7,500,000.00) from the Local
13 Issuer Single Family Pool. Any county which has received an
14 allocation pursuant to paragraphs 1, 2, or 3 above shall not be
15 eligible to submit an application or receive an allocation pursuant
16 to this paragraph. All population categories in this subsection
17 shall be determined with reference to the annual United States
18 Census Bureau County Population Estimate for July 1 of the year
19 preceding the calendar year of allocation.

20 ~~2. An issuer which has not received any allocation from the~~
21 ~~State Issuer Pool and having a single family project limited in~~
22 ~~jurisdiction to twenty counties or less, each of which has a~~

1 ~~population of three hundred thousand (300,000) or less, shall be~~
2 ~~considered a local issuer for the purposes of this subsection.~~

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

7 1. ~~Except as provided in Section 695.21 et seq. of this title,~~
8 ~~the state ceiling shall be allocated in the order in which~~
9 ~~confirmations are issued;~~

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

18 ~~3.~~ 2. The State Bond Advisor shall have no discretionary
19 control regarding the issuance of confirmations, except as
20 specifically provided in the Oklahoma Private Activity Bond
21 Allocation Act.

22 In the event a confirmation or application is denied, the State
23 Bond Advisor, within five (5) business days following such denial,

1 shall send written notice of such denial to the applicant together
2 with a brief recital of the reason therefor.

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

10 2. All local issuers and state issuers shall be entitled to
11 obtain allocations from the Consolidated Pool for any private
12 activity bond or mortgage credit certificate program based ~~on the~~
13 ~~chronological order of completed applications received after January~~
14 ~~1 of each calendar year which applications have not received an~~
15 ~~allocation~~ upon approval of the State Bond Advisor.

16 SECTION 3. AMENDATORY 62 O.S. 1991, Section 695.25, as
17 last amended by Section 11, Chapter 351, O.S.L. 2000 (62 O.S. Supp.
18 2000, Section 695.25), is amended to read as follows:

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

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

5 C. Allocations from the Local Issuer Single Family Pool will be
6 processed on the basis of the information and provisions set forth
7 in subsections D, E, F and H of this section, consistent with the
8 provisions of Section 695.24 of this title. Allocations from ~~the~~
9 ~~all other~~ pools set forth in Section 695.24 of this title will be
10 processed on the basis of ~~the chronological order of receipt of~~
11 ~~completed applications for state ceiling allocation unless otherwise~~
12 ~~provided in said section, and on the basis of~~ the information and
13 provisions set forth in subsections D, E, F and G of this section.
14 Allocations from the Consolidated Pool will be processed on the
15 basis of the system set out in subsection ~~±~~ J of Section 695.24 of
16 this title and on the basis of information and provisions set forth
17 in subsections D, E, F and G of this section.

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

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

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

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

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

20 2. The name and mailing address or other definitive description
21 of the location of the project or bonds and the purpose for which an
22 allocation of the state ceiling is requested, the name and mailing
23 address of both the initial owner or operator of the project, where

1 applicable, and an appropriate person from whom information
2 regarding the project or bonds can be obtained, and the name and
3 address of the person to whom the confirmation should be sent;

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

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

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

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

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

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

19 G. 1. Upon receipt of the completed application for state
20 ceiling allocation from any pool other than the Local Issuer Single
21 Family Pool, copies of the official action and final resolutions or
22 certificates as required by subsection D of this section and the
23 information required by subsections E and F of this section and

1 assuming availability of the sum requested and compliance with the
2 Oklahoma Private Activity Bond Allocation Act, the State Bond
3 Advisor shall send, within five (5) business days of the receipt
4 thereof, a confirmation of the allocation of the state ceiling for
5 the subject project or purpose to the person designated in the
6 application for state ceiling allocation. Provided, the State Bond
7 Advisor may reject an application or deny a confirmation pursuant to
8 the provisions of this subsection.

9 2. The State Bond Advisor may reject any application which is
10 incomplete or filed with insufficient information. The State Bond
11 Advisor may reject any application where, in the State Bond
12 Advisor's judgment, a reasonable likelihood has not been shown that
13 single-family mortgage and student loan bond proceeds or mortgage
14 credit certificates will be used for their intended public purposes.
15 In the event an application or confirmation is denied, within five
16 (5) business days following such denial, the State Bond Advisor
17 shall send the applicant written notice of the denial of an
18 application or confirmation together with the reason or reasons
19 therefor. In the case of disapprovals of applications or
20 confirmations, an applicant may appeal the disapproval by submitting
21 a new application to the Executive and Legislative Bond Oversight
22 Commissions, along with an explanation addressing the reasons for
23 disapproval cited in the State Bond Advisor's letter. The Bond

1 Oversight Commissions, through affirmative action of both
2 Commissions, may accept an application rejected by the State Bond
3 Advisor, or order the State Bond Advisor to issue a confirmation of
4 allocation, subject to provisions of the Oklahoma Private Activity
5 Bond Allocation Act. Applicants may submit only one new application
6 based on an appeal of any specific application previously submitted.

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

12 H. 1. On the first business day after February 15 of each
13 year, the State Bond Advisor shall consider all applications
14 received by the State Bond Advisor between January 1 and February 15
15 of such year for state ceiling allocation from the Local Issuer
16 Single Family Pool, copies of the official action and final
17 resolutions or certificates as required by subsection D of this
18 section and the information required by subsections E and F of this
19 section and determine which of such applications are in compliance
20 with the Oklahoma Private Activity Bond Allocation Act. The State
21 Bond Advisor may reject an application or deny a confirmation
22 pursuant to the provisions of this section. The State Bond Advisor
23 shall determine whether or not there is a sufficient sum available

1 in the Local Issuer Single Family Pool to meet the requests of all
2 applications for allocation from such pool which are not rejected as
3 provided in this subsection. If a sufficient sum is available, the
4 State Bond Advisor shall send, no later than five (5) business days
5 after the deadline for submission of applications to be considered
6 pursuant to this paragraph, a confirmation of the allocation of the
7 state ceiling for the subject project to the person designated in
8 the application for all applications received between January 1 and
9 February 15 which are not rejected by the State Bond Advisor. If a
10 sufficient sum is not available in the Local Issuer Single Family
11 Pool to meet the requests of all applications for allocation from
12 such pool which are not rejected as provided in this subsection, the
13 State Bond Advisor shall award allocations to all eligible
14 applicants on a pro rata allocation basis determined by the total
15 dollar amount of all applications and the total dollar amount of
16 allocation available in the Local Issuer Single Family Pool. No
17 later than five (5) business days after the deadline for submission
18 of applications to be considered pursuant to this paragraph, a
19 notice of confirmation of the pro rata allocation amount for the
20 subject project shall be sent to the person designated in the
21 application for all applications received between January 1 and
22 February 15 which are not rejected by the State Bond Advisor.

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

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

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

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

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

22 I. An original confirmation shall cease to be effective to
23 assure allocation of any portion of the state ceiling unless the

1 bonds, notes, other evidences of indebtedness, or the appropriate
2 election filed with the Internal Revenue Service exchanging mortgage
3 bond authority for mortgage credit certificate authority have been
4 issued or filed within one hundred twenty (120) days after the date
5 of such confirmation. No extensions shall be granted. Such
6 issuance shall be evidenced by the mailing, transmittal or delivery
7 of a final certification to the State Bond Advisor within the time
8 specified by this subsection. Receipt by an issuer of a
9 confirmation as contemplated by this section shall entitle the
10 issuer to rely conclusively upon the accuracy of the State Bond
11 Advisor's mathematical calculation and the allocation for purposes
12 of closing.

13 ~~F.~~ J. The confirmation given in advance of bond issuance or
14 mortgage credit certificate election will assure allocation for only
15 the amount of such bonds or mortgage credit certificate authority as
16 is therein set forth, unless a supplementary application for state
17 ceiling allocation for an increase in amount is filed with and a
18 supplementary confirmation is issued by the State Bond Advisor for
19 such requested allocation prior to such bond issuance or such
20 election, pursuant to the Oklahoma Private Activity Bond Allocation
21 Act. The supplementary confirmation shall be effective for the same
22 period as the prior confirmation which it supplements. Provided,
23 however, no supplementary confirmation shall be effective to preempt

1 any intervening confirmation as to allocation of a portion of the
2 state ceiling.

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

9 ~~K.~~ L. On or after 9:00 a.m. on December 20 of each calendar
10 year, issuing authorities may apply to the State Bond Advisor to
11 carry forward a portion of the state ceiling for such calendar year
12 allocated to any qualified carryforward project, as said term is
13 used in Section 103(n)(10) and 146(f) of the Internal Revenue Code
14 and which shall be evidenced by the issuance of confirmations for
15 all carryforward projects within the limitations of the state
16 ceiling. Provided, issuers or projects with more than Twenty
17 Million Dollars (\$20,000,000.00) of carryforward outstanding as of
18 the date of the application for carryforward shall only be eligible
19 for carryforward allocations to the extent other issuers with less
20 than Twenty Million Dollars (\$20,000,000.00) of outstanding
21 carryforward authority do not fully commit the state ceiling.
22 Allocations on carryforward projects shall be processed on the basis
23 of the chronological receipt of applications. No portion of the

1 state ceiling carried forward for any given year may be carried
2 forward for a period in excess of three (3) calendar years following
3 the calendar year in which the carryforward arose, except as
4 otherwise permitted under federal law.

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

8 1. Private activity bonds have been issued or state ceiling
9 exchanged for mortgage credit certificate authority and final
10 certifications have been received by the State Bond Advisor;

11 2. Confirmations of carryforward have been issued; and

12 3. Confirmations in effect and outstanding for which no private
13 activity bonds or mortgage credit certificate elections have been
14 issued or filed.

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

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

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

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

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

4 A. For purposes of this section:

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

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

- 18 a. utility services,
- 19 b. heating, ventilating or air conditioning system
20 modifications or replacements and automated control
21 systems,
- 22 c. replacement or modifications of lighting fixtures,

- 1 d. indoor air quality improvements to increase air
2 quality that conform to the applicable state or local
3 building code requirements when done in conjunction
4 with other cost-saving measures,
5 e. any additional building infrastructure improvement,
6 cost saving, life safety or any other improvement that
7 provides long-term operating cost reductions and are
8 in compliance with state and local codes, or
9 f. any facility operation and support programs that
10 reduce operating cost.

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

16 B. In addition to any other legally permissible alternatives of
17 entering into contracts, any public entity may enter into
18 performance-based efficiency contracts with a qualified provider
19 pursuant to the provisions of this section. Further, any public
20 entity may enter into an installment contract, lease purchase
21 agreement or other contractual obligation for the purpose of
22 financing performance-based efficiency projects for a term not to
23 exceed twenty (20) years or the useful life of the project. A

1 qualified provider to whom the contract is awarded shall be required
2 to give a sufficient bond to the public entity for its faithful
3 performance of the contract and the accomplishment of guaranteed
4 savings. Multi-year performance bonds covering the aggregate amount
5 of guaranteed savings over the contract term shall be required, and
6 shall remain in full force and effect until the termination of the
7 contract.

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

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

21 SECTION 6. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this resolution shall take
2 effect and be in full force from and after its passage and approval.
3 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT, dated
4 3-29-01 - DO PASS, As Amended and Coauthored.