

10255

I N   A S S E M B L Y

May 18, 2016

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Introduced by M. of A. MAGNARELLI -- read once and referred to the  
Committee on Local Governments

AN ACT in relation to redistributing 2014 bond volume allocations made pursuant to section 146 of the federal tax reform act of 1986, allocation of the unified state bond volume ceiling, and enacting the private activity bond allocation act of 2016; and providing for the repeal of certain provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "private activity bond allocation act of 2016".  
3     S 2. Legislative findings and declaration. The legislature hereby  
4     finds and declares that the federal tax reform act of 1986 established a  
5     statewide bond volume ceiling on the issuance of certain tax exempt  
6     private activity bonds and notes and, under certain circumstances,  
7     governmental use bonds and notes issued by the state and its public  
8     authorities, local governments, agencies which issue on behalf of local  
9     governments, and certain other issuers. The federal tax reform act  
10    establishes a formula for the allocation of the bond volume ceiling  
11    which was subject to temporary modification by gubernatorial executive  
12    order until December 31, 1987. That act also permits state legislatures  
13    to establish, by statute, an alternative formula for allocating the  
14    volume ceiling. Bonds and notes subject to the volume ceiling require  
15    an allocation from the state's annual volume ceiling in order to qualify  
16    for federal tax exemption.  
17    It is hereby declared to be the policy of the state to maximize the  
18    public benefit through the issuance of private activity bonds for the  
19    purposes of, among other things, allocating a fair share of the bond  
20    volume ceiling upon initial allocation and from a bond reserve to local  
21    agencies and for needs identified by local governments; providing hous-  
22    ing and promoting economic development; job creation; an economical  
23    energy supply; and resource recovery and to provide for an orderly and  
24    efficient volume ceiling allocation process for state and local agencies  
25    by establishing an alternative formula for making such allocations.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 S 3. Definitions. As used in this act, unless the context requires  
2 otherwise:

3 1. "Bonds" means bonds, notes or other obligations.

4 2. "Carryforward" means an amount of unused private activity bond  
5 ceiling available to an issuer pursuant to an election filed with the  
6 internal revenue service pursuant to section 146(f) of the code.

7 3. "Code" means the internal revenue code of 1986, as amended.

8 4. "Commissioner" means the commissioner of the New York state depart-  
9 ment of economic development.

10 5. "Covered bonds" means those tax exempt private activity bonds and  
11 that portion of the non-qualified amount of an issue of governmental use  
12 bonds for which an allocation of the statewide ceiling is required for  
13 the interest earned by holders of such bonds to be excluded from the  
14 gross income of such holders for federal income tax purposes under the  
15 code.

16 6. "Director" means the director of the New York state division of the  
17 budget.

18 7. "Issuer" means a local agency, state agency or other issuer.

19 8. "Local agency" means an industrial development agency established  
20 or operating pursuant to article 18-A of the general municipal law, the  
21 Troy industrial development authority and the Auburn industrial develop-  
22 ment authority.

23 9. "Other issuer" means any agency, political subdivision or other  
24 entity, other than a local agency or state agency, that is authorized to  
25 issue covered bonds.

26 10. "Qualified small issue bonds" means qualified small issue bonds,  
27 as defined in section 144(a) of the code.

28 11. "State agency" means the state of New York, the New York state  
29 energy research and development authority, the New York job development  
30 authority, the New York state environmental facilities corporation, the  
31 New York state urban development corporation and its subsidiaries, the  
32 Battery Park city authority, the port authority of New York and New  
33 Jersey, the power authority of the state of New York, the dormitory  
34 authority of the state of New York, the New York state housing finance  
35 agency, the state of New York mortgage agency, and any other public  
36 benefit corporation or public authority designated by the governor for  
37 the purposes of this act.

38 12. "Statewide ceiling" means for any calendar year the highest state  
39 ceiling (as such term is used in section 146 of the code) applicable to  
40 New York state.

41 13. "Future allocations" means allocations of statewide ceiling for up  
42 to two future years.

43 14. "Multi-year housing development project" means a project (a) which  
44 qualifies for covered bonds;

45 (b) which is to be constructed over two or more years; and

46 (c) in which at least twenty percent of the dwelling units will be  
47 occupied by persons and families of low income.

48 S 4. Local agency set-aside. A set-aside of statewide ceiling for  
49 local agencies for any calendar year shall be an amount which bears the  
50 same ratio to one-third of the statewide ceiling as the population of  
51 the jurisdiction of such local agency bears to the population of the  
52 entire state. The commissioner shall administer allocations of such  
53 set-aside to local agencies.

54 S 5. State agency set-aside. A set-aside of statewide ceiling for all  
55 state agencies for any calendar year shall be one-third of the statewide  
56 ceiling. The director shall administer allocations of such set-aside to

1 state agencies and may grant an allocation to any state agency upon  
2 receipt of an application in such form as the director shall require.

3 S 6. Statewide bond reserve. One-third of the statewide ceiling is  
4 hereby set aside as a statewide bond reserve to be administered by the  
5 director. 1. Allocation of the statewide bond reserve among state agen-  
6 cies, local agencies and other issuers. The director shall transfer a  
7 portion of the statewide bond reserve to the commissioner for allocation  
8 to and use by local agencies and other issuers in accordance with the  
9 terms of this section. The remainder of the statewide bond reserve may  
10 be allocated by the director to state agencies in accordance with the  
11 terms of this section.

12 2. Allocation of statewide bond reserve to local agencies or other  
13 issuers. (a) Local agencies or other issuers may at any time apply to  
14 the commissioner for an allocation from the statewide bond reserve. Such  
15 application shall demonstrate:

16 (i) that the requested allocation is required under the code for the  
17 interest earned on the bonds to be excluded from the gross income of  
18 bondholders for federal income tax purposes;

19 (ii) that the local agency's remaining unused allocation provided  
20 pursuant to section four of this act, and other issuer's remaining  
21 unused allocation, or any available carryforward will be insufficient  
22 for the specific project or projects for which the reserve allocation is  
23 requested; and

24 (iii) that, except for those allocations made pursuant to section  
25 twelve of this act to enable carryforward elections, the requested allo-  
26 cation is reasonably expected to be used during the calendar year, and  
27 the requested future allocation is reasonably expected to be used in the  
28 calendar year to which the future allocation relates.

29 (b) In reviewing and approving or disapproving applications, the  
30 commissioner shall exercise discretion to ensure an equitable distrib-  
31 ution of allocations from the statewide bond reserve to local agencies  
32 and other issuers. Prior to making a determination on such applications,  
33 the commissioner shall notify and seek the recommendation of the presi-  
34 dent and chief executive officer of the New York state housing finance  
35 agency in the case of an application related to the issuance of multi-  
36 family housing or mortgage revenue bonds, and in the case of other  
37 requests, such state officers, departments, divisions and agencies as  
38 the commissioner deems appropriate.

39 (c) Applications for allocations shall be made in such form and  
40 contain such information and reports as the commissioner shall require.

41 (d) On or before September fifteenth of each year, the commissioner  
42 shall publish the total amount of local agency set-aside that has been  
43 recaptured pursuant to section twelve of this act for that year on the  
44 department of economic development's website.

45 3. Allocation of statewide bond reserve to state agencies. The direc-  
46 tor may make an allocation from the statewide bond reserve to any state  
47 agency. Before making any allocation of statewide bond reserve to state  
48 agencies the director shall be satisfied: (a) that the allocation is  
49 required under the code for the interest earned on the bonds to be  
50 excluded from the gross income of bondholders for federal income tax  
51 purposes;

52 (b) that the state agency's remaining unused allocation provided  
53 pursuant to section five of this act or any available carryforward will  
54 be insufficient to accommodate the specific bond issue or issues for  
55 which the reserve allocation is requested; and

(c) that, except for those allocations made pursuant to section twelve of this act to enable carryforward elections, the requested allocation is reasonably expected to be used during the calendar year, and the requested future allocation is reasonably expected to be used in the calendar year to which the future allocation relates.

S 7. Access to employment opportunities. 1. All issuers shall require that any new employment opportunities created in connection with the industrial or manufacturing projects financed through the issuance of qualified small issue bonds shall be listed with the New York state department of labor and with the one-stop career center established pursuant to the federal workforce investment act (Pub. L. No. 105-220) serving the locality in which the employment opportunities are being created. Such listing shall be in a manner and form prescribed by the commissioner. All issuers shall further require that for any new employment opportunities created in connection with an industrial or manufacturing project financed through the issuance of qualified small issue bonds by such issuer, industrial or manufacturing firms shall first consider persons eligible to participate in workforce investment act (Pub. L. No. 105-220) programs who shall be referred to the industrial or manufacturing firm by one-stop centers in local workforce investment areas or by the department of labor. Issuers of qualified small issue bonds are required to monitor compliance with the provisions of this section as prescribed by the commissioner.

2. Nothing in this section shall be construed to require users of qualified small issue bonds to violate any existing collective bargaining agreement with respect to the hiring of new employees. Failure on the part of any user of qualified small issue bonds to comply with the requirements of this section shall not affect the allocation of bonding authority to the issuer of the bonds or the validity or tax exempt status of such bonds.

S 8. Overlapping jurisdictions. In a geographic area represented by a county local agency and one or more sub-county local agencies, the allocation granted by section four of this act with respect to such area of overlapping jurisdiction shall be apportioned one-half to the county local agency and one-half to the sub-county local agency or agencies. Where there is a local agency for the benefit of a village within the geographic area of a town for the benefit of which there is a local agency, the allocation of the village local agency shall be based on the population of the geographic area of the village, and the allocation of the town local agency shall be based upon the population of the geographic area of the town outside of the village. Notwithstanding the foregoing, a local agency may surrender all or part of its allocation for such calendar year to another local agency with an overlapping jurisdiction. Such surrender shall be made at such time and in such manner as the commissioner shall prescribe.

S 9. Ineligible local agencies. To the extent that any allocation of the local agency set-aside would be made by this act to a local agency which is ineligible to receive such allocation under the code or under regulations interpreting the state volume ceiling provisions of the code, such allocation shall instead be made to the political subdivision for whose benefit that local agency was created.

S 10. Municipal reallocation. The chief executive officer of any political subdivision or, if such political subdivision has no chief executive officer, the governing board of the political subdivision for the benefit of which a local agency has been established, may withdraw all or any portion of the allocation granted by section four of this act to

1 such local agency. The political subdivision may then reallocate all or  
2 any portion of such allocation, as well as all or any portion of the  
3 allocation received pursuant to section nine of this act, to itself or  
4 any other issuer established for the benefit of that political subdivi-  
5 sion or may assign all or any portion of the allocation received pursu-  
6 ant to section nine of this act to the local agency created for its  
7 benefit. The chief executive officer or governing board of the political  
8 subdivision, as the case may be, shall notify the commissioner of any  
9 such reallocation.

10 S 11. Future allocations for multi-year housing development projects.  
11 1. In addition to other powers granted under this act, the commissioner  
12 is authorized to make the following future allocations of statewide  
13 ceiling for any multi-year housing development project for which the  
14 commissioner also makes an allocation of statewide ceiling for the  
15 current year under this act or for which, in the event of expiration of  
16 provisions of this act described in section eighteen of this act, an  
17 allocation of volume cap for a calendar year subsequent to such expira-  
18 tion shall have been made under section 146 of the code: (a) to local  
19 agencies from the local agency set-aside (but only with the approval of  
20 the chief executive officer of the political subdivision to which the  
21 local agency set-aside relates or the governing body of a political  
22 subdivision having no chief executive officer) and

23 (b) to other issuers from that portion, if any, of the statewide bond  
24 reserve transferred to the commissioner by the director. Any future  
25 allocation made by the commissioner shall constitute an allocation of  
26 statewide ceiling for the future year specified by the commissioner and  
27 shall be deemed to have been made on the first day of the future year so  
28 specified.

29 2. In addition to other powers granted under this act, the director is  
30 authorized to make future allocations of statewide ceiling from the  
31 state agency set-aside or from the statewide bond reserve to state agen-  
32 cies for any multi-year housing development project for which the direc-  
33 tor also makes an allocation of statewide ceiling from the current year  
34 under this act or for which, in the event of expiration of provisions of  
35 this act described in section eighteen of this act, an allocation of  
36 volume cap for a calendar year subsequent to such expiration shall have  
37 been made under section 146 of the code, and is authorized to make  
38 transfers of the statewide bond reserve to the commissioner for future  
39 allocations to other issuers for multi-year housing development projects  
40 for which the commissioner has made an allocation of statewide ceiling  
41 for the current year. Any such future allocation or transfer of the  
42 statewide bond reserve for future allocation made by the director shall  
43 constitute an allocation of statewide ceiling or transfer of the state-  
44 wide bond reserve for the future years specified by the director and  
45 shall be deemed to have been made on the first day of the future year so  
46 specified.

47 3. (a) If an allocation made with respect to a multi-year housing  
48 development project is not used by September fifteenth of the year to  
49 which the allocation relates, the allocation with respect to the then  
50 current year shall be subject to recapture in accordance with the  
51 provisions of section twelve of this act, and in the event of such a  
52 recapture, unless a carryforward election by another issuer shall have  
53 been approved by the commissioner or a carryforward election by a state  
54 agency shall have been approved by the director, all future allocations  
55 made with respect to such project pursuant to subdivision one or two of  
56 this section shall be canceled.

(b) The commissioner and the director shall have the authority to make future allocations from recaptured current year allocations and canceled future allocations to multi-year housing development projects in a manner consistent with the provisions of this act. Any such future allocation shall, unless a carryforward election by another issuer shall have been approved by the commissioner or a carryforward election by a state agency shall have been approved by the director, be canceled if the current year allocation for the project is not used by December 31, 2017.

(c) The commissioner and the director shall establish procedures consistent with the provisions of this act relating to carryforward of future allocations.

4. The aggregate future allocations from either of the two succeeding years shall not exceed six hundred fifty million dollars for each such year.

S 12. Year end allocation recapture. On or before September first of each year, each state agency shall report to the director and each local agency and each other issuer shall report to the commissioner the amount of bonds subject to allocation under this act that will be issued prior to the end of the then current calendar year, and the amount of the issuer's then total allocation that will remain unused. As of September fifteenth of each year, the unused portion of each local agency's and other issuer's then total allocation as reported and the unallocated portion of the set-aside for state agencies shall be recaptured and added to the statewide bond reserve and shall no longer be available to covered bond issuers except as otherwise provided herein. From September fifteenth through the end of the year, each local agency or other issuer having an allocation shall immediately report to the commissioner and each state agency having an allocation shall immediately report to the director any changes to the status of its allocation or the status of projects for which allocations have been made which should affect the timing or likelihood of the issuance of covered bonds therefor. If the commissioner determines that a local agency or other issuer has overestimated the amount of covered bonds subject to allocation that will be issued prior to the end of the calendar year, the commissioner may recapture the amount of the allocation to such local agency or other issuer represented by such overestimation by notice to the local agency or other issuer, and add such allocation to the statewide bond reserve. The director may likewise make such determination and recapture with respect to state agency allocations.

S 13. Allocation carryforward. 1. No local agency or other issuer shall make a carryforward election utilizing any unused allocation (pursuant to section 146(f) of the code) without the prior approval of the commissioner. Likewise no state agency shall make or file such an election, or elect to issue or carryforward mortgage credit certificates, without the prior approval of the director.

2. On or before November fifteenth of each year, each state agency seeking unused statewide ceiling for use in future years shall make a request for an allocation for a carryforward to the director, whose approval shall be required before a carryforward election is filed by or on behalf of any state agency. A later request may also be considered by the director, who may file a carryforward election for any state agency with the consent of such agency.

3. On or before November fifteenth of each year, each local agency or other issuer seeking unused statewide ceiling for use in future years shall make a request for an allocation for a carryforward to the commis-

sioner, whose approval shall be required before a carryforward election is filed by or on behalf of any local or other agency. A later request may also be considered by the commissioner.

4. On or before January fifteenth of each year, the director shall publish the total amount of unused statewide ceiling from the prior year on the division of budget's website.

S 14. New York state bond allocation policy advisory panel. 1. There is hereby created a policy advisory panel and process to provide policy advice regarding the priorities for distribution of the statewide ceiling.

2. The panel shall consist of five members, one designee being appointed by each of the following: the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly. The designee of the governor shall chair the panel. The panel shall monitor the allocation process through the year, and in that regard, the division of the budget and the department of economic development shall assist and cooperate with the panel as provided in this section. The advisory process shall operate through the issuance of advisory opinions by members of the panel as provided in subdivisions six and seven of this section. A meeting may be held at the call of the chair with the unanimous consent of the members.

3.(a) Upon receipt of a request for allocation or a request for approval of a carryforward election from the statewide reserve from a local agency or other issuer, the commissioner shall, within five working days, notify the panel of such request and provide the panel with copies of all application materials submitted by the applicant.

(b) Upon receipt of a request for allocation or a request for approval of carryforward election from the statewide reserve from a state agency, the director shall, within five working days, notify the panel of such request and provide the panel with copies of all application materials submitted by the applicant.

4. (a) Following receipt of a request for allocation from a local agency or other issuer, the commissioner shall notify the panel of a decision to approve or exclude from further consideration such request, and the commissioner shall state the reasons. Such notification shall be made with or after the transmittal of the information specified in subdivision three of this section and at least five working days before formal notification is made to the applicant.

(b) Following receipt of a request for allocation from a state agency, the director shall notify the panel of a decision to approve or exclude from further consideration such request, and shall state the reasons. Such notification shall be made with or after the transmission of the information specified in subdivision three of this section and at least five working days before formal notification is made to the state agency.

5. The requirements of subdivisions three and four of this section shall not apply to adjustments to allocations due to bond sizing changes.

6. In the event that any decision to approve or to exclude from further consideration a request for allocation is made within ten working days of the end of the calendar year and in the case of all requests for consent to a carryforward election, the commissioner or director, as is appropriate, shall provide the panel with the longest possible advance notification of the action, consistent with the requirements of the code, and shall, wherever possible, solicit the opinions of the

1 members of the panel before formally notifying any applicant of the  
2 action. Such notification may be made by means of telephone communi-  
3 cation to the members or by written notice delivered to the Albany  
4 office of the appointing authority of the respective members.

5 7. Upon notification by the director or the commissioner, any member  
6 of the panel may, within five working days, notify the commissioner or  
7 the director of any policy objection concerning the expected action. If  
8 three or more members of the panel shall submit policy objections in  
9 writing to the intended action, the commissioner or the director shall  
10 respond in writing to the objection prior to taking the intended action  
11 unless exigent circumstances make it necessary to respond after the  
12 action has been taken.

13 8. On or before the first day of July, in any year, the director shall  
14 report to the members of the New York state bond allocation policy advi-  
15 sory panel on the actual utilization of volume cap for the issuance of  
16 bonds during the prior calendar year and the amount of such cap allo-  
17 cated for carryforwards for future bond issuance. The report shall  
18 include, for each local agency or other issuer and each state agency the  
19 initial allocation, the amount of bonds issued subject to the allo-  
20 cation, the amount of the issuer's allocation that remained unused, the  
21 allocation of the statewide bond reserve, carryforward allocations and  
22 recapture of allocations. Further, the report shall include projections  
23 regarding private activity bond issuance for state and local issuers for  
24 the calendar year, as well as any recommendations for legislative  
25 action. The director shall publish the report on the division of budg-  
26 et's website concurrently with the release of the report to the panel.

27 S 15. Severability. If any clause, sentence, paragraph, section, or  
28 part of this act shall be adjudged by any court of competent jurisdic-  
29 tion to be invalid, such judgment shall not affect, impair, or invali-  
30 date the remainder thereof, but shall be confined in its operation to  
31 the clause, sentence, paragraph, section, or part thereof directly  
32 involved in the controversy in which such judgment shall have been  
33 rendered.

34 S 16. Notwithstanding any provisions of this act to the contrary (1)  
35 provided that a local agency or other issuer certifies to the commis-  
36 sioner on or before October 1, 2016 that it has issued private activity  
37 bonds described in this act and the amount thereof which used statewide  
38 ceiling, a commitment or allocation of statewide ceiling to a local  
39 agency or other issuer made to or so used by such local agency or other  
40 issuer pursuant to the federal tax reform act of 1986 on or after Janu-  
41 ary 1, 2016 and prior to the effective date of this act, in an amount  
42 which exceeds the local agency set-aside established by section four of  
43 this act, shall be first chargeable to the statewide bond reserve estab-  
44 lished pursuant to section six of this act, and

45 (2) a commitment or allocation of statewide ceiling to a state agency  
46 made to or used by such agency pursuant to the internal revenue code, as  
47 amended, on or after January 1, 2016 and prior to the effective date of  
48 this act, shall be first chargeable to the state agency set-aside estab-  
49 lished pursuant to section five of this act, and, thereafter, to the  
50 statewide bond reserve established by section six of this act.

51 S 17. Nothing contained in this act shall be deemed to supersede,  
52 alter or impair any allocation used by or committed by the director or  
53 commissioner to a state or local agency or other issuer pursuant to the  
54 federal tax reform act of 1986 and prior to the effective date of this  
55 act.



1       S   18. This act shall take effect immediately; provided, however, that  
2 sections three, four, five, six, seven, eight, nine, ten, twelve, thir-  
3 teen and fourteen of this act shall expire July 1, 2018 when upon such  
4 date the provisions of such sections shall be deemed repealed; except  
5 that the provisions of subdivisions 2 and 3 of section thirteen of this  
6 act shall expire and be deemed repealed February 15, 2018.