

10293

I N A S S E M B L Y

March 16, 2010

Introduced by M. of A. HOYT -- (at request of the New York State Housing Finance Agency) -- read once and referred to the Committee on Local Governments

AN ACT relating to redistributing 2009 bond volume allocations made pursuant to section 146 of the federal tax reform act of 1986, in relation to allocation of the unified state bond volume ceiling, and in relation to enacting the private activity bond allocation act of 2010 and providing for the expiration of certain provisions 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 2010".
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 an
15 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.
26 S 3. Definitions. As used in this act, unless the context requires
27 otherwise:

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

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- 1 1. "Bonds" means bonds, notes or other obligations.
- 2 2. "Carryforward" means an amount of unused private activity bond
3 ceiling available to an issuer pursuant to an election filed with the
4 internal revenue service pursuant to section 146(f) of the code.
- 5 3. "Code" means the internal revenue code of 1986, as amended.
- 6 4. "Commissioner" means the commissioner of the New York state depart-
7 ment of economic development.
- 8 5. "Covered bonds" means those tax exempt private activity bonds and
9 that portion of the non-qualified amount of an issue of governmental use
10 bonds for which an allocation of the statewide ceiling is required for
11 the interest earned by holders of such bonds to be excluded from the
12 gross income of such holders for federal income tax purposes under the
13 code.
- 14 6. "Director" means the director of the New York state division of the
15 budget.
- 16 7. "Issuer" means a local agency, state agency or other issuer.
- 17 8. "Local agency" means an industrial development agency established
18 or operating pursuant to article 18-A of the general municipal law, the
19 Troy industrial development authority and the Auburn industrial develop-
20 ment authority.
- 21 9. "Other issuer" means any agency, political subdivision or other
22 entity, other than a local agency or state agency, that is authorized to
23 issue covered bonds.
- 24 10. "Qualified small issue bonds" means qualified small issue bonds,
25 as defined in section 144(a) of the code.
- 26 11. "State agency" means the state of New York, the New York state
27 energy research and development authority, the New York job development
28 authority, the New York state environmental facilities corporation, the
29 New York state urban development corporation and its subsidiaries, the
30 Battery Park city authority, the port authority of New York and New
31 Jersey, the power authority of the state of New York, the dormitory
32 authority of the state of New York, the New York state housing finance
33 agency, the state of New York mortgage agency, and any other public
34 benefit corporation or public authority designated by the governor for
35 the purposes of this act.
- 36 12. "Statewide ceiling" means for any calendar year the highest state
37 ceiling (as such term is used in section 146 of the code) applicable to
38 New York state.
- 39 13. "Future allocations" means allocations of statewide ceiling for up
40 to two future years.
- 41 14. "Multi-year housing development project" means a project (a) which
42 qualifies for covered bonds; (b) which is to be constructed over two or
43 more years and (c) in which at least twenty percent of the dwelling
44 units will be occupied by persons and families of low income.
- 45 S 4. Local agency set-aside. A set-aside of statewide ceiling for
46 local agencies for any calendar year shall be an amount which bears the
47 same ratio to one-third of the statewide ceiling as the population of
48 the jurisdiction of such local agency bears to the population of the
49 entire state. The commissioner shall administer allocations of such
50 set-aside to local agencies.
- 51 S 5. State agency set-aside. A set-aside of statewide ceiling for all
52 state agencies for any calendar year shall be one-third of the statewide
53 ceiling. The director shall administer allocations of such set-aside to
54 state agencies and may grant an allocation to any state agency upon
55 receipt of an application in such form as the director shall require.

1 S 6. Statewide bond reserve. One-third of the statewide ceiling is
2 hereby set aside as a statewide bond reserve to be administered by the
3 director.

4 1. Allocation of the statewide bond reserve among state agencies,
5 local agencies and other issuers. The director shall transfer a portion
6 of the statewide bond reserve to the commissioner for allocation to and
7 use by local agencies and other issuers in accordance with the terms of
8 this section. The remainder of the statewide bond reserve may be allo-
9 cated by the director to state agencies in accordance with the terms of
10 this section.

11 2. Allocation of statewide bond reserve to local agencies or other
12 issuers.

13 (a) Local agencies or other issuers may at any time apply to the
14 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 3. Allocation of statewide bond reserve to state agencies. The direc-
42 tor may make an allocation from the statewide bond reserve to any state
43 agency. Before making any allocation of statewide bond reserve to state
44 agencies the director shall be satisfied:

45 (a) that the allocation is required under the code for the interest
46 earned on the bonds to be excluded from the gross income of bondholders
47 for federal income tax purposes;

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

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

1 S 7. Access to employment opportunities. 1. All issuers shall require
2 that any new employment opportunities created in connection with indus-
3 trial or manufacturing projects financed through the issuance of quali-
4 fied small issue bonds shall be listed with the New York state depart-
5 ment of labor and with the one-stop career center established pursuant
6 to the federal Workforce Investment Act (Pub.L. No. 105-220) serving the
7 locality in which the employment opportunities are being created. Such
8 listing shall be in a manner and form prescribed by the commissioner.
9 All issuers shall further require that for any new employment opportu-
10 nities created in connection with an industrial or manufacturing project
11 financed through the issuance of qualified small issue bonds by such
12 issuer, industrial or manufacturing firms shall first consider persons
13 eligible to participate in Workforce Investment Act (Pub.L. No. 105-220)
14 programs who shall be referred to the industrial or manufacturing firm
15 by one-stop centers in local workforce investment areas or by the
16 department of labor. Issuers of qualified small issue bonds are required
17 to monitor compliance with the provisions of this section as prescribed
18 by the commissioner.

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

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

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

47 S 10. Municipal reallocation. The chief executive officer of any poli-
48 tical subdivision or, if such political subdivision has no chief execu-
49 tive officer, the governing board of the political subdivision for the
50 benefit of which a local agency has been established, may withdraw all
51 or any portion of the allocation granted by section four of this act to
52 such local agency. The political subdivision may then reallocate all or
53 any portion of such allocation, as well as all or any portion of the
54 allocation received pursuant to section nine of this act, to itself or
55 any other issuer established for the benefit of that political subdivi-
56 sion or may assign all or any portion of the allocation received pursu-

1 ant to section nine of this act to the local agency created for its
2 benefit. The chief executive officer or governing board of the political
3 subdivision, as the case may be, shall notify the commissioner of any
4 such reallocation.

5 S 11. Future allocations for multi-year housing development projects.

6 1. In addition to other powers granted under this act, the commissioner
7 is authorized to make the following future allocations of statewide
8 ceiling for any multi-year housing development project for which the
9 commissioner also makes an allocation of statewide ceiling for the
10 current year under this act or for which, in the event of expiration of
11 provisions of this act described in section seventeen of this act, an
12 allocation of volume cap for a calendar year subsequent to such expira-
13 tion shall have been made under section 146 of the code: (a) to local
14 agencies from the local agency set-aside (but only with the approval of
15 the chief executive officer of the political subdivision to which the
16 local agency set-aside relates or the governing body of a political
17 subdivision having no chief executive officer) and (b) to other issuers
18 from that portion, if any, of the statewide bond reserve transferred to
19 the commissioner by the director. Any future allocation made by the
20 commissioner shall constitute an allocation of statewide ceiling for the
21 future year specified by the commissioner and shall be deemed to have
22 been made on the first day of the future year so specified.

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

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

51 (b) The commissioner and the director shall have the authority to make
52 future allocations from recaptured current year allocations and canceled
53 future allocations to multi-year housing development projects in a
54 manner consistent with the provisions of this act. Any such future allo-
55 cation shall, unless a carryforward election by another issuer shall
56 have been approved by the commissioner or a carryforward election by a

1 state agency shall have been approved by the director, be canceled if
2 the current year allocation for the project is not used by December 31,
3 2010.

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

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

10 S 12. Year end allocation recapture. On or before October first of
11 each year, each state agency shall report to the director and each local
12 agency and each other issuer shall report to the commissioner the amount
13 of bonds subject to allocation under this act that will be issued prior
14 to the end of the then current calendar year, and the amount of the
15 issuer's then total allocation that will remain unused. As of October
16 fifteenth of each year, the unused portion of each local agency's and
17 other issuer's then total allocation as reported and the unallocated
18 portion of the set-aside for state agencies shall be recaptured and
19 added to the statewide bond reserve and shall no longer be available to
20 covered bond issuers except as otherwise provided herein. From October
21 fifteenth through the end of the year, each local agency or other issuer
22 having an allocation shall immediately report to the commissioner and
23 each state agency having an allocation shall immediately report to the
24 director any changes to the status of its allocation or the status of
25 projects for which allocations have been made which should affect the
26 timing or likelihood of the issuance of covered bonds therefor. If the
27 commissioner determines that a local agency or other issuer has overes-
28 timated the amount of covered bonds subject to allocation that will be
29 issued prior to the end of the calendar year, the commissioner may
30 recapture the amount of the allocation to such local agency or other
31 issuer represented by such overestimation by notice to the local agency
32 or other issuer, and add such allocation to the statewide bond reserve.
33 The director may likewise make such determination and recapture with
34 respect to state agency allocations.

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

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

48 3. On or before November fifteenth of each year, each local agency or
49 other issuer seeking unused statewide ceiling for use in future years
50 shall make a request for an allocation for a carryforward to the commis-
51 sioner, whose approval shall be required before a carryforward election
52 is filed by or on behalf of any local or other agency. A later request
53 may also be considered by the commissioner.

54 S 14. New York state bond allocation policy advisory panel. 1. There
55 is hereby created a policy advisory panel and process to provide policy

1 advice regarding the priorities for distribution of the statewide ceil-
2 ing.

3 2. The panel shall consist of five members, one designee being
4 appointed by each of the following: the governor, the temporary presi-
5 dent of the senate, the speaker of the assembly, the minority leader of
6 the senate and the minority leader of the assembly. The designee of the
7 governor shall chair the panel. The panel shall monitor the allocation
8 process through the year, and in that regard, the division of the budget
9 and the department of economic development shall assist and cooperate
10 with the panel as provided in this section. The advisory process shall
11 operate through the issuance of advisory opinions by members of the
12 panel as provided in subdivisions six and seven of this section. A meet-
13 ing may be held at the call of the chair with the unanimous consent of
14 the members.

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

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

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

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

39 5. The requirements of subdivisions three and four of this section
40 shall not apply to adjustments to allocations due to bond sizing chang-
41 es.

42 6. In the event that any decision to approve or to exclude from
43 further consideration a request for allocation is made within ten work-
44 ing days of the end of the calendar year and in the case of all requests
45 for consent to a carryforward election, the commissioner or director, as
46 is appropriate, shall provide the panel with the longest possible
47 advance notification of the action, consistent with the requirements of
48 the code, and shall, wherever possible, solicit the opinions of the
49 members of the panel before formally notifying any applicant of the
50 action. Such notification may be made by means of telephone communi-
51 cation to the members or by written notice delivered to the Albany
52 office of the appointing authority of the respective members.

53 7. Upon notification by the director or the commissioner, any member
54 of the panel may, within five working days, notify the commissioner or
55 the director of any policy objection concerning the expected action. If
56 three or more members of the panel shall submit policy objections in

1 writing to the intended action, the commissioner or the director shall
2 respond in writing to the objection prior to taking the intended action
3 unless exigent circumstances make it necessary to respond after the
4 action has been taken.

5 8. On or before the first day of March, in any year, the director
6 shall report to the members of the New York state bond allocation policy
7 advisory panel on the actual utilization of volume cap for the issuance
8 of bonds during the prior calendar year and the amount of such cap allo-
9 cated for carryforward for future bonds issuance. The report shall
10 include, for each local agency or other issuer and each state agency the
11 initial allocation, the amount of bonds issued subject to the allo-
12 cation, the amount of the issuer's allocation that remained unused, the
13 allocation of the statewide bond reserve, carryforward allocations and
14 recapture of allocations. Further, the report shall include projections
15 regarding private activity bond issuance for state and local issuers for
16 the calendar year, as well as any recommendations for legislative
17 action.

18 S 15. Severability. If any clause, sentence, paragraph, section, or
19 part of this act shall be adjudged by any court of competent jurisdic-
20 tion to be invalid, such judgment shall not affect, impair, or invali-
21 date the remainder thereof, but shall be confined in its operation to
22 the clause, sentence, paragraph, section, or part thereof directly
23 involved in the controversy in which such judgment shall have been
24 rendered.

25 S 16. Notwithstanding any provisions of this act to the contrary (1)
26 provided that a local agency or other issuer certifies to the commis-
27 sioner on or before October 1, 2010 that it has issued private activity
28 bonds described in this section and the amount thereof which used state-
29 wide ceiling, a commitment or allocation of statewide ceiling to a local
30 agency or other issuer made to or so used by such local agency or other
31 issuer pursuant to the federal tax reform act of 1986 on or after Janu-
32 ary 1, 2010 and prior to the effective date of this act, in an amount
33 which exceeds the local agency set-aside established by section four of
34 this act, shall be first chargeable to the statewide bond reserve estab-
35 lished pursuant to section six of this act, and (2) a commitment or
36 allocation of statewide ceiling to a state agency made to or used by
37 such agency pursuant to the internal revenue code, as amended, on or
38 after January 1, 2010 and prior to the effective date of this act, shall
39 be first chargeable to the state agency set-aside established pursuant
40 to section five of this act, and, thereafter, to the statewide bond
41 reserve established by section six of this act.

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

47 S 18. This act shall take effect immediately; provided, however, that
48 sections three through fourteen of this act shall expire January 1,
49 2011; except that the provisions of subdivision eight of section four-
50 teen of this act shall expire March 1, 2011 and the provisions of subdi-
51 visions two and three of section thirteen of this act shall expire
52 February 15, 2011, and, provided further that section eleven of this act
53 shall continue in full force and effect and shall be subject to the
54 applicable provisions of this act notwithstanding the expirations of law
55 set forth in this section.