

STATE OF NEW YORK

10971--A

IN ASSEMBLY

May 29, 2018

Introduced by M. of A. MAGNARELLI, CYMBROWITZ -- read once and referred to the Committee on Local Governments -- reported and referred to the Committee on Ways and Means -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT redistributing bond volume allocations made pursuant to section 146 of the federal tax reform act of 1986, relating to allocation of the unified state bond volume ceiling, and enacting the private activity bond allocation act of 2018; 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 2018".

3 § 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

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

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1 energy supply; and resource recovery and to provide for an orderly and
2 efficient volume ceiling allocation process for state and local agencies
3 by establishing an alternative formula for making such allocations.

4 § 3. Definitions. As used in this act, unless the context requires
5 otherwise:

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

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

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

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

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

19 6. "Director" means the director of the New York state division of the
20 budget.

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

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

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

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

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

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

44 13. "Future allocations" means allocations of statewide ceiling for up
45 to two future years.

46 14. "Multi-year housing development project" means a project (a) which
47 qualifies for covered bonds; (b) which is to be constructed over two or
48 more years and (c) in which at least twenty percent of the dwelling
49 units will be occupied by persons and families of low income.

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

§ 5. State agency set-aside. A set-aside of statewide ceiling for all state agencies for any calendar year shall be one-third of the statewide ceiling. The director shall administer allocations of such set-aside to state agencies and may grant an allocation to any state agency upon receipt of an application in such form as the director shall require.

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

1. Allocation of the statewide bond reserve among state agencies, local agencies and other issuers. The director shall transfer a portion of the statewide bond reserve to the commissioner for allocation to and use by local agencies and other issuers in accordance with the terms of this section. The remainder of the statewide bond reserve may be allocated by the director to state agencies in accordance with the terms of this section.

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

(a) Local agencies or other issuers may at any time apply to the commissioner for an allocation from the statewide bond reserve. Such application shall demonstrate:

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

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

(iii) that, except for those allocations made pursuant to section thirteen 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.

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

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

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

3. Allocation of statewide bond reserve to state agencies. The director may make an allocation from the statewide bond reserve to any state agency. Before making any allocation of statewide bond reserve to state agencies the director shall be satisfied:

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

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

(c) that, except for those allocations made pursuant to section thirteen 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.

§ 7. Access to employment opportunities. 1. All issuers shall require that any new employment opportunities created in connection with 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 Innovation and Opportunity Act (Pub. L. No. 113-128) 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 the Workforce Innovation and Opportunity Act (Pub. L. No. 113-128) 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.

§ 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.

§ 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.

§ 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 such local agency. The political subdivision may then reallocate all or any portion of such allocation, as well as all or any portion of the allocation received pursuant to section nine of this act, to itself or any other issuer established for the benefit of that political subdivision or may assign all or any portion of the allocation received pursuant to section nine of this act to the local agency created for its benefit. The chief executive officer or governing board of the political subdivision, as the case may be, shall notify the commissioner of any such reallocation.

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

2. In addition to other powers granted under this act, the director is authorized to make future allocations of statewide ceiling from the state agency set-aside or from the statewide bond reserve to state agencies for any multi-year housing development project for which the director also makes an allocation of statewide ceiling from the current year under this act or for which, in the event of expiration of provisions of this act described in section eighteen of this act, an allocation of volume cap for a calendar year subsequent to such expiration shall have been made under section 146 of the code, and is authorized to make transfers of the statewide bond reserve to the commissioner for future allocations to other issuers for multi-year housing development projects for which the commissioner has made an allocation of statewide ceiling for the current year. Any such future allocation or transfer of the statewide bond reserve for future allocation made by the director shall constitute an allocation of statewide ceiling or transfer of the statewide bond reserve for the future years specified by the director and shall be deemed to have been made on the first day of the future year so specified.

3. (a) If an allocation made with respect to a multi-year housing development project is not used by September fifteenth of the year to which the allocation relates, the allocation with respect to the then current year shall be subject to recapture in accordance with the provisions of section twelve of this act, and in the event of such a recapture, unless a carryforward election by another issuer shall have

1 been approved by the commissioner or a carryforward election by a state
2 agency shall have been approved by the director, all future allocations
3 made with respect to such project pursuant to subdivision one or two of
4 this section shall be canceled.

5 (b) The commissioner and the director shall have the authority to make
6 future allocations from recaptured current year allocations and canceled
7 future allocations to multi-year housing development projects in a
8 manner consistent with the provisions of this act. Any such future allo-
9 cation shall, unless a carryforward election by another issuer shall
10 have been approved by the commissioner or a carryforward election by a
11 state agency shall have been approved by the director, be canceled if
12 the current year allocation for the project is not used by December 31,
13 2019.

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

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

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

45 § 13. Allocation carryforward. 1. No local agency or other issuer
46 shall make a carryforward election utilizing any unused allocation
47 (pursuant to section 146(f) of the code) without the prior approval of
48 the commissioner. Likewise no state agency shall make or file such an
49 election, or elect to issue or carryforward mortgage credit certif-
50 icates, without the prior approval of the director.

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

1 the director, who may file a carryforward election for any state agency
2 with the consent of such agency.

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

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

12 § 14. New York state bond allocation policy advisory panel. 1. There
13 is hereby created a policy advisory panel and process to provide policy
14 advice regarding the priorities for distribution of the statewide ceil-
15 ing.

16 2. The panel shall consist of five members, one designee being
17 appointed by each of the following: the governor, the temporary presi-
18 dent of the senate, the speaker of the assembly, the minority leader of
19 the senate and the minority leader of the assembly. The designee of the
20 governor shall chair the panel. The panel shall monitor the allocation
21 process through the year, and in that regard, the division of the budget
22 and the department of economic development shall assist and cooperate
23 with the panel as provided in this section. The advisory process shall
24 operate through the issuance of advisory opinions by members of the
25 panel as provided in subdivisions six and seven of this section. A meet-
26 ing may be held at the call of the chair with the unanimous consent of
27 the members.

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

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

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

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

52 5. The requirements of subdivisions three and four of this section
53 shall not apply to adjustments to allocations due to bond sizing chang-
54 es.

55 6. In the event that any decision to approve or to exclude from
56 further consideration a request for allocation is made within ten work-

ing 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 members of the panel before formally notifying any applicant of the action. Such notification may be made by means of telephone communication to the members or by written notice delivered to the Albany office of the appointing authority of the respective members.

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

8. On or before the first day of July, in any year, the director shall report to the members of the New York state bond allocation policy advisory panel on the actual utilization of volume cap for the issuance of bonds during the prior calendar year and the amount of such cap allocated for carryforwards for future bond issuance. The report shall include, for each local agency or other issuer and each state agency the initial allocation, the amount of bonds issued subject to the allocation, the amount of the issuer's allocation that remained unused, the allocation of the statewide bond reserve, carryforward allocations and recapture of allocations. Further, the report shall include projections regarding private activity bond issuance for state and local issuers for the calendar year, as well as any recommendations for legislative action. The director shall publish the report on the division of budget's website concurrently with the release of the report to the panel.

§ 15. Severability. If any clause, sentence, paragraph, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 16. Notwithstanding any provisions of this act to the contrary (1) provided that a local agency or other issuer certifies to the commissioner on or before October 1, 2018 that it has issued private activity bonds described in this act and the amount thereof which used statewide ceiling, a commitment or allocation of statewide ceiling to a local agency or other issuer made to or so used by such local agency or other issuer pursuant to the federal tax reform act of 1986 on or after January 1, 2018 and prior to the effective date of this act, in an amount which exceeds the local agency set-aside established by section four of this act, shall be first chargeable to the statewide bond reserve established pursuant to section six of this act, and (2) a commitment or allocation of statewide ceiling to a state agency made to or used by such agency pursuant to the internal revenue code, as amended, on or after January 1, 2018 and prior to the effective date of this act, shall be first chargeable to the state agency set-aside established pursuant to section five of this act, and, thereafter, to the statewide bond reserve established by section six of this act.

1 § 17. Nothing contained in this act shall be deemed to supersede,
2 alter or impair any allocation used by or committed by the director or
3 commissioner to a state or local agency or other issuer pursuant to the
4 federal tax reform act of 1986 and prior to the effective date of this
5 act.

6 § 18. This act shall take effect immediately; provided, however, that
7 sections three, four, five, six, seven, eight, nine, ten, twelve, thir-
8 teen and fourteen of this act shall expire July 1, 2020 when upon such
9 date the provisions of such sections shall be deemed repealed; except
10 that the provisions of subdivisions two and three of section thirteen of
11 this act shall expire and be deemed repealed February 15, 2020.