

*** PRIVATE ACTIVITY BOND ALLOCATION ACT OF 1990**

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* NB Repealed January 1, 1991

*** § 1. Short title.** This act shall be known and may be cited as the "private activity bond allocation act of 1990".

* NB Repealed January 1, 1991

*** § 2. Definitions.** As used in this act, unless the context requires otherwise:

1. "Bonds" means bonds, notes or other obligations.
2. "Carryforward" means an amount of unused private activity bond ceiling available to an issuer pursuant to an election filed with the internal revenue service pursuant to section 146(f) of the code.
3. "Code" means the internal revenue code of 1986, as amended.
4. "Commissioner" means the commissioner of the New York state department of economic development.

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

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

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

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

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

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

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

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

* NB Repealed January 1, 1991

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

* NB Repealed January 1, 1991

* **§ 4. 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.

* NB Repealed January 1, 1991

* **§ 5. 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 three 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 eleven of this act to enable carryforward elections, the requested allocation is reasonably expected to be used during the calendar year.

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 commissioner of housing and community renewal 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.

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 four 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 eleven of this act to enable carryforward elections, the requested allocation is reasonably expected to be used during the calendar year.

* NB Repealed January 1, 1991

*** § 6. 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 job service division, and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (Pub. L. 97-300) in which the project is located. 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 Federal Job Training Partnership Act (Pub. L. 97-300) programs who shall be referred to the industrial or manufacturing firm by administrative entities of service delivery areas created pursuant to such act or by the job service division at 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.

* NB Repealed January 1, 1991

*** § 7. 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 three 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.

* NB Repealed January 1, 1991

*** § 8. 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.

* NB Repealed January 1, 1991

*** § 9. 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 three 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 eight 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 eight 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.

* NB Repealed January 1, 1991

*** § 10. Year end allocation recapture.** On or before October 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 October 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 October 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.

* NB Repealed January 1, 1991

*** § 11. 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 carry forward 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 commissioner, 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.

* NB Repealed January 1, 1991

*** § 12. New York state bond allocation policy advisory panel.**

1. There is hereby created a policy 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 president pro-tem 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 subdivision 6 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 shall state his reasons. Such notification shall be made with or after the transmittal of the information specified in subdivision 3 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 his reasons. Such notification shall be made with or after the transmission of the information specified in subdivision 3 of this section and at least five working days before formal notification is made to the state agency.

5. The requirements of subdivisions 3 and 4 of this section shall not

apply to adjustments to allocations due to bond sizing changes.

6. Special procedure for certain decisions. 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 his 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 his 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. Advisory opinions by members of the panel. 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. Reports. On or before the thirty-first day of January, 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, carry forward 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.

* * NB Repealed January 31, 1991

* NB Repealed January 1, 1991

* **§ 13. Expiration and repeal of certain provisions.** The provisions of sections one through twelve of this act shall expire and be deemed repealed on January 1, 1991; except that the provisions of subdivision eight of section twelve of this act shall expire and be deemed repealed on January 31, 1991.

* NB Repealed January 1, 1991

* **§ 14. 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.

* NB Repealed January 1, 1991