

Approved February 16, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

The meeting was called to order by Phil Kline at
Chairperson

3:35 ~~xxx~~/p.m. on Tuesday, January 26, 1988 in room 423-S of the Capitol.

All members were present except: Representatives Chronister and Love. - Excused.

Committee staff present:

Jim Wilson, Revisor
Lynn Holt, Research
Elaine Johnson, Secretary

Conferees appearing before the committee:

Harland Priddle, Secretary, Department of Commerce
Phil Wolfe, Attorney
Joe Norton, Gilmore and Bell
Allen Bell, President, Kansas Development Financial Authority
Ernie Moser, Executive Director, League of Kansas Municipalities

Chairman Phil Kline called the meeting to order and asked Lynn Holt to brief the committee on H.B. 2645.

Ms. Holt stated that H.B. 2645 codified an Executive Order which expired on December 31, 1987. This bill concerns establishment of an allocation procedure for issuance of private activity bonds. States have the choice of developing their own procedures and enacting legislation or adhering to a federal formula. As the Executive Order has already expired, Kansas has been forced to revert to the federal formula until such time as state legislation is enacted, if at all, which sets forth an alternative formula. H.B. 2645 was requested by the Department of Commerce and recommended for introduction by the Joint Committee on Economic Development. (See Attachments 1 and 2.)

Harland Priddle testified that he feels H.B. 2645 is necessary (See Attachment 3). Reference is made to the chart. If the federal formula is followed, \$75 million dollars would be distributed to the counties and cities of Kansas for their use and we would retain \$75 million at the state level for allocation. The chart illustrates, per capita, the caps that would be allowable within 5 selective cities that were chosen for this study. If the state had the \$150 million dollars, they could have a much more flexible system to distribute and would be much more responsive to the needs.

Phil Wolfe, who was instrumental in drafting the bill, testified that the federal formula for allocation will not allocate in the state's best interest. The federal government gives the states, through legislation, the ability to have a formula for allocation. The governor no longer has formula authority, and proposed legislation is needed now or we will be forced to follow federal formula. Proposed changes in H.B. 2645 were discussed. (See Attachment 4).

Joe Norton also discussed proposed changes in H.B. 2645.

Discussion followed.

Allen Bell testified in support of H.B. 2645. He believes the best private activity bond allocation system for the state of Kansas is one based on the principle of first-come first-served and which has the fewest reservations for special categories of bonds. He does support the proposed amendment to create a reservation for small issue IDBs so that small issue projects that come together late in the year will still have a chance of receiving an allocation. (See Attachment 5.)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

room 423-S, Statehouse, at 3:35 ~~am~~ p.m. on Tuesday, January 26, 1988

Ernie Moser testified in support of H.B. 2645. He feels that the proposed bill is substantially similar to an Executive Order allocating the state ceiling for 1987, which was consistent with the recommendations of a special task force of the League. The League requests the reservation of \$15 million for certain governmental issues, provided for in lines 43:47 and does have concerns as to the adequacy of the bill's provisions in allocating unused amounts at the end of a calendar year. If someone can come up with a way to deal with this issue; they will be supportive of the amendments to avoid the recurrence of this problem in December in future years. (See Attachment 6.)

Discussion followed.

Jim Wilson of the Revisor's Office called attention to a problem in the bill regarding the definition of code, and he feels that it may be a problem in the future.

Discussion followed and Chairman Kline requested that Mr. Wilson research the issue.

Meeting adjourned at 4:37 p.m. No future meeting is scheduled at this time.



Date: 1/26/88

GUEST REGISTER

HOUSE

Committee on Economic Development

<u>NAME</u>	<u>ORGANIZATION</u>	<u>ADDRESS</u>
Debbie Zibel	Public Policy & Bus. Research	Univ. of Kansas
Allen Bell	KS DEV FIN AUTHORITY	TOPEKA
Mark Langston	KS Municipalities	Topeka
Arland Fiddell	Dept of Commerce	Topeka
D. WAYNE ZIMMERMAN	KDOC	TOPEKA
JOE L. NORTON	GILMORE & BELL	WILMOTA
Philip B. Wolfe	Nichols & Wolfe	Topeka
John V. Tomblin	Ks. Assoc of Counties	"
Jack Montgomery	KDOC	Topeka
Donnis Shackley	CITY OF KCK	KCK

TOPIC XIII*

The Committee decided to introduce legislation, upon request of the Department of Commerce, to authorize the state's use of a different formula than that prescribed by federal law to govern allocations among governmental units and other authorities for the issuance of tax-exempt private activity bonds.

Major Issue and Background

The policy question underlying this topic is the following:

Should the allocation formula governing tax-exempt private activity bond issues, now authorized pursuant to Executive Order No. 87-95, be prescribed by state statute?

The 1986 Internal Revenue Code provides that for each state, the aggregate amount of allowable tax-exempt private activity bonds (hereafter referred to as the state ceiling) shall not exceed in 1988 and subsequent calendar years the greater of \$50 multiplied by the state population or \$150 million. In Kansas, the greater amount is \$150 million. In order to qualify for the "private activity" use designation, bonds must meet certain federally prescribed tests -- a combination of private business use test and private security or payment test or a private loan financing test. For all practical purposes, private activity bonds in Kansas are generally manufacturing industrial revenue bonds and single mortgage family revenue bonds. Federal law requires each state to take one of the following actions: (1) adhere to the federal formula governing allocation of the state ceiling (discussed below); (2) adopt an alternative formula to be proclaimed by the Governor; or (3) enact legislation specifying the allocation formula to be used by the state. Executive Order No. 87-95 was issued by the Governor and filed with the Secretary of State on March 27, 1987. This order charges the Secretary of the Department of Commerce with the responsibility of allocating the state ceiling among governmental units authorized to issue private activity bonds. In Kansas, local units of government and the Kansas Development Finance Authority would qualify for such bond issues. Pursuant to this order, the Secretary is directed to approve each properly filed application for an allocation of \$5 million or less on the basis of chronological order of receipt from the prospective issuers. The Secretary may approve the total amount or a partial amount or reject an application requesting more than \$5 million.

Committee Activities

Recommendation of the Department of Commerce. D. Wayne Zimmerman, the Deputy Secretary of the Department of Commerce, requested that the Joint Committee introduce a bill that would codify the provisions of Executive Order No. 87-95, addressed above. If enacted, this bill would authorize the continuation of the ongoing allocation practices of the Department of

* Proposed bill accompanies this report.

*House EcoDev
Attachment 1
1/26/88*

Commerce. According to Mr. Zimmerman, the order, in compliance with provisions of federal law, is scheduled to expire on December 31, 1987 and no additional orders may be issued by the Governor. Mr. Zimmerman contended that failure by the Legislature to enact a bill early in 1988 would result in obligatory adherence by the state to a complex and unworkable federal allocation formula, discussed further below.

Federal Formula. If the federal allocation formula were to be implemented in Kansas, 50 percent of the state ceiling (\$75 million) for any calendar year would be allotted to the Kansas Development Finance Authority, which probably would not need that much. The remaining 50 percent (\$75 million) would be allocated among local governmental issuing authorities on a prorata population percentage basis. This means that a smaller community which might want to float a large tax-exempt bond issue to attract an industrial park may not receive permission because the population of that community could preclude it from issuing the desired amount. A city the size of Wichita could likewise lose potential industrial sites if the total amount of a desired bond issue were to exceed the authorized amount. The problem with the federal formula, according to officials from the Department of Commerce, is the lack of flexibility in accommodating the potential needs of local units of government, since such needs are not necessarily correlated with the populations of those governmental units.

Although the state ceiling for 1987 is \$250 million, the total amount of tax exempt bonds that have been allocated as of mid-November is only approximately \$26.7 million. The 1986 Tax Reform Act amended the state ceiling from \$250 million to \$150 million.

Committee Conclusions and Recommendations

The Committee recommends that legislation be introduced to codify the provisions of Executive Order 87-95, addressed above, and that this proposed legislation be given priority at the beginning of the 1988 Legislative Session.

Y87-227/lh

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1/26/88



Backgrounder

028701

States Information Center
The Council of State Governments
Iron Works Pike
P.O. Box 11910
Lexington, KY 40578
(606) 252-2291

Date: February 1987
Topic: BOND ALLOCATION
Infokey: Finance, Public

PRIVATE-PURPOSE TAX-EXEMPT BOND ALLOCATION IN THE STATES

The Tax Reform Act of 1986 has the potential to significantly alter state borrowing practices. The next few years are likely to see major changes in the financing of state and local capital improvements, the volume of government-sponsored capital construction, the structure of credit markets and the ratio of public to private projects undertaken.

As a result of tax reform, the immediate problem facing states is devising allocation procedures to fairly distribute bond authorization among state agencies, local governments units and other entities or authorities needing borrowed funds. This is because Section 146 (Title XIII, Subtitle A, Part IV, Support A, Private Activity Bonds) of the Tax Reform Act of 1986 (PL-99-514) limits each state's total annual issue of tax-exempt private-activity bonds to \$250 million, or \$75 per capita, in 1987 and \$150 million, or \$50 per capita, beginning in 1988.¹ The table provides a listing of limits for all 50 states.

Competition for the right to issue private activity bonds is likely to be fierce in states where more such bonds are commonly issued annually than are allowed under the new limits. States may operate under allocation procedures authorized by a governor's executive order until December 31, 1987, when state legislation establishing statutory authorization for allocation must be in place. In the absence of state legislation, federal regulations will allocate 50 percent of a state's allowable private-purpose bond amount to the state and 50 percent to local units within the state.²

Background

In years past, state and federal authorities have debated the use of tax-free bonds to provide funding for projects benefiting private interests as well as the general public, such as civic centers and arenas, parking garages, water and pollution control projects and industrial development projects. The federal government generally views tax-free private-purpose bonds as lost revenue.

*This CSG Backgrounder was compiled by Revon Johnson, Research Assistant, and Marysia Tobin, Research Associate, National Association of State Treasurers, Center for Management Improvement, Office of Research and State Services.

Note: Backgrounder information is the latest available at the time of publication, but for updates, you should contact the appropriate state or federal agency directly. This material does not represent the position of The Council of State Governments. Information is included based on relevance to the topic. Some material, as noted, is copyrighted and may not be reproduced further without permission of the original publisher. Contact the States Information Center or the writer at CSG.

*House Eco Dev
Attachment 3
1/26/88*

CSG Backgrounder -- Bond Allocation

While willing to concede that states, as sovereign entities, have the right to issue tax-free bonds for public purposes, federal authorities oppose the use of tax-free bonds to finance private projects. Such projects, it asserts, should be paid for through the issue of taxable debt in the same manner as private corporations issue taxable bonds to finance capital projects. Such debt provides a source of revenue for the federal government. States counter with the argument that the additional margin provided by lower borrowing costs associated with tax-free bonds reduces total costs enough to enhance the feasibility of many projects providing public as well as private benefits.

Tax Reform and Deficit Reduction Acts

Federal regulations on tax-free bonds began to change in the early 1980s. The 1982 Tax Equity and Fiscal Responsibility Act (TEFRA) required that private-purpose tax-exempt bonds, primarily industrial revenue bonds, issued by state or local governments or special authorities, be approved by the legislature, chief elected executive officer or voters of the unit issuing the bond.³ Next, the Federal Deficit Reduction Act of 1984 (DEFRA) imposed the first volume limits⁴ on each state's total annual issue of private-activity tax-exempt bonds. These caps placed a ceiling on the total annual amount of private-activity bonds that could be issued in each state. DEFRA also specified the types of bonds to be included and excluded in the calculation of the total subject to the cap. Bonds issued for industrial and commercial development, pollution control and student loans counted. Those providing funds for multi-family housing and government-owned exempt facilities including sports, convention or trade show facilities, airports, docks, wharves, mass transit and parking facilities, sewage and waste disposal facilities and local gas and electrical facilities did not.

The caps established by DEFRA varied according to state population. Through 1986, the DEFRA cap for each state was the greater of \$150 per capita or \$200 million total. Beginning in 1987, the DEFRA cap was reduced to \$100 per capita per year. Once caps were reached, further borrowing needs went unfulfilled. Thus, each state having borrowing demand with the potential to exceed DEFRA's caps needed a system for deciding which bond proposals were authorized and which were denied. DEFRA allowed such a system to be established in two stages. The governor of a state could initiate a system for allocating bond approval⁵ by issuing an executive order establishing procedures and criteria. A governor's allocation proclamation remained in force until the next session of the state legislature at which time a law spelling out the allocation process was to be passed. If no legislation was forthcoming by the end of the year in which the next scheduled legislative session took place, the governor's executive order was supposed to expire. However, federal officials generally allowed a governor's proclamations to remain in force even when the legislature failed to provide a law for allocating the cap.

The Tax Reform Act of 1986 does two things. It sets the volume caps previously cited and revises both the list of projects which may qualify for tax-exempt financing and the collection of bonds which count toward the total which is subject to the cap. Both single-family mortgage bonds and multi-family rental housing bonds which were not counted under DEFRA are now included and

CSG Backgrounder -- Bond Allocation

will increase the totals subject to the cap. Bonds issued for sports facilities, convention or trade show facilities, parking facilities and air and water pollution control facilities which counted under DEFRA will no longer contribute to the tax-free total because they are no longer eligible for tax-free status. Industrial development bonds for manufacturing will not contribute to the totals after 1989 when they lose their tax-exemption eligibility.

Current State Activity

Results of a 1987 National Association of State Treasurers' survey of state officials indicate a wide variation in both awareness of the allocation issue and plans for addressing it. State debt managers, economic development officers and legislative research staff in 12 sample states (Alaska, California, Colorado, Connecticut, Florida, Georgia, Illinois, New York, Maine, Mississippi, Oregon and Rhode Island) were questioned about their states' current and planned allocation procedures and practices. They were asked how each state's allocation plan was structured, how it was authorized, what the legislature was doing if the current allocation plan was authorized by executive order, what the new state caps were for 1986 and 1987 and what amount of private-purpose tax-free debt was issued in the state's most recent fiscal year. Results are as follows:

Alaska: The Alaska allocation program, authorized by an executive order, evenly divides the allowable bond issues between the Industrial Development Authority and the Housing Finance Corporation. The legislature is expected to act this year on allocation legislation.

1986 issues	\$ 21.7 million	private activity bonds
	100 million	mortgage subsidy bonds
total	\$121.7 million	
1987 cap	\$250 million	
1988 cap	\$150 million	

California: Authority for private-purpose allocation of private-purpose bonds rests with the California Debt Limit Allocation Committee, established by executive order in 1984. Allocations are set each year.

1986 issues	\$.7 billion	mortgage bonds
	\$1.921 billion	private purpose bonds
total	\$2.621 billion	
1987 cap	\$1.977 billion	
1988 cap	\$1.318 billion	

CSG Backgrounder -- Bond Allocation

Colorado: A Colorado legislative committee is drafting legislation to provide for a 50/50 state/local split. Issues over \$1 million will receive individual authorizations while those under the \$1 million mark will vie for funds in an investment pool.

1985 issues	\$2.3 billion
1987 cap	\$.25 billion
1988 cap	\$.165 billion

Connecticut: Connecticut's allocation committee, authorized by executive order, includes the governor's chief financial officer, the secretary of policy and management and the heads of agencies utilizing bonded indebtedness. Two allocations per year are made by the committee. Legislation this year may substantially alter these procedures.

Recent issues	\$600-700 million per year
1986 cap	\$250 million
1987 cap	\$158 million

Florida: Florida's allocation plan, based on an executive order, assigns 60 percent of the cap to geographical areas on a pro-rata basis according to population. Of the rest, 25 percent goes to housing and 15 percent goes to a state pool to service projects such as waste recovery and enterprise centers. At the end of the fiscal year (July 1), unused portions of the allocation revert to a central pool for reallocation. A legislative proposal based on the current plan is under development.

1985 issues	\$.9 billion IDA
	\$2 billion housing
total	\$2.9 billion
1986 cap	\$.852 billion
1987 cap	\$.583 billion

Georgia: Georgia's allocation, authorized by executive order, is divided into fourths by dollar rather than percentage. The \$75.00 per capita amount for 1987 is divided into \$32.00 for housing, \$20.00 for economic development, \$10.00 for limited purposes (limited period, restricted to exempt facilities, student loans and private activity portions of government use bonds) and \$13.00 for state departments. Each of these shares is further allocated to various uses within each category. For example, the \$32.00 share for housing is divided into \$17.00 for single-family projects and \$15.00 for multi-family projects. Legislation introduced in the 1987 Georgia legislature would translate this program into law.

CSG Backgrounder -- Bond Allocation

Georgia (continued):

1985 issues	\$828.9 million
1986 cap	\$448 million
1987 cap	\$229 million

Illinois: Six million of Illinois' 11 million residents live in local jurisdictions called home-rule units which have the authority to make their own decisions regarding bond issue. Specific information on ultimate uses of private purpose tax-free debt is entirely dependent on the home-rule units reporting to the state. Because some home-rule units send complete reports while others report nothing, any statewide figures contain much estimation, extrapolation and guesswork. The allocation schedule in use divides Illinois' cap 50/50 between home-rule units and non-home-rule units and state agencies. These shares are further subdivided. The home-rule share assignment is pro-rated according to population of individual home-rule units. Illinois expects no legislation on this issue in 1987.

1985 issues	\$826 million
1986 cap	\$865 million
1987 cap	\$577 million

Maine: A 1986 executive order established a committee composed of the governor, treasurer and agency heads to oversee private-purpose bond allocation. The present allocation is \$148 million for housing, \$6 million for the state bond bank and the remainder to state agencies, primarily higher education and health.

1985 issues	\$ 40 million
1986 cap	\$250 million
1987 cap	\$150 million

Mississippi: The governor of Mississippi delegated allocation authority to the state Economic Development Authority. The state legislature will either approve or change this system.

New York: By executive order, New York allocates 40 percent to state agencies, 40 percent to local governments and 20 percent to a reserve fund. The legislature is expected to consider an allocation structure similar to this plan. However, changes in housing tax credit rules with special provisions for New York City have lowered housing demand projections making housing bond volume less predictable than in the past.

CSG Backgrounder -- Bond Allocation

New York (continued):

1985 issues	\$2.6 billion
1986 cap	\$1.3 billion
1987 cap	\$.9 billion

Oregon: By executive order in 1986, the state treasurer oversees private-purpose bond allocation in Oregon. There is no fixed allocation schedule. Agencies or entities wishing to issue a private-activity bond apply to the state treasurer. Requests for less than \$5 million are allocated on a first-come, first-served basis. The treasurer must submit requests over \$5 million to an advisory council which makes a recommendation to the Private Activity Bond Committee where final decisions are made. Legislation proposed this year would codify these procedures.

1985 issues	\$250 million
1986 cap	\$250 million
1987 cap	\$150 million

Rhode Island: A Public Finance Management Board was established in July 1986 to allocate tax exempt bond issues.

1984 issues	\$500 million
1986 cap	\$400 million

CSG Backgrounder -- Bond Allocation

CALCULATED VOLUME CAPS*

	1987 (in thousands)	1988 (in thousands)
Alabama	\$ 301,575	\$ 201,050
Alaska	250,000	150,000
Arizona	250,000	159,350
Arkansas	250,000	150,000
California	1,977,375	1,318,250
Colorado	250,000	161,550
Connecticut	250,000	158,700
Delaware	250,000	150,000
Florida	852,450	568,300
Georgia	448,200	298,800
Hawaii	250,000	150,000
Idaho	250,000	150,000
Illinois	865,125	576,750
Indiana	412,425	274,950
Iowa	250,000	150,000
Kansas	250,000	150,000
Kentucky	279,450	186,300
Louisiana	336,075	224,050
Maine	250,000	150,000
Maryland	329,400	219,600
Massachusetts	441,150	291,100
Michigan	681,600	454,400
Minnesota	314,475	209,650
Mississippi	250,000	150,000
Missouri	377,175	251,450
Montana	250,000	150,000
Nebraska	250,000	150,000
Nevada	250,000	150,000
New Hampshire	250,000	150,000
New Jersey	567,150	378,100
New Mexico	250,000	150,000
New York	1,333,725	889,150
North Carolina	469,125	312,750
North Dakota	250,000	150,000
Ohio	805,800	537,200
Oklahoma	250,000	165,050
Oregon	250,000	150,000
Pennsylvania	888,975	592,650
Rhode Island	250,000	150,000
South Carolina	251,025	167,350
South Dakota	250,000	150,000
Tennessee	357,150	238,100
Texas	1,227,750	818,500
Utah	250,000	150,000
Vermont	250,000	150,000
Virginia	427,950	285,300

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CSG Backgrounder -- Bond Allocation

CALCULATED VOLUME CAPS*
(continued)

	<u>1987</u> (in thousands)	<u>1988</u> (in thousands)
Washington	330,675	220,450
West Virginia	250,000	150,000
Wisconsin	358,125	238,750
Wyoming	250,000	150,000

*For those states with sufficient population⁵ to invoke the \$75/\$50 rule, caps were calculated on the basis of 1985 U.S. Census Bureau figures (\$75 x state for 1987, \$50 x state population for 1988).

Notes

1. "Tax Reform Act of 1986" (PL 99-514, October 22, 1986), pp. 576-579.
2. Ibid.
3. "Tax Equity and Fiscal Responsibility Act of 1982" (PL 97-248, September 3, 1982), U.S. Statutes at Large 96, pp. 324-707.
4. "Deficit Reduction Act of 1984" (PL 98-369, July 18, 1984).
5. The Book of the States, The Council of State Governments, Volume 26, 1986-87, Lexington, KY, p. 271.

Price -- \$5.00

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TESTIMONY

on

HOUSE BILL 2645

Presented to

HOUSE ECONOMIC DEVELOPMENT COMMITTEE

by

Harland E. Priddle
Secretary of Commerce

January 26, 1988

*House Eco Dev
Attachment 3
1/26/88*

Mr. Chairman and Members of the Committee, we are pleased to present testimony today in explanation of and support of House Bill 2645 regarding Kansas Private Activity Bond Allocations. In accordance with Executive Order 87-95, the Secretary of Commerce has been allocating private activity bonds to Kansas cities and counties. This allocation has been made in accordance with Section 146(e)(2) of the Internal Revenue Code of 1986. The Executive Order terminated on December 31, 1987; however, the authority was extended on December 28, 1987, until legislative action could address this issue.

Upon the termination of the allocation authority under Executive Order 87-95, the allocation of private activity bond authority reverts to Federal law which provides that one-half of the state authorization be allocated to any agency of the state, and the remainder be allocated to other issuing authorities, such as cities and counties, in the same proportion that their population bears to the state population.

The Kansas volume cap for 1988 is \$150 million. Therefore, \$75 million is currently assigned to the Department of Commerce, and the remaining \$75 million is subject to allocation to Kansas cities and counties based on population.

To provide Kansas a system for allocating tax exempt private activity bonds in the future in a more appropriate and flexible manner, House Bill 2645 was developed. This bill was drafted with the assistance and consultation with industry

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ALLOCATIONS OF VOLUME CAP PURSUANT TO 26 U.S.C.A., Section 146(c)

<u>COMMUNITY</u>	<u>POPULATION</u>	<u>% TOTAL STATE POPULATION</u>	<u>ALLOCATION AMOUNT</u>
Hillsboro	2,717	.001	\$86,211
Dodge City	18,001	.008	\$571,175
Wichita	279,272	.118	\$8,861,356
Derby	9,786	.004	\$310,512
Kansas City	161,087	.068	\$5,111,322

Calculations: Kansas Department of Commerce

Source of population figures:

Table 1: Summary of General Population Characteristics, Summary Characteristics for Governmental Units and Standard Metropolitan Statistical Areas, 1980 Census of Population and Housing, U.S. Department of Commerce, Bureau of the Census

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PRIVATE ACTIVITY BONDS

Responsibilities of the Secretary of Commerce

Assure that the total amount of tax-exempt private activity bonds issued in Kansas does not exceed the prescribed federal limit.

This is essentially a bookkeeping function - tracking requests and authorizations for bond allocations within the various bond type categories, i.e., IRB's, Exempt Facility Bonds, Mortgage Revenue Bonds/Mortgage Credit Certificates, Student Loan Bonds, and Redevelopment Bonds.

Approve or disapprove requests for bond allocations.

Requests for allocations are handled on a first come-first served basis. Requests for \$5 million or less are automatically granted. Those exceeding \$5 million are examined relative to ceiling amount remaining, carryovers outstanding, etc. The Secretary may approve an application in whole or in part, disapprove it, or place it on hold pending receipt of additional information or review.

Notify the requestor within 5 days regarding the approval or disapproval and date of allocation expiration.

Grant (or deny) extensions of allocations.

Usually extensions are granted for 30 days or until December 15 (proposed change to December 1), whichever comes first. If allocation expires on December 1, Secretary may extend further to December 31.

Approve or disapprove requests to issue bonds in a subsequent year.

If bonds are not issued by the expiration date, the allocation amount is automatically surrendered. However, for allocations expiring after December 14 (proposed change to December 16) Secretary may authorize a carryforward so that bonds may be issued in the following year. Only Exempt Facility Bonds, Mortgage Bonds/Credit Certificates, Student Loan Bonds and Redevelopment Bonds may be carried forward.

Periodically review use of and demand for allocations of the state ceiling and recommend to Governor and Legislature an alternate method of allocation.

Although not ordered by the E.O. (or proposed statute), an implied responsibility is to see that the entire state allocation is used, so as to receive the maximum benefit.

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representatives and agrees with their concepts as well as the Department of Commerce.

House Bill 2645, if enacted, would authorize the continuation of allocation formulas currently used by the Department of Commerce. An explanation of rationale and reasons for adopting our formula for use is outlined in the statute. The Federal allocation formula, if implemented in Kansas, would be allocated among local governmental issuing authorities on a pro rata population percentage basis. This means that a smaller community which might want to float a larger exempt bond issue to attract an industrial park may not receive permission because the population of that community could preclude it from issuing the desired amount. A city the size of Wichita could likewise lose potential industrial sites if the total amount of the desired bond issue were to exceed the authorized amount. The problem with the Federal formula is the lack of flexibility in accommodating the potential needs of local units of government since such needs are not necessarily correlated with the populations of those governmental units.

This function and activity is very technical in nature and changes frequently. To assist us and the state of Kansas, as well as you, the legislature, we have asked a representative who deals with this subject on a daily basis to present technical information on this subject. Mr. Phil Wolfe will provide you background and other rationale regarding the bill being considered by you today.

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HOUSE BILL No. 2645

By Joint Committee on Economic Development

12-22

0016 AN ACT enacting the Kansas private activity bond allocation act;
0017 also repealing K.S.A. 74-5041, 74-5042 and 74-5043.

0018 *Be it enacted by the Legislature of the State of Kansas:*

0019 Section 1. This act shall be known and may be cited as the
0020 Kansas private activity bond allocation act.

0021 Sec. 2. As used in this act:

0022 (a) "Allocation" means the allocation of the state ceiling
0023 among governmental issuers as provided in this act.

0024 (b) "Code" means the internal revenue code of 1986, as
0025 amended, and the regulations promulgated thereunder.

0026 (c) "Governmental issuer" means the state and any instru-
0027 mentality or political subdivision thereof which is authorized to
0028 issue private activity bonds.

0029 (d) "Private activity bond" has the meaning ascribed thereto
0030 in the code.

0031 (e) "Secretary" means the secretary of commerce.

0032 (f) "State" means the state of Kansas.

0033 (g) "State ceiling" means the ceiling applicable under the
0034 code to the aggregate face amount of qualified private activity
0035 bonds, the interest on which is exempt from federal income
0036 taxation, which may be issued within this state during any
0037 calendar year.

0038 Sec. 3. (a) The secretary shall determine the state ceiling for
0039 each calendar year in accordance with the formula provided
0040 therefor in the code and shall allocate the state ceiling among
0041 governmental issuers in accordance with the provisions of this
0042 act.

0043 (b) The secretary shall reserve until November 15 of each
0044 year (1) an amount equal to \$15,000,000 for allocation in accord-

October

\$5,000,000

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0082 cember 15 of the calendar year in which the allocation was
0083 approved.

0084 (g) A governmental issuer may request an extension of the
0085 expiration date of an approved allocation by filing a written
0086 application therefor with the secretary. Any such application
0087 must be received by the secretary not less than two days prior to
0088 the expiration date of the approved allocation. In such instances,
0089 the secretary may approve an extension for a period ending at the
0090 earliest of (1) the time of 11:59 p.m. on the date which is 30 days
0091 after the initial expiration date, or (2) the date upon which the
0092 approved allocation is voluntarily surrendered to the secretary
0093 by the governmental issuer, or (3) the time of 11:59 p.m. on

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0094 December 15 of the calendar year in which the allocation was
0095 approved. The secretary shall notify the governmental issuer
0096 within five business days after receipt of the application if the
0097 request for extension has been approved or denied. If the private
0098 activity bonds for which an extension has been approved are not
0099 issued on or before the last day of the extension period approved
0100 by the secretary, the approved allocation shall expire unless a
0101 carryforward election is approved by the secretary.

0102 (h) Notwithstanding any other provision of this act, if an
0103 approved allocation or an approved extension period expires on
0104 December 15 the secretary may grant an extension, or a further
0105 extension, for a period ending not later than the time of 11:59
0106 p.m. on December 31 of the calendar year in which the allocation
0107 was approved.

1

any

0108 (i) The secretary shall provide to the governmental issuer on
0109 or prior to the date of issuance of any private activity bonds for
0110 which an approved allocation has not expired a certification that
0111 such bonds meet the requirements of section 146 of the code.

16

0112 (j) On or after December 1 of each calendar year, the secre-
0113 tary may approve a carryforward election with respect to an
0114 approved allocation or any approved extension if the govern-
0115 mental issuer, in writing (1) requests such action, and (2) indi-
0116 cates that the private activity bonds for which the allocation was
0117 approved cannot be issued during the calendar year in which the
0118 allocation was approved. Such approved carryforward election

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0045 ance with the provisions of section 141(b)(5) of the code for
 0046 private activity use of a portion of the proceeds of bonds issued
 0047 by governmental issuers, and (2) an amount equal to \$15,000,000
 0048 for allocation for qualified student loan bonds as defined in
 0049 section 144(b) of the code. On and after November 15 of each
 0050 year, any portion of the state ceiling remaining unused or un-
 0051 committed shall be available for allocation to governmental
 0052 issuers by the secretary without regard to the reservations pro-
 0053 vided for in this subsection.

\$5,000,000

; and (3) an amount equal to \$25,000,000 for allocation for qualified small issue bonds as defined in section 144(a) of the code

October

0054 (c) Prior to any issuance of private activity bonds subject to
 0055 the state ceiling, a governmental issuer shall submit to the
 0056 secretary on a form prescribed by the secretary a written appli-
 0057 cation for an allocation of the state ceiling for such issue.

0058 (d) Subject to the provisions of subsection (b), the secretary
 0059 shall approve each properly filed application for an allocation of
 0060 \$5,000,000 or less on the basis of the chronological order of
 0061 receipt of applications. If an application is for an allocation in
 0062 excess of \$5,000,000, the secretary may approve the total amount,
 0063 approve a partial amount or reject the application.

0064 (e) Within five business days after receipt of an application
 0065 for an allocation, the secretary shall notify the governmental
 0066 issuer in writing that (1) the application has been approved and
 0067 shall specify the amount approved, or (2) the application has
 0068 been denied, or (3) the application has been placed on hold
 0069 pending receipt of additional information with respect to the
 0070 application or pending a review of the effect approval of the
 0071 application will have on the state ceiling.

0072 (f) Unless an extension or a carryforward election is approved
 0073 by the secretary, an approved allocation, or any portion thereof,
 0074 that is not utilized by the issuance of the private activity bonds
 0075 for which the allocation was approved shall expire at the earliest
 0076 of (1) the time of 11:59 p.m. on the date which is 60 days after the
 0077 date the notification of the approved allocation is mailed to the
 0078 governmental issuer or on such other date as the secretary may
 0079 specify in the notification, or (2) the date upon which the ap-
 0080 proved allocation is voluntarily surrendered to the secretary by
 0081 the governmental issuer, or (3) the time of 11:59 p.m. on De-

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0119 shall be made by the governmental issuer by means of a state-
0120 ment, signed by a duly authorized official of such issuer. Such
0121 statement shall be filed with the secretary and with the internal
0122 revenue service prior to the end of such calendar year in ac-
0123 cordance with section 146(f) of the code. A governmental issuer
0124 may elect to carryforward such issuing authority only for quali-
0125 fied mortgage bonds, mortgage credit certificates, qualified stu-
0126 dent loan bonds, qualified redevelopment bonds, as defined in
0127 sections 142, 143 and 144 of the code, or for bonds to finance a
0128 project described in section 141(d)(1)(A) of the code. In no event
0129 shall such carryforward be effective for a period longer than
0130 permitted by section 146(f) of the code.

0131 (k) If an approved allocation expires, a governmental issuer
0132 may submit another application for an allocation of the state
0133 ceiling for the same purpose for which the expired allocation was
0134 approved. Any such applications shall be reviewed in order of
0135 receipt with no preference or priority being given as a result of
0136 the prior application and allocation.

0137 Sec. 4. (a) All governmental issuers are hereby required to
0138 report the amount of all private activity bonds issued pursuant to
0139 an approved allocation under this act to the secretary by tele-
0140 phone no later than the second business day after the date of
0141 issuance of such bonds. Such reports shall be confirmed in
0142 writing by overnight delivery service approved by the secretary,
0143 or by certified mail, return receipt requested, postmarked not
0144 later than five calendar days after the issuance of such bonds.
0145 The written reports required by this subsection shall be on forms
0146 prescribed by the secretary.

0147 (b) Failure by a governmental issuer to report in accordance
0148 with the provisions of subsection (a), or otherwise to abide by the
0149 terms of this act, may result in the forfeiture of future allocations
0150 for private activity bonds.

0151 Sec. 5. The secretary, from time to time, shall review and
0152 evaluate the use of and demand for allocations of the state ceiling
0153 for issuance of private activity bonds. If it appears to the secre-
0154 tary that the allocation of the state ceiling pursuant to the provi-
0155 sions of this act should be revised, the secretary shall recom-

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0156 mend to the governor and the legislature an alternative method
0157 for allocation of the state ceiling.

0158 Sec. 6. K.S.A. 74-5041, 74-5042 and 74-5043 are hereby re-
0159 pealed.

0160 Sec. 7. This act shall take effect and be in force from and
0161 after its publication in the Kansas register.

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MARTY BLOOMQUIST, ASSISTANT

January 26, 1988

M E M O R A N D U M

TO: House Committee on Economic Development

FROM: Allen Bell, President
Kansas Development Finance Authority

SUBJECT: House Bill No. 2645 - The Kansas Private Activity
Bond Allocation Act

Mr. Chairman and Members of the Committee:

I support House Bill 2645. It is essentially a codification of the Executive Order which was in effect until the end of last year, and it is my opinion that for the most part, that allocation system worked extremely well.

I personally believe that the best private activity bond allocation system for the state of Kansas is one based on the principle of first-come first-served and which has the fewest reservations for special categories of bonds. I do support, however, the proposed amendment to create a reservation for small issue IDBs so that small issue projects that come together late in the year will still have a chance of receiving an allocation. Every year since there has been an allocation system, the volume cap has been consumed very rapidly in the late fall by large housing projects. And small issue IDBs are the only category of private activity bonds that are not eligible for the carryforward election allowed by the 1986 Tax Reform Act.

As the president of the only state-level organization with the authority to issue tax-exempt private activity bonds, I do not wish to have a reservation for state-issued bonds included in the allocation system. I do however want to be sure that bonds issued by KDFFA have an equal chance at receiving an allocation as bonds issued by any other issuer in the state. I believe the definition of "governmental issuer" contained in Section 2 of the bill makes that a certainty.

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January 26, 1988
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Finally, I would like to urge you to expedite the passage of this bill. We are currently in a kind of limbo with respect to having a working allocation system. The executive order expired on December 31st. Until this bill is enacted, the state must abide by the default allocation system prescribed by the 1986 Tax Code. Under that system, \$75 million of the volume cap is reserved for state agencies having the authority to issue private activity bonds. As I said before, we don't want a reservation, and we certainly can't use \$75 million. What's worse, the other \$75 million is pre-allocated to each non-state issuer on the basis of the issuer's population relative to the state's population. It means that a city of 10,000 is limited to issuing up to \$325,000 in IDBs. Projects of that size are usually considered too small to finance with IDBs. So please hurry and pass it.

Thank you, Mr. Chairman. I'll answer any questions the Committee might have.

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League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL / 112 WEST SEVENTH ST., TOPEKA, KANSAS 66603 / AREA 913-354-9565

RE: HB 2645--State Allocation of Federal Ceiling on Tax Exempt Private Activity Bonds
TO: House Committee on Economic Development
FROM: E.A. Mosher, Executive Director
DATE: January 26, 1988

The League is in support of HB 2645, to establish by law the procedure and formula for allocating the maximum amount of private activity bonds which may be issued with interest exempt from taxation under the 1986 Internal Revenue Code. We believe the federal formula, which will continue to apply in Kansas absent the enactment of state legislation, is not practical, nor in the best interest of the local governments of Kansas or our future economic development. Further, we urge legislative action as soon as possible, since the federal formula continues to apply until state legislation is enacted.

The proposed bill is substantially similar to an Executive Order allocating the state ceiling for 1987, which was consistent with the recommendations of a special task force of the League established to study this matter. It essentially establishes a first-come, first-served allocation formula, with certain reservations. Given the predicted reduced volume of economic development bonds, as a result of limiting exemptions to IDBs for manufacturing purposes, and the reduced growth in new manufacturing enterprises in Kansas, we think this basic approach is sound, avoiding the complicated formula used in 1986.

We urgently request the reservation of \$15 million for certain governmental issues, provided for in lines 43:47. These are the types of bonds, including general obligation bonds, which have been historically exempt from federal taxation but which may be under the bond cap as a result of some incidental private use.

We do have some concerns as to the adequacy of the bill's provisions in allocating unused amounts at the end of a calendar year. At the end of both 1986 and 1987, substantial allocations were granted to a few issuers, to the considerable consternation of other potential issuers. Frankly, we offer no specific amendment as to how to deal with this issue; we are supportive of amendments to attempt to avoid the recurrence of this problem in December of future years.

*House Eco Dev
Attachment 6
1/26/88*