

LEGISLATIVE HISTORY CHECKLIST

NJSA: 49:2a-1 to 49:2A-5 (Private activity bonds-- annual volume cap)

LAWS OF: 1987 CHAPTER: 393

Bill No: S3757

Sponsor(s): Weiss

Date Introduced: November 12, 1987

Committee: Assembly: -----

Senate: Revenue, Finance and Appropriations

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: January 7, 1988

Senate: December 10, 1987

Date of Approval: January 13, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

[OFFICIAL COPY REPRINT]
SENATE, No. 3757

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 12, 1987

By Senator WEISS

Referred to Committee on Revenue, Finance and Appropriations

AN ACT to provide for the allocation of the State's volume cap on private activity bonds and the private activity portion of governmental bonds.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "New Jersey
2 Private Activity Bond Volume Cap Allocation Act."

1 2. The Legislature finds and determines that:

2 a. The Internal Revenue Code of 1986, 26 U. S. C. § 145 et seq.,
3 as amended, by the "Tax Reform Act of 1986," Pub. L. 99-514,
4 hereinafter referred to as the "Code," imposes an annual limita-
5 tion on the volume of tax-exempt private activity bonds and the
6 private activity portion of governmental bonds issued after August
7 15, 1986.

8 b. The Code limits the annual volume of tax-exempt private
9 activity bonds and the private activity portion of governmental
10 bonds for the State of New Jersey to \$75.00 per resident for
10a calendar year 1987 and \$50.00 per resident for calendar years, there-
11 after, based on the most recent population estimate provided by
12 the Bureau of the Census before the beginning of the calendar year
13 to which the limitation applies.

14 c. The use of tax-exempt bonds is an effective and necessary
15 methods of financing programs for housing, water supply, sewerage
16 treatment, hazardous waste treatment, storage and disposal, solid
17 waste disposal, resource recovery and economic development, and
18 such financing promotes and improves the health, safety, welfare
19 and quality of life of the residents of the State.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted December 7, 1987.

20 d. The Code establishes a formula for allocation of the volume
21 cap which, pursuant to subsection (c) of section 146 of the Code,
22 was subject to temporary modification by gubernatorial executive
23 order until December 31, 1987. The Code also permits the State
24 to establish by law an alternative formula for allocating the volume
25 cap.

26 e. In accordance with the Code, the Governor by Executive Order
27 No. 147, has heretofore established procedures for the allocation
28 of the State's volume cap on private activity bonds and the private
29 activity portion of governmental bonds within the State under the
30 interim authority provided by the Code.

31 f. There is a Statewide need to assure that the limited amount
32 of tax-exempt private activity bond financing available is used in
33 the most effective manner by issuers of bonds in the State in order
34 to provide the greatest benefits to the State, and that need can
35 best be met by authorizing the Governor to continue to allocate
36 portions of the State's volume cap among issuers.

1 3. As used in this act:

2 a. "Bond" means a revenue obligation, security, bond, note,
3 debenture, certificate or other evidence of indebtedness of an issuer.

4 b. "Carryforward" means that portion of the State volume cap
5 for any calendar year which is unused during that calendar year
6 and which is available to be carried forward to be used in later
7 years pursuant to the Code.

8 c. "Federal formula" means the formula or formulas for alloca-
9 tion of the State volume cap now or hereafter established pursuant
10 to the Code.

11 d. "Governmental bond" means any tax-exempt bond which is
12 not a private activity bond.

13 e. "Issuer" means the State or any political subdivision of the
14 State or any entity issuing bonds on behalf of the State or any
15 political subdivision of the State.

16 f. "Private activity bond" and "private activity portion of gov-
17 ernmental bonds" means a bond or portion thereof subject to any
18 allocation of State volume cap pursuant to the Code.

19 g. "Tax-exempt bond" means a bond, note or other obligation
20 the interest on which is not includible in federal gross income pur-
21 suant to section 103 of the Code.

22 h. "Volume cap" means the annual dollar limitation on the
23 issuance of tax-exempt private activity bonds and the private
24 activity portion of governmental bonds now or hereinafter imposed
25 on issuers by the Code.

1 4. a. In order to ensure that the limited amount of available
 2 tax-exempt private activity bond financing is used in the most
 3 effective manner by issuers, the Governor ***[may]*** **is authorized*
 4 *to** establish ***[by executive order a formula and]*** **a** procedure
 5 for allocation of the State volume cap which ** procedure may*
 6 *provide for a reallocation formula that** differs from the federal
 6A formula.

6B b. ***[In the executive order.]*** **Any allocation procedure estab-*
 6C *lished by** the Governor ***[may]*** **shall** provide, *by executive*
 6D *order or otherwise.** that:

7 (1) The entire State volume cap be allocated to the Department
 8 of Treasury for reallocation by the State Treasurer;

9 (2) Any allocations made pursuant to this act be reviewed peri-
 10 odically and that unused allocations may be utilized for carry-
 11 forward or rescinded for reallocation and carryforward, for re-
 12 allocation, or for carryforward, as the case may be; and

13 (3) Any department of State Government or issuer receiving
 14 an allocation may establish guidelines and procedures with respect
 15 to that allocation and, if permitted, with respect to the realloca-
 16 tion and carryforward of that allocation or the reallocation, or
 17 carryforward of that allocation, as the case may be.

18 c. The ***[executive order may]*** **allocation procedure and for-*
 19 *mula, if any, established by the Governor pursuant to this section*
 20 *shall** be applicable to the allocation of the State volume cap for
 21 the 1988 calendar year, and, unless modified or revoked by ***[an-**
 22 **other order]*** **further action** of the Governor, ***[may]*** **shall**
 23 be applicable to each calendar year thereafter.

1 **5. The Governor shall submit to the Legislature, after January*
 2 *1, 1988 and on or before January 20, 1988, and after January 1 and*
 3 *on or before January 20 annually thereafter, a written report pro-*
 4 *viding a review of the allocation of the State's private activity*
 5 *bond volume ceiling during the preceding calendar year and the*
 6 *preliminary allocation anticipated for the current calendar year.*
 7 *If the information concerning the preliminary allocation is not*
 8 *available on each January 20, the Governor shall submit that in-*
 9 *formation to the Legislature as soon as the information is avail-*
 10 *able. The annual report shall include for the year being reviewed*
 11 *and for the current calendar year, as may be applicable:*

12 a. *A statement of the annual Statewide private activity bond*
 13 *volume ceiling;*

14 b. *An explanation of any formula used or to be used for the allo-*
 15 *cation among issuers;*

16 *c. The name of issuers granted any portion of the annual volume*
17 *ceiling, the amount of the volume ceiling allocated to each issuer,*
18 *the amount of bonds issued under the classifications of qualified*
19 *private activity bonds set forth in section 141 (d) (1) of the Code,*
20 *a description of the nature of each bond issuance under the cap and*
21 *the private business use applicable to the bonds, and any elective*
22 *carryforward and reallocation and the use and purposes thereof;*
23 *and*

24 *d. A statement of guidelines, terms and conditions, and proce-*
25 *dures established by any department of State Government or issuer*
26 *promulgated under the authority of section 4 of this act and under*
27 *the authority of any executive action taken thereunder, and any*
28 *action concerning the allocation of the annual volume cap or any*
29 *carryforward that is an exception or deviation from the standard*
30 *guidelines, terms and conditions, and procedures.*

31 *The Governor shall also submit to the Legislature in writing, as*
32 *soon as is possible, any modification or revocation of an allocation*
33 *procedure or formula established pursuant to section 4 of this act.**

1 ***[5.]*** *6.* This act shall take effect on January 1, 1988.

STATE BUDGET AND FINANCE

Authorizes the Governor to establish a procedure for the allocation and reallocation of the annual Statewide volume cap on tax-exempt private activity bonds.

1 4. a. In order to ensure that the limited amount of available
2 tax-exempt private activity bond financing is used in the most
3 effective manner by issuers, the Governor may establish by execu-
4 tive order a formula and procedure for allocation of the State
5 volume cap which differs from the federal formula.

6 b. In the executive order, the Governor may provide that:

7 (1) The entire State volume cap be allocated to the Department
8 of Treasury for reallocation by the State Treasurer;

9 (2) Any allocations made pursuant to this act be reviewed peri-
10 odically and that unused allocations may be utilized for carry-
11 forward or rescinded for reallocation and carryforward, for re-
12 allocation, or for carryforward, as the case may be; and

13 (3) Any department of State Government or issuer receiving
14 an allocation may establish guidelines and procedures with respect
15 to that allocation and, if permitted, with respect to the realloca-
16 tion and carryforward of that allocation or the reallocation, or
17 carryforward of that allocation, as the case may be.

18 c. The executive order may be applicable to the allocation of the
19 State volume cap for the 1988 calendar year and, unless modified
20 or revoked by another order of the Governor, may be applicable
21 to each calendar year thereafter.

1 5. This act shall take effect on January 1, 1988.

STATEMENT

The Internal Revenue Code of 1986, as amended by the "Tax Reform Act of 1986," imposes a volume cap on the issuance of private activity bonds and governmental bonds to the extent that the private activity portion of such governmental bonds exceeds \$15,000,000.00. The Code also provides a formula for allocation of the volume cap among issuers. Under the Code, this federal formula may be modified by action of the Legislature, or, on an interim basis up to December 31, 1987, by the Governor. The purpose of this bill is to authorize the Governor to modify the federal formula after January 1, 1988 in order to ensure that the limited amount of available tax-exempt private activity bond financing is used in the most effective manner by State and local governmental issuers.

STATE BUDGET AND FINANCE

Authorizes Governor to determine by executive order the allocation of the annual State volume cap on private activity bonds.

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SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO

SENATE, No. 3757

with Senate committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 7, 1987

The Senate Revenue, Finance and Appropriations Committee reported Senate Bill No. 3757 favorably, with committee amendments.

Senate Bill No. 3757, as amended, authorize the Governor, after January 1, 1988, to modify by executive order or otherwise the formula for allocation of the volume cap or ceiling on the issuance of federally tax-exempt private activity bonds. The volume cap and allocation formula are specified in the federal Internal Revenue Code of 1986, as amended by the "Tax Reform Act of 1986." The bill, as amended, also requires the Governor to submit annual reports to the Legislature by January 20 including a review of the allocation of the volume cap in the prior year, and the preliminary allocation for the current year. If the preliminary allocation is not available on the reporting date, then it shall be submitted as soon as it is available.

The Internal Revenue Code of 1986 ("the Code") imposes a State volume cap on the annual issuance of federally tax-exempt private activity bonds (and governmental bonds to the extent that the private activity portion of such governmental bonds exceeds \$15,000,000.00). This ceiling is equal to the greater of \$250,000,000.0 or \$75.00 per capita in 1987, and \$150,000,000.00 or \$50.00 per capita in 1988 and thereafter. For New Jersey, the per capita calculation yields a volume ceiling of \$571,800,000.00 in 1987, and \$378,000,000.00 in 1988 and thereafter. Section 146 of the Code further specifies that, unless a state takes action to the contrary, as described below, 50% of this volume ceiling shall be allocated to State agencies and 50% shall be allocated to local government issuers in the State; the 50% local share shall be allocated among the local issuers on the basis of population. Each local issuer's share is established according to a ratio that is determined by dividing the population of the State by the population within the issuing authority's jurisdiction.

However, the Code also provides that states may enact at any time laws providing for a different allocation of their volume caps and that until December 31, 1987, states may also operate under a different

allocation pursuant to a governor's executive order. New Jersey is now operating under Executive Order No. 147, which makes the State Treasurer the custodian of the full State allocation, and authorizes the Treasurer to set terms and conditions under which allocations may be made to State agencies or local units of government. The Executive Order, and the Code's authority allowing the State to allocate its volume cap solely under an executive order, expire December 31, 1987. This bill, as amended, provides the State statutory authorization for the Governor to continue to determine the allocation of the State's volume cap among issuers, through continuing executive orders or otherwise, under which the entire State volume cap may be reallocated and reviewed by the State Treasurer.

COMMITTEE AMENDMENTS:

The committee amendments specify that the means by which the Governor may modify the allocation formula include, but are not limited to, the issuance of executive orders. The amendments also require the Governor to submit annual reports to the Legislature by January 20, 1988 and each January 20 thereafter providing a review of the allocation of the volume cap in the prior year, and the preliminary allocation for the current year, including the applicable ceiling, the allocation formula, bonds issued under the ceiling and terms and conditions established. If information concerning the preliminary allocation is not available on the reporting date, then it shall be submitted as soon as it is available.

FISCAL IMPACT:

This bill, as amended, will have no direct fiscal impact. However, any prospective issuers which fail to receive a portion of the State's annual volume ceiling and subsequently issue taxable bonds will face higher debt service costs.
