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SENATE BILL 400

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DON KIDD

AN ACT

RELATING TO PRIVATE ACTIVITY BONDS; AMENDING THE PRIVATE  
ACTIVITY BOND ACT TO ADD NEW ISSUING AUTHORITIES AND TO CHANGE  
CERTAIN ALLOCATION PROVISIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-20-2 NMSA 1978 (being Laws 1988,  
Chapter 46, Section 2) is amended to read:

"6-20-2. DEFINITIONS. --

A. As used in the Private Activity Bond Act:

(1) "allocation" means an allocation of the  
state ceiling issued by the board to an issuing authority to  
issue private activity bonds;

(2) "allocation expiration date" means the  
expiration date for issuance of private activity bonds or making  
a mortgage credit certificate election set forth in the board

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1 allocation, which shall be the earlier of [~~one hundred twenty~~  
2 ninety days from the date of issuance of the allocation or the  
3 bond issuance expiration date for the calendar year of the  
4 allocation, [~~provided, however, that in the case of allocations~~  
5 ~~issued pursuant to Subsection A or B of Section 3 of the Private~~  
6 ~~Activity Bond Act, "allocation expiration date" means July 1 of~~  
7 ~~the calendar year of the allocation]~~ subject to extension  
8 pursuant to Section 6-20-10 NMSA 1978;

9 (3) "board" means the state board of finance;

10 (4) "bond counsel" means an attorney or a firm  
11 of attorneys listed in the most recently available "directory of  
12 municipal bond dealers of the United States", published by the  
13 bond buyer and commonly known as the "red book", in the section  
14 listing municipal bond attorneys of the United States, or the  
15 successor publication thereto;

16 (5) "bond issuance expiration date" means the  
17 date, not later than [~~December 26~~] the last business day of a  
18 calendar year, selected annually by the board upon which all  
19 unexpired allocations issued for the calendar year shall expire  
20 except to the extent that any unexpired allocation has been used  
21 by an issuing authority prior to such date to issue private  
22 activity bonds or make a mortgage credit certificate election;

23 (6) "carryforward election allocation" means an  
24 allocation of the state ceiling issued by the board pursuant to  
25 the Private Activity Bond Act which an issuing authority may

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1 elect to treat as a carryforward under Section 146 of the code;

2 (7) "carryforward purpose" means:

3 (a) the purpose of issuing exempt  
4 facility bonds;

5 (b) the purpose of issuing qualified  
6 mortgage bonds or mortgage credit certificates;

7 (c) the purpose of issuing qualified  
8 student loan bonds; and

9 (d) the purpose of issuing qualified  
10 redevelopment bonds;

11 (8) "code" means the Internal Revenue Code of  
12 1986, as amended;

13 (9) "confirmation" means the confirmation of  
14 bond issuance furnished to the board;

15 (10) "inducement resolution" means a resolution  
16 expressing an intent to issue private activity bonds for a  
17 project;

18 (11) "issuing authority" means the state, state  
19 agencies, counties, ~~[and]~~ incorporated municipalities and  
20 regional housing authorities and any agency, authority,  
21 instrumentality, corporation or body that is authorized under  
22 state law to issue private activity bonds on behalf of a county,  
23 incorporated municipality or regional housing authority

24 (12) "mortgage credit certificate election"  
25 means an election pursuant to Section 25(c)(2)(A)(ii) of the

1 code, by an issuing authority not to issue qualified mortgage  
2 bonds which the issuing authority is otherwise authorized to  
3 issue, in exchange for the authority under Section 25 of the  
4 code to issue mortgage credit certificates in connection with a  
5 qualified mortgage credit certificate within the meaning of  
6 Section 25(c)(2) of the code;

7 (13) "private activity bond" means:

8 (a) any bond or other obligation which is  
9 a qualified private activity bond under Section 141 of the code  
10 which is not excluded by Section 146(g), (h) and (i) of the code  
11 or a bond or other obligation issued under Section 1312 or 1313  
12 of the Tax Reform Act of 1986; and

13 (b) the private activity portion of  
14 government use bonds allocated by an issuing authority to an  
15 issue under Section 141(b)(5) of the code;

16 (14) "project" means any facilities which can  
17 be financed with private activity bonds which are not qualified  
18 student loan bonds or qualified mortgage bonds;

19 (15) "qualified mortgage bond" means a bond or  
20 obligation which is issued as part of a qualified mortgage issue  
21 under Section 143 of the code;

22 (16) "qualified student loan bond" means any  
23 bond issued as part of an issue of which the applicable  
24 percentage or more of the net proceeds thereof are to be used  
25 directly or indirectly to make or finance student loans under

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1 programs identified by Section 144(b) of the code;

2 (17) "regulations" means the regulations  
3 promulgated by the internal revenue service under the code ~~or~~  
4 ~~under the Internal Revenue Code of 1954, as amended~~;

5 (18) "request for allocation" means the request  
6 of an issuing authority pursuant to the Private Activity Bond  
7 Act;

8 (19) "request for carryforward election  
9 allocation" means the request of an issuing authority pursuant  
10 to the Private Activity Bond Act;

11 (20) "state" means the state of New Mexico;

12 (21) "state agency" means the New Mexico  
13 industrial and agricultural finance authority, the New Mexico  
14 educational assistance foundation, the New Mexico mortgage  
15 finance authority, the New Mexico finance authority, the border  
16 authority and any other agency, authority, instrumentality,  
17 corporation or body, now existing or hereafter created, which  
18 under state law ~~can~~ is authorized to issue private activity  
19 bonds on behalf of the state or any state agency; provided, a  
20 regional housing authority shall not be deemed to be a "state  
21 agency" for purposes of the Private Activity Bond Act;

22 (22) "state ceiling" means, for any calendar  
23 year, the greater of an amount equal to fifty dollars (\$50.00)  
24 multiplied by the state population as shown by the most recent  
25 census estimate of the resident population of the state released

1 by the United States bureau of census before the beginning of  
2 such calendar year or one hundred fifty million dollars  
3 (\$150,000,000) or such different amount as may be provided by  
4 Section 146(d) of the code;

5 (23) "state private activity bond fund" means  
6 the fund into which the unallocated and unused state ceiling is  
7 set aside [~~on July 1~~] in each calendar year and from which  
8 issuing authorities may receive carryforward election  
9 allocations and allocations to fund the issuance of private  
10 activity bonds and the making of mortgage credit certificate  
11 elections; and

12 (24) "user" means the user of proceeds of  
13 private activity bonds for a project.

14 B. The word "issue" or "issued", when used in the  
15 context of an issuing authority issuing a private activity bond,  
16 means the physical delivery of the evidences of indebtedness in  
17 exchange for the amount of the purchase price.

18 C. References in the Private Activity Bond Act to  
19 particular sections of the code or the regulations shall be  
20 deemed also to refer to any successor or recodification  
21 sections. "

22 Section 2. Section 6-20-3 NMSA 1978 (being Laws 1988,  
23 Chapter 46, Section 3) is amended to read:

24 "6-20-3. ALLOCATION OF STATE CEILING. -- ~~[A. Until July 1~~  
25 ~~in any calendar year, forty percent of the state ceiling for the~~

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1 ~~calendar year shall be allocated to state agencies as a group;~~  
2 ~~provided, however, that such allocation shall be made in~~  
3 ~~accordance with directives, rules or regulations governing the~~  
4 ~~distribution of allocations to be established by the board.~~

5 ~~B. Until July 1 in any calendar year, sixty percent~~  
6 ~~of the state ceiling for the calendar year shall be allocated to~~  
7 ~~issuing authorities that are not state agencies, as a group;~~  
8 ~~provided, however, that such allocations shall be made in~~  
9 ~~accordance with directives, rules or regulations governing the~~  
10 ~~distribution of allocations to be established by the board.~~

11 ~~C. On July 1 of each calendar year, the amount of~~  
12 ~~any allocation issued by the board pursuant to Subsection A or B~~  
13 ~~of Section 3 of the Private Activity Bond Act shall expire and~~  
14 ~~shall be automatically set aside into the state private activity~~  
15 ~~bond fund, except to the extent that an allocation has been used~~  
16 ~~by an issuing authority prior to July 1 to issue private~~  
17 ~~activity bonds or to make a mortgage credit certificate~~  
18 ~~election.~~

19 ~~D. From July 1 through December 31 in any calendar~~  
20 ~~year, the board shall prescribe the allocation of the state~~  
21 ~~ceiling.] In any calendar year, the board shall prescribe the~~  
22 ~~allocation of the state ceiling in accordance with directives,~~  
23 ~~rules or regulations governing the distribution of allocations~~  
24 ~~to be established by the board."~~

25 Section 3. Section 6-20-5 NMSA 1978 (being Laws 1988,

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1 Chapter 46, Section 5) is amended to read:

2 "6-20-5. REQUEST FOR ALLOCATION. --A request for allocation  
3 may be submitted to the board at any time and shall consist of  
4 the following:

5 A. a letter from the issuing authority or, in the  
6 case of a project, a letter from bond counsel for the issuing  
7 authority or the user stating the amount of the state ceiling  
8 requested in dollars;

9 B. in the case of a project, a copy of the  
10 inducement resolution, certified by an official of the issuing  
11 authority, and a statement of bond counsel for the issuing  
12 authority or the user that the bonds to be issued are private  
13 activity bonds;

14 C. with respect to a request submitted [~~on or after~~  
15 ~~July 1~~] in any calendar year, in the case of a project, a  
16 project plan containing the following, if applicable:

17 (1) a description of the project and its  
18 specific location;

19 (2) the estimated number of jobs, both  
20 construction and permanent, [~~which~~] that can be filled by  
21 persons who are residents of the state at the time of submission  
22 of the request for allocation;

23 (3) the [~~present~~] current use or conditions of  
24 the project site;

25 (4) the ~~maximum~~ amount of the bonds to be

1 issued;

2 (5) a proposed starting date and estimated  
3 completion date of the construction project;

4 (6) information relating to the feasibility of  
5 the proposed project, showing that the project will generate  
6 revenues and cash flow sufficient to make payments under the  
7 lease or installment sale agreement;

8 (7) the amount and source of private capital  
9 [~~which~~] that will be used for the project in addition to bond  
10 financing;

11 (8) conceptual site plans for the project and a  
12 map locating the project area;

13 (9) in the case of qualified residential rental  
14 projects, so-called multifamily housing, an explanation of why  
15 the housing needs of individuals whose income will make them  
16 eligible under Section 142(d) of the code are not being met by  
17 existing multifamily housing;

18 (10) any other information [~~which~~] that the  
19 user believes will aid the board in considering the request for  
20 allocation; and

21 (11) any other information specifically  
22 requested by the board;

23 D. in the case of a project, a commitment letter  
24 from the proposed purchaser or underwriter of the bonds; and

25 E. in the case of a mortgage credit certificate

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1 election, a letter from the issuing authority stating that a  
2 qualified mortgage credit certificate program has been adopted  
3 by the issuing authority. "

4 Section 4. Section 6-20-6 NMSA 1978 (being Laws 1988,  
5 Chapter 46, Section 6) is amended to read:

6 "6-20-6. ALLOCATION. --After considering a request for  
7 allocation, the board may within a reasonable time, as  
8 determined by the board, issue an allocation [provided, however,  
9 that an allocation requested by an issuing authority pursuant to  
10 Subsection A or B of Section 3 of the Private Activity Bond Act  
11 shall be issued by the board within a reasonable time after a  
12 request for allocation is submitted to the board]. An  
13 allocation shall state the amount, in dollars, of the state  
14 ceiling allocated and shall state the allocation expiration  
15 date. "

16 Section 5. Section 6-20-7 NMSA 1978 (being Laws 1988,  
17 Chapter 46, Section 7) is amended to read:

18 "6-20-7. CARRYFORWARD ELECTION ALLOCATIONS. --An issuing  
19 authority may submit to the board a request for carryforward  
20 election allocation with respect to private activity bonds  
21 proposed to be issued to finance bonds for a specified  
22 carryforward purpose. The date for submission of such requests  
23 shall be established by the board annually. A separate request  
24 [must] shall be submitted for each carryforward purpose, except  
25 that a request for carryforward election allocation with respect

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1 to qualified student loan bonds or qualified mortgage bonds may  
2 cover all proposed issuances of student loan bonds and qualified  
3 mortgage bonds. Not later than ~~[December 26]~~ the last business  
4 day of a calendar year ~~[or the next business day if December 26~~  
5 ~~is a holiday]~~, the board shall issue carryforward election  
6 allocations in amounts determined by the board, to the extent  
7 that sufficient amounts are available in the state private  
8 activity bond fund and the requirements of the Private Activity  
9 Bond Act are satisfied. A request for carryforward election  
10 allocation shall contain the same information and materials  
11 required to be included in a request for allocation. "

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1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

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5  
6 February 11, 1997

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8 Mr. President:

9  
10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to  
11 whom has been referred

12  
13 SENATE BILL 400

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15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, and thence referred to the WAYS  
17 & MEANS COMMITTEE.

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20 Respectfully submitted,

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25 Roman M. Maes, III, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: None

Excused: Griego, Robinson, Wilson

Absent: None

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1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

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5  
6 February 19, 1997

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8 Mr. President:

9  
10 Your WAYS AND MEANS COMMITTEE, to whom has been  
11 referred

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13 SENATE BILL 400

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15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, and thence referred to the  
17 FINANCE COMMITTEE.

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20 Respectfully submitted,

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25 Carlos R. Cisneros, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: McSorley, Nava

Absent: None

S0400WM1

Underscored material = new  
[bracketed material] = delete