

## CHAPTER 297

[Substitute House Bill No. 739]

## PRIVATE ACTIVITY BOND ALLOCATION

AN ACT Relating to private activity bond allocation; amending RCW 39.44.200; adding new sections to chapter 39.86 RCW; creating new sections; repealing RCW 39.86.010, 39.86.020, 39.86.030, 39.86.031, 39.86.040, 39.86.050, 39.86.060, 39.86.070, 39.86.900, 39.86.901, 39.86.902, 39.86.903, and 39.86.904; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. **LEGISLATIVE FINDINGS AND POLICY.** The federal tax reform act of 1986 imposes an annual ceiling on the aggregate amount of federally tax-exempt private activity bonds, including bonds for housing, student loans, exempt facilities, small issue industrial, redevelopment, and certain public utility projects, that may be issued during any calendar year by or on behalf of states and their political subdivisions. The tax reform act of 1986 establishes a private activity bond ceiling for each state of seventy-five dollars per capita for 1987 and of fifty dollars per capita for 1988 and each year thereafter. However, a study by the department of community development indicates that the dollar amount of the state ceiling is considerably less than the anticipated dollar amount for which issuers would need an allocation from the state ceiling. The tax reform act of 1986 provides a formula for allocating the annual ceiling among various issuers of private activity bonds within a state, but permits each state to enact a different allocation method that is appropriate to that state's needs. The purpose of this chapter is to provide a flexible and efficient method of allocating the annual state ceiling in Washington in a manner that recognizes the need of the state and its political subdivisions to finance activities or projects that satisfy a substantial public purpose.

**NEW SECTION.** Sec. 2. **DEFINITIONS.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Agency" means the department of community development.
- (2) "Board" means the community economic revitalization board established under chapter 43.160 RCW.
- (3) "Bonds" means bonds, notes, or other obligations of an issuer.
- (4) "Bond use category" means any of the following categories of bonds which are subject to the state ceiling: (a) Housing, (b) student loans, (c) small issue, (d) exempt facility, (e) redevelopment, (f) public utility; and (g) remainder.
- (5) "Carryforward" is an allocation or reallocation of the state ceiling which is carried from one calendar year to a later year, in accordance with the code.

(6) "Code" means the federal internal revenue code of 1986 as it exists on the effective date of this section. It also means the code as amended after the effective date of this section, but only if the amendments are approved by the agency under section 9 of this act.

(7) "Director" means the director of the agency or the director's designee.

(8) "Exempt facility" means the bond use category which includes all bonds which are exempt facility bonds as described in the code, except those for qualified residential rental projects.

(9) "Firm and convincing evidence" means documentation that satisfies the director that the issuer is committed to the prompt financing of, and will issue tax exempt bonds for, the project or program for which it requests an allocation from the state ceiling.

(10) "Housing" means the bond use category which includes: (a) Mortgage revenue bonds and mortgage credit certificates as described in the code; and (b) exempt facility bonds for qualified residential rental projects as described in the code.

(11) "Initial allocation" means the portion or dollar value of the state ceiling which initially in each calendar year is allocated to a bond use category for the issuance of private activity bonds, in accordance with section 3 of this act.

(12) "Issuer" means the state, any agency or instrumentality of the state, any political subdivision, or any other entity authorized to issue private activity bonds under state law.

(13) "Private activity bonds" means obligations that are private activity bonds as defined in the code or bonds for purposes described in section 1317(25) of the tax reform act of 1986.

(14) "Program" means the activities for which housing bonds or student loan bonds may be issued.

(15) "Public utility" means the bond use category which includes those bonds described in section 1317(25) of the tax reform act of 1986.

(16) "Redevelopment" means the bond use category which includes qualified redevelopment bonds as described in the code.

(17) "Remainder" means that portion of the state ceiling remaining after initial allocations are made under section 3 of this act for any other bond use category.

(18) "Small issue" means the bond use category which includes all industrial development bonds that constitute qualified small issue bonds, as described in the code.

(19) "State" means the state of Washington.

(20) "State ceiling" means the volume limitation for each calendar year on tax-exempt private activity bonds, as imposed by the code.

(21) "Student loans" means the bond use category which includes qualified student loan bonds as described in the code.

**NEW SECTION.** Sec. 3. INITIAL ALLOCATION. (1) Except as provided in subsections (2) and (4) of this section, the initial allocation of the state ceiling shall be for each year as follows:

<u>Bond Use Category</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990 and thereafter</u>
Housing	5%	25%	25%	35%
Student Loans	10%	15%	15%	15%
Exempt Facility	40%	20%	20%	35%
Public Utility	10%	10%	10%	10%
Small Issue	30%	25%	25%	0%
Remainder and redevelopment	5%	5%	5%	5%

(2) Initial allocations may be modified by the agency only to reflect an issuer's carryforward amount. Any reduction of the initial allocation shall be added to the remainder and be available for allocation or reallocation.

(3) The remainder shall be allocated by the agency among one or more issuers from any bond use category with regard to the criteria specified in section 4 of this act.

(4) Should any bond use category no longer be subject to the state ceiling due to federal or state provisions of law, the agency shall divide the amount of that initial allocation among the remaining categories as necessary or appropriate with regard to the criteria specified in section 4 of this act.

(5)(a) Prior to September 1 of each calendar year, any available portion of an initial allocation may be allocated or reallocated only to an issuer within the same bond use category, except that the remainder category, or portions thereof, may be allocated at any time to any bond use category.

(b) Beginning September 1 of each calendar year, the agency may allocate or reallocate any available portion of the state ceiling to any bond use category with regard to the criteria specified in section 4 of this act.

**NEW SECTION.** Sec. 4. CRITERIA. (1) In granting an allocation, reallocation, or carryforward of the state ceiling as provided in this chapter, the agency shall consider existing state priorities and other such criteria, including but not limited to, the following criteria:

(a) Need of issuers to issue private activity bonds within a bond use category;

(b) Amount of the state ceiling available;

(c) Public benefit and purpose to be satisfied, including economic development, educational opportunity, and public health, safety, or welfare;

(d) Cost or availability of alternative methods of financing for the project or program; and

(e) Certainty of using the allocation which is being requested.

(2) In determining whether to allocate an amount of the state ceiling to an issuer within any bond use category, the agency shall consider, but is not limited to, the following criteria for each of the bond use categories:

(a) Housing: Criteria which comply with RCW 43.180.200.

(b) Student loans: Criteria which comply with the applicable provisions of Title 28B RCW and rules adopted by the higher education coordinating board or applicable state agency dealing with student financial aid.

(c) Small issue: Recommendation by the board regarding how the amount of the state ceiling set aside for the small issue bond use category shall be allocated among issuers. Factors may include:

(i) The number of employment opportunities the project is likely to create or retain in relation to the amount of the bond issuance;

(ii) The level of unemployment existing in the geographic area likely to be affected by the project;

(iii) A commitment to providing employment opportunities to low-income persons in cooperation with the employment security department;

(iv) Geographic distribution of projects;

(v) The number of persons who will benefit from the project;

(vi) Consistency with criteria identified in subsection (1) of this section;

(vii) Order in which requests were received; and

(viii) Requirements of the board's umbrella bond program.

(d) Exempt facility or redevelopment: Factors which may include:

(i) State issuance needs;

(ii) Consistency with criteria identified in subsection (1) of this section;

(iii) Order in which requests were received;

(iv) The proportionate number of persons in relationship to the size of the community who will benefit from the project; and

(v) The unique timing and issuance needs of large scale projects that may require allocations in more than one year.

(e) Public utility: Factors which may include:

(i) Consistency with criteria identified in subsection (1) of this section; and

(ii) Timing needs for issuance of bonds over a multi-year period.

**NEW SECTION.** Sec. 5. PROCEDURE FOR OBTAINING STATE CEILING ALLOCATION. (1) No issuer may receive an allocation of the state ceiling without a certificate of approval from the agency.

(2)(a) For each state ceiling allocation request, an issuer shall submit to the agency, no sooner than ninety days prior to the beginning of a calendar year for which an allocation of the state ceiling is being requested, a form identifying:

(i) The amount of the allocation sought;

(ii) The bond use category from which the allocation sought would be made;

(iii) The project or program for which the allocation is requested;  
(iv) The financing schedule for which the allocation is needed; and  
(v) Any other such information required by the agency, including information which corresponds to the allocation criteria of section 4 of this act.

(b) Nothing in (a) of this subsection precludes a public utility issuer from filing and the agency from considering a request at such times as may be appropriate in order to meet the criteria set forth in section 4(2)(e)(ii) of this act.

(3) The agency may approve or deny an allocation for all or a portion of the issuer's request. Any denied request, however, shall remain on file with the agency for the remainder of the calendar year and shall be considered for receiving any allocation, reallocation, or carryforward of unused portions of the state ceiling during that period.

(4) After receiving an allocation request, the agency shall mail to the requesting issuer a written certificate of approval or notice of denial for an allocation amount, by a date no later than the latest of the following:

(a) Forty-five days from the effective date of this section;

(b) February 1 of the calendar year, other than 1987, for which the request is made;

(c) Fifteen days from the date the agency receives an allocation request; or

(d) Fifteen days from the date the agency receives a recommendation by the board with regard to a small issue allocation request, should the board choose to review individual requests.

(5)(a) For requests of the state ceiling of any calendar year, the following applies to all bond use categories except housing and student loans:

(i) Except for housing and student loans, any allocations granted prior to April 1, for which bonds have not been issued by September 1 of the same calendar year, shall revert to the agency on September 1 of the same calendar year for reallocation unless an extension or carryforward is granted;

(ii) Except for housing and student loans, any allocations granted on or after April 1, for which bonds have not been issued by December 15 of the same calendar year, shall revert to the agency on December 15 of the same calendar year for reallocation unless an extension or carryforward is granted.

(b) For each calendar year, any housing or student loan allocations, for which bonds have not been issued by December 15 of the same calendar year, shall revert to the agency on December 15 of the same calendar year for reallocation unless an extension or carryforward is granted.

(6) An extension of the deadlines provided by subsection (5) of this section may be granted by the agency for the approved allocation amount or a portion thereof, based on:

(a) Firm and convincing evidence that the bonds will be issued before the end of the calendar year if the extension is granted; and

(b) Any other criteria the agency deems appropriate.

(7) If an issuer determines that bonds subject to the state ceiling will not be issued for the project or program for which an allocation was granted, the issuer shall promptly notify the agency in writing so that the allocation may be canceled and the amount may be available for reallocation.

(8) Bonds subject to the state ceiling may be issued only to finance the project or program for which a certificate of approval is granted.

(9) Within three business days of the date that bonds for which an allocation of the state ceiling is granted have been delivered to the original purchasers, the issuer shall mail to the agency a written notification of the bond issuance. In accordance with chapter 39.44 RCW, the issuer shall also complete bond issuance information on the form provided by the agency.

(10) If the total amount of tax-exempt bonds issued for a project or program is less than the amount allocated, the remaining portion of the allocation shall revert to the agency for reallocation in accordance with the criteria in section 4 of this act. If the amount of tax-exempt bonds actually issued under the state ceiling is greater than the amount allocated, the entire allocation shall be disallowed.

**NEW SECTION.** Sec. 6. REALLOCATION PROCESS AND CARRYFORWARDS. (1) Beginning September 1 of each calendar year, the agency may allocate or reallocate any portions of the state ceiling for which no certificate of approval is in effect. Reallocations may also be made from the remainder category at any time during the year.

(2) Prior to the end of each calendar year, the agency shall allocate or reallocate any unused portions of the state ceiling among one or more issuers as carryforward, to be used within three years, in accordance with the code and relevant criteria described in section 4 of this act.

**NEW SECTION.** Sec. 7. EXECUTIVE ORDERS. If federal legislation is enacted or federal regulations are promulgated which affect the state ceiling, when the legislature is not in session or is less than forty-five days from the constitutional end of session, the governor may establish by executive order an alternative system for the allocation of tax-exempt bonds under the state ceiling, effective until the legislature acts. In allocating or reallocating under this section, the governor shall take into account the requirements of federal law, the policy choices expressed in state law, and the projected needs of issuers.

**NEW SECTION.** Sec. 8. FEES. A fee schedule shall be established by rule by the agency to assist in support of bond allocation activities. Fees shall reflect costs actually incurred or expected to be incurred by the agency in its bond allocation activities.

**NEW SECTION.** Sec. 9. CODE AMENDMENTS. In order to permit the full use of the authorized state ceiling under federal law, the agency may adopt rules approving any amendments made to the code after the effective date of this section.

**NEW SECTION.** Sec. 10. ANNUAL REPORT. By February 1 of each year, the agency shall summarize for the legislature each previous year's bond allocation requests and issuance. Beginning in June of 1988 and thereafter in June of each even-numbered year, the agency shall also submit a biennial report summarizing usage of the bond allocation proceeds and any policy concerns for future bond allocations.

**NEW SECTION.** Sec. 11. RATIFICATION. Any state ceiling allocations taken prior to the effective date of this section in conformance with the code and an applicable executive order of the governor are ratified and confirmed and shall remain in full force and effect notwithstanding any other provision of this act.

Sec. 12. Section 5, chapter 130, Laws of 1985 and RCW 39.44.200 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 39.44.200 through 39.44.240.

(1) "Bond" means "bond" as defined in RCW 39.46.020, but also includes any other indebtedness that may be issued by any local government to fund private activities or purposes where the indebtedness is of a nonrecourse nature payable from private sources (~~(except obligations subject to chapter 39.84 RCW)~~).

(2) "Local government" means "local government" as defined in RCW 39.46.020.

(3) "Type of bond" includes: (a) General obligation bonds; (b) revenue bonds; (c) local improvement district bonds; (d) special assessment bonds such as those issued by irrigation districts and diking districts; and (e) other classes of bonds.

**NEW SECTION.** Sec. 13. REPEALER. The following acts or parts of acts are each repealed:

- (1) Section 16, chapter 446, Laws of 1985 and RCW 39.86.010;
- (2) Section 17, chapter 446, Laws of 1985 and RCW 39.86.020;
- (3) Section 18, chapter 446, Laws of 1985 and RCW 39.86.030;
- (4) Section 2, chapter 247, Laws of 1986 and RCW 39.86.031;
- (5) Section 19, chapter 446, Laws of 1985 and RCW 39.86.040;
- (6) Section 20, chapter 446, Laws of 1985 and RCW 39.86.050;
- (7) Section 21, chapter 446, Laws of 1985 and RCW 39.86.060;
- (8) Section 22, chapter 446, Laws of 1985 and RCW 39.86.070;
- (9) Section 23, chapter 446, Laws of 1985 and RCW 39.86.900;
- (10) Section 24, chapter 446, Laws of 1985 and RCW 39.86.901;
- (11) Section 27, chapter 446, Laws of 1985 and RCW 39.86.902;

(12) Section 28, chapter 446, Laws of 1985 and RCW 39.86.903; and  
(13) Section 30, chapter 446, Laws of 1985 and RCW 39.86.904.

**NEW SECTION.** Sec. 14. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** Sec. 15. CAPTIONS. As used in this act, captions constitute no part of the law.

**NEW SECTION.** Sec. 16. LEGISLATIVE DIRECTIVE. Sections 1 through 10 of this act are each added to chapter 39.86 RCW.

**NEW SECTION.** Sec. 17. EMERGENCY CLAUSE. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 23, 1987.  
Passed the Senate April 13, 1987.  
Approved by the Governor May 8, 1987.  
Filed in Office of Secretary of State May 8, 1987.

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CHAPTER 298

[Engrossed House Bill No. 39]

SPECIAL DISTRICTS—TRANSFER OF TERRITORY—FILLING OF VACANCIES—  
SPECIAL ASSESSMENT BONDS OR NOTES—LEGISLATIVE BUDGET  
COMMITTEE TO REVIEW SPECIAL DISTRICTS

AN ACT Relating to special districts; amending RCW 85.38.070, 85.38.080, 85.38.190, and 85.38.240; adding a new section to chapter 85.38 RCW; adding a new chapter to Title 44 RCW; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. A new section is added to chapter 85.38 RCW to read as follows:

Territory that is located in one special district may be transferred from that special district to another special district as provided in this section, if a portion of this territory is coterminous with a portion of the boundaries of the special district to which it is transferred. Such a transfer shall be accomplished using the procedures in RCW 85.38.200 for annexing territory, except that the governing body of both special districts must approve the transfer and make findings that the transfer is in the public interest and that the special district to which the territory is transferred is better able to provide the activities and facilities serving the territory than the special district from which the territory is transferred.

Property in the territory so transferred shall remain liable for any special assessments of the special district from which it was transferred, if the