

CHAPTER 7C

PRIVATE ACTIVITY BOND ALLOCATION ACT

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7C.1 Short title.

This chapter shall be known and may be cited as the “*Private Activity Bond Allocation Act*”.
85 Acts, ch 225, §3

7C.2 Declaration of intent.

It is the intention of the general assembly in enacting this chapter to:

1. Implement section 146 of the Internal Revenue Code by providing a different formula for allocating the state ceiling among the various governmental units which are authorized to issue private activity bonds under the laws of this state.

2. Maximize the availability of the state ceiling to the issuers of private activity bonds within the state and thereby maximize the economic benefit to the citizens of the state from the issuance of private activity bonds.

85 Acts, ch 225, §4; 87 Acts, ch 171, §1

7C.3 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. “*Allocation*” means that portion of the state ceiling which is allocated and certified to a political subdivision hereby or by the governor’s designee pursuant to section 7C.8 with respect to an issue of bonds for a specific project or purpose.

2. “*Bond*” or “*private activity bond*” means a private activity bond as defined in section 141 of the Internal Revenue Code.

3. “*Carryforward project*” means a carryforward project or carryforward purpose as defined in section 146(f) of the Internal Revenue Code.

4. “*First-time farmer*” means a first-time farmer as defined in section 147(c) of the Internal Revenue Code.

5. “*Governor’s designee*” means the person, department, or authority designated by the governor to administer this chapter.

6. “*Internal Revenue Code*” means the Internal Revenue Code as defined in section 422.3.

7. “*Political subdivision*” means a political subdivision, authority, or department of the state which is authorized under the laws of the state to issue private activity bonds.

8. “*Qualified mortgage bond*” means a qualified mortgage bond as defined in section 143(a) of the Internal Revenue Code.

9. “*Qualified residential rental project bond*” means a qualified residential rental project bond as defined in section 142(d) of the Internal Revenue Code.

10. “*Qualified small issue bond*” means a qualified small issue bond as defined in section 144(a) of the Internal Revenue Code.

11. “*Qualified student loan bond*” means a qualified student loan bond as defined in section 144(b) of the Internal Revenue Code.

12. “*State ceiling*” means the same as defined in section 146(d) of the Internal Revenue Code.

85 Acts, ch 225, §5; 87 Acts, ch 171, §2; 2005 Acts, ch 30, §1

7C.4 Maximum amount of bonds.

The aggregate principal amount of bonds which are subject to section 146 of the Internal Revenue Code which may be issued by all political subdivisions during a calendar year shall not exceed the state ceiling for that calendar year, except as provided in section 7C.8.

85 Acts, ch 225, §6; 87 Acts, ch 171, §3

7C.4A Allocation of state ceiling.

For each calendar year, the state ceiling shall be allocated among bonds issued for various purposes as follows:

1. *a.* Thirty percent of the state ceiling shall be allocated solely to the Iowa finance authority for any of the following purposes:

- (1) Issuing qualified mortgage bonds.
- (2) Reallocating the amount, or any portion thereof, to another qualified political subdivision for the purpose of issuing qualified mortgage bonds.
- (3) Exchanging the allocation, or any portion thereof, for the authority to issue mortgage credit certificates by election under section 25(c) of the Internal Revenue Code.
- (4) Issuing qualified residential rental project bonds.

b. However, at any time during the calendar year the executive director of the Iowa finance authority may determine that a lesser amount need be allocated to the Iowa finance authority and on that date this lesser amount shall be the amount allocated to the authority and the excess shall be allocated under subsection 7.

2. Twelve percent of the state ceiling shall be allocated to bonds issued to carry out programs established under chapters 260C, 260E, and 260F. However, at any time during the calendar year the director of the Iowa department of economic development may determine that a lesser amount need be allocated and on that date this lesser amount shall be the amount allocated for those programs and the excess shall be allocated under subsection 7.

3. Sixteen percent of the state ceiling shall be allocated to qualified student loan bonds. However, at any time during the calendar year the governor's designee, with the approval of the Iowa student loan liquidity corporation, may determine that a lesser amount need be allocated to qualified student loan bonds and on that date the lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection 7.

4. Twenty-one percent of the state ceiling shall be allocated to qualified small issue bonds issued for first-time farmers. However, at any time during the calendar year the governor's designee, with the approval of the Iowa agricultural development authority, may determine that a lesser amount need be allocated to qualified small issue bonds for first-time farmers and on that date this lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection 7.

5. Eighteen percent of the state ceiling shall be allocated to bonds issued by political subdivisions to finance a qualified industry or industries for the manufacturing, processing, or assembly of agricultural or manufactured products even though the processed products may require further treatment before delivery to the ultimate consumer. A single project allocated a portion of the state ceiling pursuant to this subsection shall not receive an allocation in excess of ten million dollars in any calendar year.

6. During the period of January 1 through June 30, three percent of the state ceiling shall be reserved for private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions.

7. *a.* The amount of the state ceiling which is not otherwise allocated under subsections 1 through 5, and after June 30, the amount of the state ceiling reserved under subsection 6 and not allocated, shall be allocated to all bonds requiring an allocation under section 146 of the Internal Revenue Code without priority for any type of bond over another, except as otherwise provided in sections 7C.5 and 7C.11. A single project allocated a portion of the state ceiling pursuant to this subsection shall not receive an allocation in excess of ten million dollars in any calendar year.

b. The population of the state shall be determined in accordance with the Internal Revenue Code.

87 Acts, ch 171, §4; 90 Acts, ch 1011, §1; 91 Acts, ch 25, §1; 98 Acts, ch 1165, §1; 2005 Acts, ch 30, §2; 2008 Acts, ch 1024, §1, 2; 2008 Acts, ch 1032, §201

7C.5 Formula for allocation.

Except as provided in section 7C.4A, subsections 1 through 5, the state ceiling shall be allocated among all political subdivisions on a statewide basis on the basis of the chronological orders of receipt by the governor's designee of the applications described in section 7C.6 with respect to a definitive issue of bonds, as determined by the day, hour, and minute time-stamped on the application immediately upon receipt by the governor's designee. However, for the period January 1 through June 30 of each year, allocations to bonds for which an amount of the state ceiling has been reserved pursuant to section 7C.4A, subsection 6, shall be made to the political subdivisions submitting the applications first from the reserved amount until the reserved amount has been fully allocated and then from the amount specified in section 7C.4A, subsection 7.

85 Acts, ch 225, §7; 87 Acts, ch 171, §5; 98 Acts, ch 1165, §2

7C.6 Application for allocation.

A political subdivision which proposes to issue bonds for a particular project or purpose for which an allocation of the state ceiling is required and has not already been made under section 7C.4A, subsections 1 through 5, must make an application for allocation before issuance of the bonds. The application may be made by the political subdivision or its representative, the beneficiary of the project or purpose, or by a person acting on behalf of the beneficiary. The application shall be submitted to the governor's designee, in the form prescribed by the governor's designee. The application shall contain, where appropriate, the following information:

1. Name and mailing address of the political subdivision.
2. Name of the chief elected or appointed executive officer of the political subdivision.
3. If the project to be financed by the bonds is not to be owned by the political subdivision, the name or description and location by mailing address or other definitive description of the project for which the allocation is requested.
4. Name and mailing address of both the initial owner, beneficiary, or operator of the project and an appropriate person from whom information regarding the project or purpose can be obtained.
5. Date of adoption by the governing body of the political subdivision of any initial governmental act with respect to the bonds.
6. Amount of the state ceiling which the political subdivision is requesting be allocated to the bonds.
7. Other information which the governor's designee deems reasonably required to carry out the purposes of this chapter.

85 Acts, ch 225, §8; 87 Acts, ch 171, §6; 98 Acts, ch 1165, §3

7C.7 Certification of allocation.

Upon the receipt of a completed application pursuant to section 7C.6, the governor's designee shall promptly certify to the political subdivision the amount of the state ceiling allocated to the bonds for the purpose or project with respect to which the application was submitted. The allocation shall remain valid for one hundred twenty days from the date the allocation was certified, subject to the following conditions:

1. If the bonds are issued and delivered for the purpose or project within the one-hundred-twenty-day period or the thirty-day extension period provided in subsection 2, the political subdivision or its representative shall within ten days following the issuance and delivery of the bonds or not later than June 30 of that year, if the bonds were issued and delivered on or before that date, file with the governor's designee, in the form or manner the governor's designee may prescribe, a notification of the date of issuance and the delivery of the bonds, and the actual principal amount of bonds issued and delivered. The filing of

the notification shall be done by actual delivery or by posting in a United States post office depository with correct first class postage paid. If the actual principal amount of bonds issued and delivered is less than the amount of the allocation, the amount of the allocation is automatically reduced to the actual principal amount of the bonds issued and delivered.

2. If the political subdivision does not reasonably expect to issue and deliver the bonds within the one-hundred-twenty-day period and evidence of an executed, valid and binding agreement to purchase the bonds is obtained from an entity with the legal ability to purchase and this agreement is filed with the governor's designee, the one-hundred-twenty-day allocation period is automatically extended for an additional thirty days. The allocation period shall not be extended beyond that additional thirty days.

3. The allocation is no longer valid unless the bonds are issued and delivered prior to December 24 or in the case of bonds described in section 7C.11 are issued and delivered prior to December 31 of the calendar year in which the allocation is certified, except as provided in section 7C.8.

85 Acts, ch 225, §9; 87 Acts, ch 171, §7; 88 Acts, ch 1134, §2; 98 Acts, ch 1165, §4; 2008 Acts, ch 1024, §3

7C.8 State ceiling carryforwards.

It is the intention of the general assembly that the maximum use be made of all carryforward provisions in the Internal Revenue Code. Therefore, if the aggregate principal amount of bonds, subject to section 146 of the Internal Revenue Code, issued by all political subdivisions in a calendar year is less than the state ceiling for that calendar year, a political subdivision may apply to the governor's designee for an allocation of a specified portion of the excess state ceiling to be applied to a specified carryforward project. The governor's designee shall determine the time and manner in which applications for an allocation of excess state ceiling shall be made for this purpose and may, in the designee's discretion, refuse any requests. However, the procedures for applications, the method of identifying, and the types permitted of carryforward projects shall comply with the carryforward provisions of the Internal Revenue Code and regulations promulgated under those provisions.

85 Acts, ch 225, §10; 87 Acts, ch 171, §8

7C.9 Nonbusiness days.

If the expiration date of either the one-hundred-twenty-day period or the thirty-day extension period described in subsection 1 or 2 of section 7C.7 is a Saturday, Sunday, or any day on which the offices of the state, banking institutions, or savings and loan associations in the state are authorized or required to close, the expiration date is extended to the first day thereafter which is not a Saturday, Sunday, or other previously described day.

85 Acts, ch 225, §11; 87 Acts, ch 171, §9; 2008 Acts, ch 1024, §4

7C.10 Resubmission of expired allocations.

If an allocation becomes no longer valid as provided in section 7C.7, the political subdivision may resubmit its application for the same project or purpose. The resubmitted application shall be treated as a new application and preference, priority, or prejudice shall not be given to the application or the political subdivision as a result of the prior application.

85 Acts, ch 225, §12; 87 Acts, ch 171, §10

7C.11 Priority allocations.

Notwithstanding any other provision of this chapter, the governor's designee shall give priority in allocation of the state ceiling not yet allocated to bonds which must be issued and delivered on or prior to December 31 of the calendar year in order for the interest on the bonds to be exempt from federal income taxation. Applications for an allocation with respect to these bonds shall be accompanied by an opinion of a nationally recognized bond counsel to the effect that the bonds must be issued and delivered on or prior to December 31 in that calendar year in order for the interest on the bonds to be exempt from federal income taxation.

85 Acts, ch 225, §13; 87 Acts, ch 171, §11

7C.12 Authority and duties of the governor and governor's designee.

1. The governor shall designate a person, department, or authority to administer this chapter. The person, department, or authority so designated shall serve at the pleasure of the governor and shall be selected primarily for administrative ability and knowledge in the area of public finance.

2. In addition to the powers and duties specified in sections 7C.1 to 7C.11, the governor's designee:

a. Shall promulgate rules which are necessary or expedient to carry out the intent and purposes of the private activity bond allocation Act.

b. Shall maintain records of all applications filed by political subdivisions pursuant to section 7C.6 and all bonds issued pursuant to these applications including, but not limited to, a daily accounting of the amount of the state ceiling available for allocation, the amount of the state ceiling which has been allocated but not used, and the names, addresses, and telephone numbers of those political subdivisions for whom an allocation has been approved or disapproved and the amount of the allocation approved or disapproved for the political subdivisions.

c. Shall report quarterly any reallocation of the amount of the state ceiling by the governor's designee in accordance with this chapter to the general assembly's standing committees on government oversight and the auditor of state. The report shall contain, at a minimum, the amount of each reallocation, the date of each reallocation, the name of the political subdivision and a description of all bonds issued pursuant to a reallocation, a brief explanation of the reason for the reallocation, and such other information as may be required by a standing committee on government oversight.

85 Acts, ch 225, §14; 87 Acts, ch 171, §12; 2008 Acts, ch 1132, §1; 2009 Acts, ch 86, §2

7C.13 Qualified student loan bond issuer — open records and meetings — oversight.

1. *Condition of allocation.* As a condition of receiving the allocation of the state ceiling as provided in section 7C.4A, subsection 3, the qualified student loan bond issuer shall comply with the provisions of this section.

2. *Annual report and audit.* The qualified student loan bond issuer shall submit an annual report to the governor, general assembly, and the auditor of state by January 15 setting forth its operations and activities conducted and newly implemented in the previous fiscal year related to use of the allocation of the state ceiling in accordance with this chapter and the outlook for the future. The report shall describe how the operations and activities serve students and parents. The annual audit of the qualified student loan bond issuer shall be filed with the office of auditor of state.

3. *Open meetings for consideration of tax-exempt issuance.* The deliberations or meetings of the board of directors of the qualified student loan bond issuer that relate to the issuance of bonds in accordance with this chapter shall be conducted in accordance with chapter 21.

4. *Public hearing prior to issuance of tax-exempt bonds.* Prior to the issuance of tax-exempt bonds in accordance with this chapter, the board of directors of the qualified student loan bond issuer shall hold a public meeting after reasonable notice. The board shall give notice of the time, date, and place of the meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that information and provide interested parties with an opportunity to submit or present data, views, or arguments related to the issuance of the bonds.

5. *Open records for consideration of tax-exempt bonds.* All of the following shall be subject to chapter 22:

a. Minutes of the meetings conducted in accordance with subsection 3.

b. The data and written views or arguments submitted in accordance with subsection 4.

c. Letters seeking approval from the governor for issuance of tax-exempt bonds in accordance with this chapter.

d. The published official statement of each tax-exempt bond issue authorized in accordance with this chapter.

6. *State superintendent of banking — review.*

a. The state superintendent of banking shall not serve on the board of directors of the qualified student loan bond issuer.

b. The superintendent of banking shall annually review the qualified student loan bond issuer's total assets, loan volume, and reserves. Additionally, the superintendent shall review the qualified student loan bond issuer's procedures to inform students, prior to the submission of an application to the qualified student loan bond issuer for a loan made by the qualified student loan bond issuer, about the advantages of loans available under Tit. IV of the federal Higher Education Act of 1965, as amended, for which the students may be eligible. The review shall verify that the qualified student loan bond issuer issued bonds in accordance with this chapter in conformance to the letter requesting approval of the governor as set forth in subsection 5. The superintendent shall submit the review to the general assembly by January 15.

7. *No state obligation for bonds.* The obligations of the qualified student loan bond issuer are not the obligations of the state or any political subdivision of the state within the meaning of any constitutional or statutory debt limitations, but are obligations of the qualified student loan bond issuer payable solely and only from the qualified student loan bond issuer's funds. The qualified student loan bond issuer shall not and cannot pledge the credit or taxing power of this state or any political subdivision of this state or make its debts payable out of any moneys except those of the qualified student loan bond issuer.

2008 Acts, ch 1132, §2; 2009 Acts, ch 41, §3