WEST VIRGINIA CODE: §13-2C-21

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.

(a) Private activity bonds (as defined in Section 141(a) of the United States Internal Revenue Code of 1986, other than those described in Section 146(g) of the Internal Revenue Code) issued pursuant to this article, including bonds issued by the West Virginia public energy authority pursuant to subsection (11), section five, article one, chapter five-d of this code or under article eighteen, chapter thirty-one of this code, during any calendar year may not exceed the ceiling established by Section 146(d) of the United States Internal Revenue Code. It is hereby determined and declared as a matter of legislative finding: (i) That, in an attempt to promote economic revitalization of distressed urban and rural areas, certain special tax incentives will be provided for empowerment zones and enterprise communities to be designated from qualifying areas nominated by state and local governments, all as set forth by Section 1391, et seq., of the United States Internal Revenue Code; (ii) that qualified businesses operating in enterprise communities and empowerment zones will be eligible to finance property and provide other forms of financial assistance as provided for in Section 1394 of the United States Internal Revenue Code; and (iii) that it is in the best interest of this state and its citizens to facilitate the acquisition, construction and equipping of projects within designated empowerment zones and enterprise communities by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for these projects. It is hereby further determined and declared as a matter of legislative finding: (i) That the production of bituminous coal in this state has resulted in coal waste which is stored in areas generally referred to as gob piles; (ii) that gob piles are unsightly and have the potential to pollute the environment in this state; (iii) that the utilization of the materials in gob piles to produce alternative forms of energy needs to be encouraged; (iv) that Section 142(a)(6) of the United States Internal Revenue Code of 1986 permits the financing of solid waste disposal facilities through the issuance of private activity bonds; and (v) that it is in the best interest of this state and its citizens to facilitate the construction of facilities for the generation of power through the utilization of coal waste by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for these projects.

(b) On or before the first day of each calendar year, the Executive Director of the Development Office shall determine the state ceiling for the year based on the criteria of the United States Internal Revenue Code. The annual ceiling shall be allocated among the several issuers of bonds under this article or under article eighteen, chapter thirty-one of this code as follows:

(1) For the calendar year two thousand one, $50 million and for each subsequent calendar year, forty percent of the state ceiling for that year shall be allocated to the West Virginia Housing Development Fund for the purpose of issuing qualified mortgage bonds, qualified

mortgage certificates or bonds for qualified residential rental projects;

(2) The amount remaining after the allocation to the West Virginia Housing Development Fund described in subdivision (1) of this subsection shall be retained by the West Virginia Development Office and shall be referred to in this section as the "state allocation";

(3) Thirty-five percent of the state allocation shall be set aside by the Development Office to be made available for lessees, purchasers or owners of proposed projects, hereafter in this section referred to as "nonexempt projects", which do not qualify as exempt facilities as defined by United States Internal Revenue Code. All reservations of private activity bonds for nonexempt projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the Development Office promulgates pursuant to section two, article two, chapter five-b of this code: Provided, That all requests or reservations of funds from projects described in this subsection are submitted to the Development Office on or before November 1, of each calendar year: Provided, however, That on November 15, of each calendar year, the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section; and

(4) Ten percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities under Section 1394 of the United States Internal Revenue Code. All reservations of private activity bonds for the projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the Development Office promulgates pursuant to section two, article two, chapter five-b of this code: Provided, That all requests for reservations of funds from projects described in this subsection shall be submitted to the Development Office on or before November 1, of each calendar year: Provided, however, That on November 15, of each calendar year the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section.

(c) The remaining fifty-five percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities as defined by Section 142(a) of the United States Internal Revenue Code. All reservations of private activity bonds for exempt facilities shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the Development Office promulgates pursuant to section two, article two, chapter five-b of this code: Provided, That no reservation may be in an amount in excess of fifty percent of this portion of the state allocation: Provided, however, That all requests for reservations of funds from projects described in this subsection shall be submitted to the Development Office on or before November 1, of each calendar year: Provided further, That on November 15, of each calendar year the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section.

(d) No reservation may be made for any project until the governmental body seeking the

WV Legislature

reservation submits a notice of reservation of funds as provided in subsection (e) of this section. The governmental body shall first adopt an inducement resolution approving the prospective issuance of bonds and setting forth the maximum amount of bonds to be issued. Each governmental body seeking a reservation of funds following the adoption of the inducement resolution shall submit a notice of inducement signed by its clerk, secretary or recorder or other appropriate official to the Development Office. The notice shall include information required by the Development Office pursuant to any rule of the Development Office. Notwithstanding the foregoing, when a governmental body proposes to issue bonds for the purpose of: (i) Constructing, acquiring or equipping a project described in subdivision (3) or (4), subsection (b) of this section; or (ii) constructing an energy producing project which relies, in whole or in part, upon coal waste as fuel, to the extent the project qualifies as a solid waste facility under Section 142(a)(6) of the United States Internal Revenue Code of 1986, the project may be awarded a reservation of funds from the state allocation available for three years subsequent to the year in which the notice of reservation of funds is submitted, at the discretion of the Executive Director of the Development Office: Provided, That no discretionary reservation may be made for any single project described in this subsection in an amount in excess of thirty-five percent of the state allocation available for the year subsequent to the year in which the request is made.

(e) Currently with or following the submission of its notice of inducement, the governmental body at any time considered expedient by it may submit its notice of reservation of funds which shall include the following information:

(1) The date of the notice of reservation of funds;

(2) The identity of the governmental body issuing the bonds;

(3) The date of inducement and the prospective date of issuance;

(4) The name of the entity for which the bonds are to be issued;

(5) The amount of the bond issue or, if the amount of the bond issue for which a reservation of funds has been made has been increased, the amount of the increase;

(6) The type of issue; and

(7) A description of the project for which the bonds are to be issued.

(f) The Development Office shall accept the notice of reservation of funds no earlier than the first calendar workday of the year for which a reservation of funds is sought: Provided, That a notice of reservation of funds with respect to a project described in subdivision (4), subsection (b) of this section or an energy producing project that is eligible for a reservation of funds for a year subsequent to the year in which the notice of reservation of funds is submitted may contain an application for funds from a subsequent year's state allocation. Upon receipt of the notice of reservation of funds, the Development Office shall immediately

WV Legislature

note upon the face of the notice the date and time of reception.

(g) If the bond issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of the reservation to be made by the committee, or the thirty-first of December following the date of reservation if sooner and a statement of bond closure which has been executed by the clerk, secretary, recorder or other appropriate official of the governmental body reserving the bond issue has not been received by the Development Office within that time, then the reservation shall expire and be considered to have been forfeited and the funds reserved shall be released and revert to the portion of the state allocation from which the funds were originally reserved and shall then be made available for other qualified issues in accordance with this section and the Internal Revenue Code: Provided, That as to any reservation for a nonexempt project or any reservation for a project described in subdivision (4), subsection (b) of this section that is forfeited on or after November 1, in any calendar year, the reservation shall revert to the state allocation for allocation by the industrial revenue bond allocation review committee: Provided, however, That as to any notice of reservation of funds received by the Development Office during the month of December in any calendar year with respect to any project qualifying as an elective carry forward pursuant to Section 146(f)(5) of the Internal Revenue Code, the notice of reservation of funds and the reservation to which the notice relates may not expire or be subject to forfeiture: Provided further, That any unused state ceiling as of December 31, in any year not otherwise subject to a carry forward pursuant to Section 146(f) of the Internal Revenue Code shall be allocated to the West Virginia Housing Development Fund which shall be considered to have elected to carry forward the unused state ceiling for the purpose of issuing qualified mortgage bonds, qualified mortgage credit certificates or bonds for qualified residential rental projects, each as defined in the Internal Revenue Code. All requests for subsequent reservation of funds upon loss of a reservation pursuant to this section shall be treated in the same manner as a new notice of reservation of funds in accordance with subsections (d) and (e) of this section.

(h) Once a reservation of funds has been made for a project described in subdivision (4), subsection (b) of this section, notwithstanding the language of subsection (g) of this section, the reservation shall remain fully available with respect to the project until October 1, in the year from which the reservation was made at which time, if the bond issue has not been finally closed, the reservation shall expire and be considered forfeited and the funds reserved are released as provided in said subsection.

WV Legislature