

SENATE BILL NO. 61  
INTRODUCED BY R. JOHNSON  
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ALLOCATION OF PRIVATE ACTIVITY AND GOVERNMENTAL BONDS BY A PERCENTAGE OF THE STATE LIMITATION ON THE AMOUNT OF THOSE BONDS THAT MAY BE ISSUED; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH BY RULE THE STATE'S VOLUME CAP ON PRIVATE ACTIVITY AND GOVERNMENTAL BONDS; AMENDING SECTIONS 17-5-1302, 17-5-1311, 17-5-1312, 17-5-1315, 17-5-1316, 17-5-1318, AND 17-5-1323, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 17-5-1302, MCA, is amended to read:

**"17-5-1302. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

- (1) "Allocation" means an allocation of a part of the state's volume cap to an issuer pursuant to this part.
- (2) "Board" means the board of examiners.
- (3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.
- (4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.
- (5) "Department" means the department of administration.
- (6) "Governmental bonds" means bonds other than private activity bonds.
- (7) "Issuer" means a state issuer or local issuer.
- (8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized to issue private activity bonds or governmental bonds.
- (9) "Local portion" means that portion of the state's volume cap reserved for local issuers.
- (10) "Montana board of housing" (MBH) means the board created in 2-15-1814.
- (11) "Montana board of investments" (MBI) means the board provided for in 2-15-1808.
- (12) "Montana health facility authority" (MHFA) means the authority provided for in 2-15-1815.
- (13) "Montana higher education student assistance corporation" (MHESAC) means the nonprofit

corporation established TO PROVIDE STUDENT LOAN CAPITAL TO THE STUDENT LOAN PROGRAM ESTABLISHED BY THE BOARD OF REGENTS OF HIGHER EDUCATION under Title 20, chapter 26, part 11.

(14) "Private activity bonds" (PABs) has the meaning prescribed under section ~~1301 of the tax act~~ 141 of the Internal Revenue Code.

(15) "State issuer" means the state and any agency thereof authorized to issue private activity bonds. For this part only, the Montana higher education student assistance corporation is considered an agency of the state.

(16) "State portion" means that portion of the state's volume cap reserved for state issuers.

(17) "State's volume cap" means that amount of the volume cap specified by the department pursuant to 17-5-1311(2).

~~(17)~~(18) "Tax act" means the ~~Tax Reform Act of 1986~~ latest limitation enacted by the United States congress on the amount of cap bonds that may be issued by a state or local issuer.

~~(18)~~(19) "Volume cap" means, with respect to each calendar year, the principal amount of cap bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act."

**Section 2.** Section 17-5-1311, MCA, is amended to read:

**"17-5-1311. ~~Volume~~ State's volume cap and reservations -- department to adopt rule.** (1) For each calendar year, the state's volume cap is ~~\$150 million~~ the amount specified by the department pursuant to subsection (2). In each calendar year, subject to the provisions established by 17-5-1312 and 17-5-1313, ~~\$105 million~~ 70% of the state's volume cap is the state portion and ~~\$45 million~~ 30% is the local portion.

(2) The department shall adopt a rule for the state's volume cap specifying the maximum dollar value of cap bonds that may be issued in a calendar year. The rule adopted by the department must consider the volume cap."

**Section 3.** Section 17-5-1312, MCA, is amended to read:

**"17-5-1312. Allocation to state issuers.** (1) Except as provided in subsection (5), the state portion must be allocated to state issuers pursuant to 17-5-1316.

(2) As a condition of receiving an allocation, each state issuer, upon issuance of the bonds, shall pay 30 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit.

(3) The following ~~set-asides~~ set-aside percentages of the state's volume cap must be made in each

calendar year for the following state issuers:

State Issuer	Percentage	Allocation Amount
Board	4	\$4,200,000
MBH	41	43,050,000
MBI	25	26,250,000
MHESAC	26	27,300,000
MHFA	4	4,200,000
Total	100%	\$105,000,000

(4) Each set-aside expires on the first Monday in September.

(5) Prior to the set-aside expiration date, allocations may be made by the department to each state issuer only from its respective set-aside pursuant to 17-5-1316 and ~~no~~ a state issuer is not entitled to an allocation except from its set-aside unless otherwise provided by the governor.

(6) After the expiration date, the amount of the set-aside remaining unallocated is available for allocation by the department to issuers pursuant to 17-5-1316 without preference or priority."

**Section 4.** Section 17-5-1315, MCA, is amended to read:

**"17-5-1315. Carryforward elections.** (1) Between the first Monday in December and the second Wednesday in December, each issuer shall file with the department an application for a carryforward election with respect to any unallocated portion of the state's volume cap for the calendar year.

(2) Applications for carryforward elections may be filed only with respect to carryforward purposes authorized by the tax act. Each application for a carryforward election must contain the information required of an application for allocation under 17-5-1316 and any additional information required by either the tax act or the department.

(3) If, as of the second Wednesday in December, the aggregate amount of applications for carryforward elections does not exceed the amount of the unallocated and unused state's volume cap, each application constitutes a valid carryforward election within the meaning of the tax act.

(4) If, as of the second Wednesday in December, the aggregate amount of applications for carryforward elections exceeds the unallocated and unused state's volume cap, the department shall determine which applications constitute a valid carryforward election within the meaning of the tax act.

(5) After receipt of an application, the department shall notify the applicant in writing of either the approval of the carryforward election or the reason for disapproval."

**Section 5.** Section 17-5-1316, MCA, is amended to read:

**"17-5-1316. Allocations by the department.** (1) The department shall administer the allocation of state's volume cap bonds to issuers in accordance with this section and 17-5-1312. Applications for an allocation for each issue of bonds must be made to the department in an acceptable form and, if applicable, must contain the following:

- (a) the name of the issuer;
- (b) a description of the purpose or purposes for which the proceeds of the state's volume cap bonds will be used, including, if appropriate, a description of the project or projects to be financed;
- (c) the location of the project or projects;
- (d) the name and address of each project owner and user;
- (e) a certified copy of the inducement resolution adopted or official action taken by the issuer, pursuant to the tax act, approving the project or the purpose and granting preliminary authorization for the issuance of the state's volume cap bonds;
- (f) the preliminary opinion of a qualified bond counsel stating that the proposed purpose for which the state's volume cap bonds are to be issued qualifies under applicable state law and the tax act and that the interest on the bonds is not taxable as gross income for purposes of federal income taxation;
- (g) evidence that all public hearing requirements concerning the proposed purpose and project have been met;
- (h) a copy of a letter from an underwriter, bank, or other financial institution certifying that in its opinion the proposed financing is feasible, that the state's volume cap bonds may be successfully sold under current market conditions, and that it has reviewed all of the information necessary to form its opinion;
- (i) the amount of allocation requested; and
- (j) such other information as the department considers necessary.

(2) The department shall issue allocations in chronological order of the receipt of completed applications. Completed applications received by the department on the same day must be ranked according to the earliest inducement resolution or official action date."

**Section 6.** Section 17-5-1318, MCA, is amended to read:

**"17-5-1318. Terms of allocations.** (1) Unless terminated earlier by the issuer, an allocation is valid for 90 days from the date the department mails the notice of approval. Prior to the expiration of the 90-day period, the department may extend the period of validity for an additional 30 days upon presentation of evidence that an

agreement to purchase the state's volume cap bonds for which the allocation was given has been obtained from an entity legally authorized to purchase them.

(2) If the state's volume cap bonds are not issued within the period of validity as determined under subsection (1), the allocation automatically expires.

(3) All allocations expire on December 31 of the year in which they were made. However, this subsection does not limit the term of an allocation for which a valid carryforward election has been made."

**Section 7.** Section 17-5-1323, MCA, is amended to read:

**"17-5-1323. Recordkeeping.** The department shall maintain complete records of all applications for allocations to ~~assure~~ ensure that the requirements of the tax act, with respect to the volume cap, and the requirements of the state's volume cap are observed."

NEW SECTION. **Section 8. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on October 1, 2001.

(2) [Section 2(2) and this section] are effective on passage and approval.

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