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**HOUSE BILL 169**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Robert M. Burpo**

**AN ACT**

**RELATING TO PUBLIC FINANCE; GIVING GREATER DISCRETION TO THE  
STATE BOARD OF FINANCE FOR THE ALLOCATION OF THE STATE'S  
PRIVATE ACTIVITY BOND CEILING; EXPANDING THE DEFINITION OF  
"ISSUING AUTHORITY"; AMENDING SECTIONS OF THE NMSA 1978.**

**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**

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1 making a mortgage credit certificate election set forth in the  
2 board allocation, which shall be the earlier of one hundred  
3 twenty days from the date of issuance of the allocation or the  
4 bond issuance expiration date for the calendar year of the  
5 allocation [~~provided, however, that in the case of allocations~~  
6 ~~issued pursuant to Subsection A or B of Section 3 of the~~  
7 ~~Private Activity Bond Act, "allocation expiration date" means~~  
8 ~~July 1 of the calendar year of the allocation~~];

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

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

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

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

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1 authority may elect to treat as a carryforward under Section  
2 146 of the code;

3 (7) "carryforward purpose" means:

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

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

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

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

12 (8) "code" means the Internal Revenue Code of  
13 1986, as amended;

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

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

19 (11) "issuing authority" means the state,  
20 state agencies, regional housing authorities, counties, [and]  
21 incorporated municipalities and any other governmental entity  
22 permitted by state law to issue private activity bonds;

23 (12) "mortgage credit certificate election"  
24 means an election pursuant to Section 25(c)(2)(A)(ii) of the  
25 code, by an issuing authority not to issue qualified mortgage

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1 bonds which the issuing authority is otherwise authorized to  
2 issue, in exchange for the authority under Section 25 of the  
3 code to issue mortgage credit certificates in connection with  
4 a qualified mortgage credit certificate within the meaning of  
5 Section 25(c)(2) of the code;

6 (13) "private activity bond" means:

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

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

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

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

21 (16) "qualified student loan bond" means any  
22 bond issued as part of an issue of which the applicable  
23 percentage or more of the net proceeds thereof are to be used  
24 directly or indirectly to make or finance student loans under  
25 programs identified by Section 144(b) of the code;

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

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

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

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

11 (21) "state agency" means the New Mexico  
12 industrial and agricultural finance authority, the New Mexico  
13 educational assistance foundation, the New Mexico mortgage  
14 finance authority and any other agency, authority,  
15 instrumentality, corporation or body, now existing or  
16 hereafter created, which under state law ~~can~~ may issue  
17 private activity bonds on behalf of the state;

18 (22) "state ceiling" means, for any calendar  
19 year, the greater of an amount equal to fifty dollars (\$50.00)  
20 multiplied by the state population as shown by the most recent  
21 census estimate of the resident population of the state  
22 released by the United States bureau of census before the  
23 beginning of such calendar year or one hundred fifty million  
24 dollars (\$150,000,000) or such different amount as may be  
25 provided by Section 146(d) of the code;

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

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

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

14                  C. References in the Private Activity Bond Act to  
15 particular sections of the code or the regulations shall be  
16 deemed also to refer to any successor or recodification  
17 sections. "

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

20                  "6-20-3. ALLOCATION OF STATE CEILING. -- [~~A. Until July 1~~  
21 ~~in any calendar year, forty percent of~~] The board shall  
22 allocate the state ceiling for the calendar year [~~shall be~~  
23 ~~allocated to state agencies as a group; provided, however,~~  
24 ~~that such allocation shall be made~~] in accordance with  
25 directives, rules or regulations governing the distribution of

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1 allocations to be established by the board.

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

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

17 ~~D. From July 1 through December 31 in any calendar~~  
18 ~~year, the board shall prescribe the allocation of the state~~  
19 ~~ceiling. ]"~~

20 Section 3. Section 6-20-5 NMSA 1978 (being Laws 1988,  
21 Chapter 46, Section 5) is amended to read:

22 "6-20-5. REQUEST FOR ALLOCATION. --A request for  
23 allocation may be submitted to the board at any time and shall  
24 consist of the following:

25 A. a letter from the issuing authority or, in the

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1 case of a project, a letter from bond counsel for the issuing  
2 authority or the user stating the amount of the state ceiling  
3 requested in dollars;

4 B. in the case of a project, a copy of the  
5 inducement resolution, certified by an official of the issuing  
6 authority, and a statement of bond counsel for the issuing  
7 authority or the user that the bonds to be issued are  
8 qualified private activity bonds that require an allocation of  
9 the state ceiling;

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

13 (1) a description of the project and its  
14 specific location;

15 (2) the estimated number of jobs, both  
16 construction and permanent, which can be filled by persons who  
17 are residents of the state at the time of submission of the  
18 request for allocation;

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

21 (4) the ~~maximum~~ amount of the bonds to be  
22 issued;

23 (5) a proposed starting date and estimated  
24 completion date of the construction project;

25 (6) information relating to the feasibility of



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1 the proposed project, showing that the project will generate  
2 revenues and cash flow sufficient to make payments under the  
3 lease or installment sale agreement;

4 (7) the amount and source of private capital  
5 which will be used for the project in addition to bond  
6 financing;

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

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

14 (10) any other information which the user  
15 believes will aid the board in considering the request for  
16 allocation; and

17 (11) any other information specifically  
18 requested by the board;

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

21 E. in the case of a mortgage credit certificate  
22 election, a letter from the issuing authority stating that a  
23 qualified mortgage credit certificate program has been adopted  
24 by the issuing authority. "

25 Section 4. Section 6-20-6 NMSA 1978 (being Laws 1988,

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1 Chapter 46, Section 6) is amended to read:

2 "6-20-6. ALLOCATION. -- After considering a request for  
3 allocation, the board may within a reasonable time, as  
4 determined by the board, issue an allocation [~~provided,~~  
5 ~~however, that an allocation requested by an issuing authority~~  
6 ~~pursuant to Subsection A or B of Section 3 of the Private~~  
7 ~~Activity Bond Act shall be issued by the board within a~~  
8 ~~reasonable time after a request for allocation is submitted to~~  
9 ~~the board]~~. An allocation shall state the amount, in dollars,  
10 of the state ceiling allocated and shall state the allocation  
11 expiration date. "

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