

CHAPTER 76

AN ACT providing for the allocation of the State's annual bond volume limits on certain bonds in accordance with the federal American Recovery and Reinvestment Act of 2009, and amending the title and body of P.L.1987, c.393.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1 Section 1 of P.L.1987, c.393 (C.49:2A-1) is amended to read as follows:

C.49:2A-1 Short title.

1. This act shall be known and may be cited as the "New Jersey Bond Volume Cap Allocation Act."

2. The Title of P.L.1987, c.393 is amended to read as follows:

Title amended.

AN ACT to provide for the allocation of the State's volume cap on certain bonds established under provisions of the federal Internal Revenue Code.

3. Section 2 of P.L.1987, c.393 (C.49:2A-2) is amended to read as follows:

C.49:2A-2 Findings, determinations.

2. The Legislature finds and determines that:

a. The Internal Revenue Code of 1986, 26 U.S.C. s.146 et seq., as amended, by the "Tax Reform Act of 1986," Pub.L.99-514, and as thereafter amended, hereinafter referred to as the "Code," imposes an annual limitation on the volume of tax-exempt private activity bonds and the private activity portion of governmental bonds issued after August 15, 1986.

b. The Code limits the annual volume of tax-exempt private activity bonds and the private activity portion of governmental bonds for the State of New Jersey to \$75.00 per resident for calendar year 1987 and \$50.00 per resident for calendar years, thereafter, based on the most recent population estimate provided by the Bureau of the Census before the beginning of the calendar year to which the limitation applies.

c. The use of tax-exempt bonds is an effective and necessary method of financing programs for housing, water supply, sewerage treatment, hazardous waste treatment, storage and disposal, solid waste disposal, resource recovery and economic development, and such financing promotes and improves the health, safety, welfare and quality of life of the residents of the State.

d. The Code establishes a formula for allocation of the volume cap which, pursuant to subsection (e) of section 146 of the Code, was subject to temporary modification by gubernatorial executive order until December 31, 1987. The Code also permits the State to establish by law an alternative formula for allocating the volume cap.

e. In accordance with the Code, the Governor by Executive Orders No.147 of 1986 and No.185 of 1988, has heretofore established procedures for the allocation of the State's volume cap on private activity bonds and the private activity portion of governmental bonds within the State under the interim authority provided by the Code.

f. There is a Statewide need to assure that the limited amount of tax-exempt private activity bond financing available is used in the most effective manner by issuers of bonds in the State in order to provide the greatest benefits to the State, and that need can best be met

by authorizing the Governor to continue to allocate portions of the State's volume cap among issuers.

g. The Code as amended further provides for annual limitations on the volume of other types of tax-exempt bonds or taxable bonds issued by governmental entities which may have the benefit of certain tax credits or tax subsidies. Specifically, the American Recovery and Reinvestment Act of 2009, Pub.L. No.111-5, further amended and supplemented the Code to provide for the issuance of certain tax-exempt, tax-credit and tax subsidy types of bonds, including "Recovery Zone Facility Bonds," "Recovery Zone Economic Development Bonds," "Qualified School Construction Bonds," "Qualified Zone Academy Bonds" and "Qualified Energy Conservation Bonds." These types of bonds are intended to finance programs to facilitate the economic recovery of the nation, contain limitations on the amount which can be issued throughout the nation and therefore require an allocation of such national limitation among the several states, including the State of New Jersey.

h. There is a Statewide need to assure that the limited amount of tax-exempt private activity bond financing and other types of tax-exempt, tax-credit or tax subsidy bond financing which are now authorized under the Code or may be authorized under the Code in the future, is used in the most effective manner by issuers of bonds in the State in order to provide the greatest benefits to the State, and that need can best be met by authorizing the Governor to continue to allocate portions of the State's volume cap among issuers.

4. Section 3 of P.L.1987, c.393 (C.49:2A-3) is amended to read as follows:

C.49:2A-3 Definitions.

3. As used in this act:

a. "Bond" means a revenue obligation, security, bond, note, debenture, certificate or other evidence of indebtedness of an issuer.

b. "Carryforward" means that portion of the State volume cap for any calendar year which is unused during that calendar year and which is available to be carried forward to be used in later years pursuant to the Code.

c. "Federal formula" means the formula or formulas for allocation of the State volume cap now or hereafter established pursuant to the Code.

d. "Governmental bond" means any tax-exempt bond which is not a private activity bond.

e. "Issuer" means the State or any political subdivision of the State or any entity issuing bonds on behalf of the State or any political subdivision of the State.

f. "Private activity bond" and "private activity portion of governmental bonds" means a bond or portion thereof subject to any allocation of the State volume cap pursuant to the Code.

g. "Tax-exempt bond" means a bond, note or other obligation the interest on which is not includible in federal gross income pursuant to section 103 of the Code.

h. "Tax-credit bond" or "tax subsidy bond" is a bond the interest on which is included in gross income for federal income tax purposes, but in respect of which the holder receives a tax credit or, in the alternative, the issuer receives an interest subsidy payment, which tax credit or interest subsidy payment is predicated on the bond qualifying for such amounts under applicable provisions of the American Recovery and Reinvestment Act of 2009, Pub.L. No.111-5 or such other provision of federal law as may amend or supplement the Code from time to time.

i. "Volume cap" means the annual dollar limitation on the issuance of tax-exempt private activity bonds and the private activity portion of governmental bonds now or hereafter imposed on issuers by the Code or any other annual dollar limitation on the issuance of tax-credit bonds or tax-subsidy bonds under the Code.

5. Section 4 of P.L.1987, c.393 (C.49:2A-4) is amended to read as follows:

C.49:2A-4 Allocation of State volume cap.

4. a. In order to ensure that the limited amounts of available tax-exempt private activity bond financing, tax-credit bond financing, and tax-subsidy bond financing are used in the most effective manner by issuers, the Governor is authorized to establish a procedure for allocation of the State volume cap which procedure may provide for a reallocation formula that differs from the federal formula.

b. Any allocation procedure established by the Governor shall provide, by executive order or otherwise, that:

(1) The entire State volume cap be allocated to the Department of the Treasury for reallocation by the State Treasurer;

(2) Any allocations made pursuant to this act be reviewed periodically and that unused allocations may be utilized for carryforward or rescinded for reallocation and carryforward, for reallocation, or for carryforward, as the case may be; and

(3) Any department of State Government or issuer receiving an allocation may establish guidelines and procedures with respect to that allocation and, if permitted, with respect to the reallocation and carryforward of that allocation or the reallocation, or carryforward of that allocation, as the case may be.

c. The allocation procedure and formula, if any, established by the Governor pursuant to this section shall be applicable to the allocation of the State volume cap for the 1988 calendar year, and, unless modified or revoked by further action of the Governor, shall be applicable to each calendar year thereafter.

6. Section 5 of P.L.1987, c.393 (C.49:2A-5) is amended to read as follows:

C.49:2A-5 Annual report.

5. The Governor shall submit to the Legislature, after January 1, 1988 and on or before January 20, 1988, and after January 1 and on or before January 20 annually thereafter, a written report providing a review of the allocation of the State volume cap during the preceding calendar year and the preliminary allocation anticipated for the current calendar year. If the information concerning the preliminary allocation is not available on each January 20, the Governor shall submit that information to the Legislature as soon as the information is available. The annual report shall include for the year being reviewed and for the current calendar year, as may be applicable:

a. A statement of the annual State volume cap;

b. An explanation of any formula used or to be used for the allocation among issuers;

c. The name of issuers granted any portion of the annual State volume cap, the amount of the State volume cap allocated to each issuer, the amount of bonds issued under the classifications of qualified private activity bonds set forth in section 146 of the Code and tax-credit bonds and tax-subsidy bonds under any other applicable section of the Code, a description of the nature of each bond issuance under the State volume cap and the private

business use if any applicable to the bonds, and any elective carryforward and reallocation and the use and purposes thereof; and

d. A statement of guidelines, terms and conditions, and procedures established by any department of State Government or issuer promulgated under the authority of section 4 of this act and under the authority of any executive action taken thereunder, and any action concerning the allocation of the State volume cap or any carryforward that is an exception or deviation from the standard guidelines, terms and conditions, and procedures.

The Governor shall also submit to the Legislature in writing, as soon as is possible, any modification or revocation of an allocation procedure or formula established pursuant to section 4 of this act.

7. This act shall take effect immediately.

Approved June 29, 2009.