

REFERENCE TITLE: private activity bonding

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

## **SB 1718**

Introduced by  
Senator Kaiser

AN ACT

AMENDING SECTIONS 35-902, 35-904, 35-905 AND 35-907, ARIZONA REVISED  
STATUTES; RELATING TO PRIVATE ACTIVITY BONDING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 35-902, Arizona Revised Statutes, is amended to  
3 read:

4 35-902. Allocation

5 A. Subject to this chapter, the total amount of the state ceiling  
6 is allocated among projects pursuant to this section. The director shall  
7 issue confirmations on a ~~first come, first served~~ **FIRST-COME,**  
8 **FIRST-SERVED** basis, within any particular category of projects as  
9 described in subsection C, D, E, F or G of this section.

10 B. Thirty percent of the state ceiling is allocated to projects  
11 that are designated at the sole discretion of the director.

12 C. ~~Thirty-five~~ **TEN** percent of the state ceiling is allocated to  
13 qualified mortgage revenue bonds and qualified mortgage credit certificate  
14 programs, excluding any such bonds and certificate programs for home  
15 improvement and rehabilitation.

16 D. ~~Fifteen~~ **FORTY-FIVE** percent of the state ceiling is allocated to  
17 qualified residential rental projects as described in the United States  
18 internal revenue code of 1986.

19 E. Five percent of the state ceiling is allocated to qualified  
20 student loan projects.

21 F. Five percent of the state ceiling is allocated to manufacturing  
22 projects.

23 G. ~~Ten~~ **FIVE** percent of the state ceiling is allocated to all  
24 projects financable through issuance of bonds that require an allocation  
25 of state ceiling and that are not described and provided for in  
26 subsections C, D, E and F of this section. Such projects include, but are  
27 not limited to, qualified mortgage revenue bonds and qualified mortgage  
28 credit certificate programs for home improvement and rehabilitation.

29 H. A request shall not be filed and a confirmation shall not be  
30 issued to a project unless the project is subject to section 146 of the  
31 code. ~~No~~ **A** project is **NOT** deemed to have been allocated any portion of  
32 the state ceiling unless, in connection with the project, this chapter has  
33 been substantially complied with.

34 I. Any request on file with the authority for which a confirmation  
35 has not been issued by 5:00 p.m. on March 31, other than a request for an  
36 allocation pursuant to subsection B of this section, is deemed to have  
37 expired at 5:00 p.m. on March 31. All or any part of any confirmation for  
38 which bonds have not been issued or for which a qualified mortgage credit  
39 certificate program has not been established by 5:00 p.m. on March 31,  
40 evidenced by the filing of a certificate of closing with the authority, or  
41 for which confirmations have not been extended pursuant to section 35-910,  
42 is deemed to have expired.

1 J. At any given time, an issuer, or an issuer together with one or  
2 more other issuers, may not file more than one request for each project,  
3 except that the authority may satisfy an allocation request from one or  
4 more categories of projects as described in subsection B, C, D, E, F or G  
5 of this section. This subsection does not prohibit an issuer from  
6 refiling a request for a given project if a prior request has expired or  
7 filing a request for each separate and distinct project.

8 ~~K. An issuer may not transfer or assign its rights to an allocation~~  
9 ~~of state ceiling from one project to another project or from itself to~~  
10 ~~another issuer.~~

11 Sec. 2. Section 35-904, Arizona Revised Statutes, is amended to  
12 read:

13 35-904. Obtaining and issuing confirmations

14 A. Subject to section 35-905, a confirmation allocating a portion  
15 of the state ceiling to a project must be obtained before the sale or  
16 issuance of bonds or mortgage credit certificates by the issuer. A  
17 confirmation may be obtained by filing with the authority a request and  
18 evidence of an inducement resolution or other official action taken by the  
19 issuer in connection with the project. Requests filed by mail are deemed  
20 to be filed with the authority at 5:00 p.m. on the day the request is  
21 actually received at the authority. All requests received on the same  
22 date and at the same time shall be dated and numbered by lot and  
23 confirmations to those requests shall be issued in the order determined by  
24 lot.

25 B. On and after the first business day of each year, a request may  
26 be prepared and filed by the issuer or on behalf of the issuer by bond  
27 counsel or any other interested person.

28 C. Except as provided in ~~section 35-902, subsection I,~~ section  
29 35-909 and subsection D of this section, a confirmation issued before 5:00  
30 p.m. on March 31 expires and ~~no~~ AN allocation is NOT deemed to be made  
31 unless the applicable bonds have been issued or a qualified mortgage  
32 credit certificate program has been established and a certificate of  
33 closing has been actually filed, not merely postmarked, with the authority  
34 ~~no~~ NOT later than ninety days after the date of the confirmation or the  
35 first business day after the ninetieth day if the ninetieth day is not a  
36 business day. The confirmation may be extended as provided in section  
37 35-910 beyond the ninety-day period or 5:00 p.m. on March 31.

38 D. Notwithstanding subsection C of this section, a confirmation  
39 issued for a project to be funded in part with an urban development action  
40 grant to be made under section 119 of the housing and community  
41 development act of 1974 (P.L. 93-383; 88 Stat. 633) or a housing  
42 development grant to be made under section 301 of the housing and  
43 ~~urban-renewal~~ URBAN-RURAL recovery act of 1983 (P.L. 98-181, title III,  
44 section 301, 97 Stat. 1196 and amended October 17, 1984, P.L. 98-479,  
45 title III, section 103, 98 Stat. 2223) expires and ~~no~~ AN allocation is NOT

1 deemed to be made unless the applicable bonds have been issued and a  
2 certificate of closing and evidence satisfactory to the director of the  
3 commitment to make an urban development action grant or a housing  
4 development grant with respect to such project have been actually filed,  
5 not merely postmarked, with the authority ~~no~~ NOT later than 5:00 p.m. on  
6 December 26.

7 E. Subject to this section and section 35-909, the confirmation  
8 shall ensure allocation in the manner prescribed by the code for a dollar  
9 amount of bonds or a qualified mortgage credit certificate program not in  
10 excess of the amount set forth in the confirmation.

11 F. The director shall decline to issue confirmations at such time  
12 as the aggregate amount of bonds or mortgage credit certificates allocated  
13 under all confirmations previously issued and not expired, together with  
14 the proposed issue of bonds or mortgage credit certificates as to which a  
15 request has been received, would, through 5:00 p.m. on March 31, exceed  
16 the respective aggregate amount allocated under section 35-902, subsection  
17 C, D, E, F or G for such purpose, and from April 1, exceed the aggregate  
18 amount of the state ceiling that is not allocated under an unexpired  
19 confirmation nor within the discretion of the director pursuant to section  
20 35-902, subsection B. On expiration of a confirmation or release of an  
21 allocation, the director shall issue a confirmation to the next numbered  
22 request which is equal to or less than the then available portion of the  
23 state ceiling or to the next numbered request if the principal amount of  
24 such request is reduced to an amount equal to or less than the then  
25 available portion of the state ceiling available for such purpose. The  
26 director may only issue a single confirmation for each request.

27 G. A confirmation made pursuant to the director's discretion may be  
28 accompanied by a certificate executed by the director. On request, the  
29 director shall execute a certificate stating that the confirmation was not  
30 made in consideration of any bribe, gift, gratuity or direct or indirect  
31 contribution to any political campaign. The director may require such  
32 oaths or affirmations as the director considers to be necessary to verify  
33 the accuracy of the certificate.

34 H. The director shall ~~attempt to~~ issue confirmations within three  
35 business days after receipt and shall issue confirmations in the order of  
36 receipt of fully and properly completed requests within the limitations of  
37 subsection F of this section. The authority shall notify the issuer or  
38 other contact person listed in the request in writing, by ~~e-mail~~ EMAIL or  
39 by telephone of the issuance of a confirmation. The authority is not  
40 responsible for returning confirmations to the filing party. A  
41 confirmation shall be available for pickup at the authority after issuance  
42 of the confirmation.

1           Sec. 3. Section 35-905, Arizona Revised Statutes, is amended to  
2 read:

3           35-905. Restrictions on confirmations; definition

4           A. Before December 17, a confirmation shall not be allocated to a  
5 project in an amount greater than ~~thirty-five million dollars~~ \$35,000,000,  
6 except that this subsection does not apply to any project that is eligible  
7 to receive an allocation pursuant to section 35-902, subsection B, ~~OR D~~  
8 ~~OR E~~. For the purposes of this section, the amount of allocation to a  
9 project shall also include any other state ceiling allocation received by  
10 any related person to the project.

11           B. For the purposes of this section, "related person" has the same  
12 meaning as provided in section 147(a)(2) of the code, except that all  
13 references to fifty percent shall be changed to twenty-five percent.

14           Sec. 4. Section 35-907, Arizona Revised Statutes, is amended to  
15 read:

16           35-907. Allocations after 5:00 p.m. December 16; reallocation  
17 of carryforwards; definition

18           A. Any portions of the state ceiling for which bonds have not been  
19 issued by 5:00 p.m. December 16, other than confirmations extended  
20 pursuant to section 35-910, shall be pooled and are subject to allocation  
21 by the director to projects eligible for a ~~carry-forward~~ CARRYFORWARD  
22 allocation under ~~the code~~ SECTION 35-902, SUBSECTION D.

23           B. Obtaining and issuing a confirmation after 5:00 p.m. December 16  
24 shall occur as provided in section 35-904, subject to the following  
25 restrictions and changes:

26           1. A notice of intent shall be filed on or before December 15 with  
27 the authority by ~~any~~ THE STATEWIDE issuer, bond counsel or other  
28 interested person, with respect to projects for which allocations may be  
29 carried forward pursuant to section 146 of the code. ~~Such~~ THE notice of  
30 intent shall be considered and confirmations shall be issued by the  
31 director to the ~~issuers~~ THE STATEWIDE ISSUER on December 17. Any portions  
32 of the state ceiling for which bonds have not been issued or for which a  
33 qualified mortgage credit certificate program has not been established by  
34 5:00 p.m. December 26 shall be allocated by the director and confirmations  
35 shall be issued to ~~such issuers~~ THE STATEWIDE ISSUER before January  
36 1. ~~Issuers~~ THE STATEWIDE ISSUER shall not file elections with the federal  
37 government under section 146 of the code until an allocation has been  
38 issued by the authority under this section for the bonds pertaining to a  
39 project. The failure to file a notice of intent results in the exclusion  
40 of the project from allocations to ~~issuers~~ THE STATEWIDE ISSUER of any  
41 portion of the current calendar year state ceiling.

42           2. A security deposit equal to one percent of the principal amount  
43 stated in the notice of intent shall be received by the authority within  
44 five days after notification by the director that the project is eligible  
45 for a ~~carry-forward~~ CARRYFORWARD allocation. ~~No~~ A security deposit is NOT

1 required if the direct beneficiary of the bonds proceeds is this state or  
2 a county, city, town or nonprofit entity, ~~the issuer is a student loan~~  
3 ~~corporation,~~ the project includes urban development action grant or  
4 housing development grant financing, is a project described in section  
5 1317(3)(N) of the tax reform act of 1986 ~~or is a qualified mortgage~~  
6 ~~revenue bond project or is a qualified mortgage credit certificate program~~  
7 or the confirmation is issued by the director on or after December 26.  
8 The security deposit is forfeited to the authority if bonds are not issued  
9 within three years after the receipt of the deposit. For bonds that are  
10 issued from and after December 31, 2015, any security deposit made in  
11 relation to the project for which the bonds are issued shall be refunded  
12 if the bonds are issued within three years after the receipt of the  
13 deposit that is required under this paragraph, whether or not  
14 carry-forward allocation is used.

15 C. NOTWITHSTANDING SUBSECTION B OF THIS SECTION AND SECTION 35-904,  
16 ON WRITTEN NOTICE TO THE DIRECTOR, AN ISSUER MAY REALLOCATE ANY  
17 CARRYFORWARD ALLOCATION PROPERLY OBTAINED AND ISSUED PURSUANT TO  
18 SUBSECTION B OF THIS SECTION TO ANOTHER PROJECT OF THE SAME TYPE, BY THE  
19 SAME ISSUER, IF THE PROJECT IS LOCATED WHOLLY WITHIN THE JURISDICTION OF  
20 THE ISSUER. A REALLOCATION MADE PURSUANT TO THIS SUBSECTION MUST BE  
21 CONSISTENT WITH THIS SECTION AND WITH APPLICABLE FEDERAL LAW. A  
22 REALLOCATION MADE PURSUANT TO THIS SUBSECTION INCREASES THE AGGREGATE  
23 AMOUNT OF THE ORIGINAL CARRYFORWARD ALLOCATION TO WHICH THE REALLOCATION  
24 RELATES AND EXTENDS THE TERM OF THE ORIGINAL CARRYFORWARD ALLOCATION  
25 DURING WHICH THE BONDS MUST BE ISSUED OR A REFUND OF ANY SECURITY DEPOSIT  
26 PREVIOUSLY RECEIVED BY THE AUTHORITY ON ACCOUNT OF THE ORIGINAL  
27 CARRYFORWARD ALLOCATION MUST BE MADE.

28 D. FOR THE PURPOSES OF THIS SECTION, "STATEWIDE ISSUER" MEANS THE  
29 AUTHORITY.