

House Engrossed Senate Bill
private activity bonding

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

CHAPTER 202
SENATE BILL 1718

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, FIRST-SERVED
8 basis, ~~SUBJECT TO SECTION 35-904, SUBSECTION A IN THE EVENT OF~~
9 ~~OVERSUBSCRIPTION~~, within any particular category of projects as described
10 in subsection C, D, ~~OR E, F or G~~ of this section.

11 B. ~~Thirty~~ TWENTY-FIVE percent of the state ceiling is allocated to
12 projects that are designated at the sole discretion of the director.

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

17 D. ~~Fifteen~~ FORTY percent of the state ceiling is allocated to
18 qualified residential rental projects as described in SECTION 142(d) OF
19 the United States internal revenue code of 1986.

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

22 ~~F.~~ E. Five percent of the state ceiling is allocated to
23 manufacturing projects.

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

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

35 ~~I.~~ G. Any request on file with the authority for which a
36 confirmation has not been issued by 5:00 p.m. on March 31, other than a
37 request for an allocation pursuant to subsection B OR D of this section,
38 is deemed to have expired at 5:00 p.m. on March 31. OTHER THAN A
39 CONFIRMATION MADE PURSUANT TO SUBSECTION B OF THIS SECTION OR FOR WHICH
40 CONFIRMATIONS HAVE NOT BEEN EXTENDED PURSUANT TO SECTION 35-910, all or
41 any part of any confirmation for which bonds have not been issued or for
42 which a qualified mortgage credit certificate program has not been
43 established by 5:00 p.m. on March 31, evidenced by the filing of a
44 certificate of closing with the authority, ~~or for which confirmations have~~
45 ~~not been extended pursuant to section 35-910~~, is deemed to have expired.

1 ~~J~~. H. At any given time, an issuer, or an issuer together with one
2 or more other issuers, may not file more than one request for each
3 project, except that the authority may satisfy an allocation request from
4 one or more categories of projects as described in subsection B, C, D, ~~OR~~
5 ~~E, F or G~~ of this section. This subsection does not prohibit an issuer
6 from refileing a request for a given project if a prior request has expired
7 or 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 I. BEGINNING FROM AND AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO
12 THIS SECTION UNTIL JULY 31, 2030:

13 1. FROM MARCH 31 THROUGH JULY 31 OF EACH YEAR, EXCEPT FOR THE
14 PERCENTAGE ALLOCATED BY THE DIRECTOR PURSUANT TO SUBSECTION B OF THIS
15 SECTION, SIXTY PERCENT OF THE REMAINING STATE CEILING IS ALLOCATED TO
16 PROJECTS PRESCRIBED IN SUBSECTIONS C AND D OF THIS SECTION.

17 2. NOTWITHSTANDING SECTION 35-905, SUBSECTION A, FROM MARCH 31
18 THROUGH JULY 31 OF EACH YEAR, A CONFIRMATION MAY NOT BE ALLOCATED TO A
19 PROJECT PRESCRIBED IN SUBSECTION C OF THIS SECTION IN AN AMOUNT GREATER
20 THAN \$35,000,000.

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

23 35-904. Obtaining and issuing confirmations

24 A. Subject to section 35-905, a confirmation allocating a portion
25 of the state ceiling to a project must be obtained before the sale or
26 issuance of bonds or mortgage credit certificates by the issuer. A
27 confirmation may be obtained by filing with the authority a request and
28 evidence of an inducement resolution or other official action taken by the
29 issuer in connection with the project. Requests filed by mail are deemed
30 to be filed with the authority at 5:00 p.m. on the BUSINESS day the
31 request is actually received at the authority, ~~WHETHER BY MAIL OR EMAIL~~.
32 All requests received on the same date and at the same time shall be dated
33 and numbered by lot and confirmations to those requests shall be issued in
34 the order determined by lot.

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

38 C. Except as provided in section 35-902, subsection ~~F~~ G, section
39 35-909 and subsection D of this section, a confirmation issued before
40 5:00 p.m. on March 31 expires and ~~no~~ AN allocation is NOT deemed to be
41 made unless the applicable bonds have been issued or a qualified mortgage
42 credit certificate program has been established and a certificate of
43 closing has been actually filed AND RECEIVED, not merely postmarked,
44 INCLUDING BY EMAIL, with the authority ~~no~~ NOT later than ninety days after
45 the date of the confirmation or the first business day after the ninetieth

1 day if the ninetieth day is not a business day. The confirmation may be
2 extended as provided in section 35-910 beyond the ninety-day period or
3 5:00 p.m. on March 31.

4 D. Notwithstanding subsection C of this section, a confirmation
5 issued for a project to be funded in part with an urban development action
6 grant to be made under section 119 of the housing and community
7 development act of 1974 (P.L. 93-383; 88 Stat. 633) or a housing
8 development grant to be made under section 301 of the housing and
9 ~~urban renewal~~ URBAN-RURAL recovery act of 1983 (P.L. 98-181, title III,
10 section 301, 97 Stat. 1196 and amended October 17, 1984, P.L. 98-479,
11 title III, section 103, 98 Stat. 2223) expires and ~~no~~ AN allocation is NOT
12 deemed to be made unless the applicable bonds have been issued and a
13 certificate of closing and evidence satisfactory to the director of the
14 commitment to make an urban development action grant or a housing
15 development grant with respect to such project have been actually filed
16 AND RECEIVED, not merely postmarked, INCLUDING BY EMAIL, with the
17 authority ~~no~~ NOT later than 5:00 p.m. on December 26 OR THE NEXT BUSINESS
18 DAY IF DECEMBER 26 IS NOT A BUSINESS DAY.

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

23 F. The director shall decline to issue confirmations at such time
24 as the aggregate amount of bonds or mortgage credit certificates allocated
25 under all confirmations previously issued and not expired, together with
26 the proposed issue of bonds or mortgage credit certificates as to which a
27 request has been received, would, through 5:00 p.m. on March 31, exceed
28 the respective aggregate amount allocated under section 35-902, subsection
29 C, D, ~~OR E, F or G~~ for such purpose, and from April 1, exceed the
30 aggregate amount of the state ceiling that is not allocated under an
31 unexpired confirmation nor within the discretion of the director pursuant
32 to section 35-902, subsection B. On expiration of a confirmation or
33 release of an allocation BY THE RELATED ISSUER, the director shall issue a
34 confirmation to the next numbered request which is equal to or less than
35 the then available portion of the state ceiling or to the next numbered
36 request if the principal amount of such request is reduced to an amount
37 equal to or less than the then available portion of the state ceiling
38 available for such purpose. EXCEPT FOR CONFIRMATIONS MADE PURSUANT TO
39 SECTION 35-902, SUBSECTION B, the director may only issue a single
40 confirmation for each request.

41 G. A confirmation made pursuant to ~~the director's discretion~~
42 SECTION 35-902, SUBSECTION B may be accompanied by a certificate executed
43 by the director. On request, the director shall execute a certificate
44 stating that the confirmation was not made in consideration of any bribe,
45 gift, gratuity or direct or indirect contribution to any political

1 campaign. The director may require such oaths or affirmations as the
2 director considers to be necessary to verify the accuracy of the
3 certificate.

4 H. The director shall ~~attempt to~~ issue confirmations within three
5 business days after receipt and shall issue confirmations in the order of
6 receipt of fully and properly completed requests within the limitations of
7 subsection F of this section. The authority shall notify the issuer ~~or~~
8 **AND ANY** other contact person listed in the request in writing, by ~~e-mail~~
9 **EMAIL** or by telephone of the issuance of a confirmation. The authority is
10 not responsible for returning confirmations to the filing party. A
11 confirmation shall be available for pickup at the authority after issuance
12 of the confirmation.

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

15 35-905. Restrictions on confirmations; definition

16 A. Before ~~December 17~~ **AUGUST 31**, a confirmation shall not be
17 allocated to a project in an amount greater than ~~thirty-five million~~
18 ~~dollars~~ **\$35,000,000**, except that this subsection does not apply to any
19 project that is eligible to receive an allocation pursuant to section
20 35-902, subsection B, C ~~OR D~~ ~~or E~~. For the purposes of this section, the
21 amount of allocation to a project shall also include any other state
22 ceiling allocation received by any related person to the project.

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

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

28 35-907. Allocations after 5:00 p.m. December 16; reallocation
29 of carryforwards; definition

30 A. Any portions of the state ceiling for which bonds have not been
31 issued by 5:00 p.m. December 16, other than confirmations extended
32 pursuant to section 35-910, shall be pooled and are subject to allocation
33 by the director to projects eligible for a ~~carry-forward~~ **CARRYFORWARD**
34 allocation under the code.

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

38 1. **BEFORE 5:00 P.M. ON DECEMBER 15**, a notice of intent shall be
39 filed ~~on or before December 15~~ with **AND RECEIVED BY** the authority by any
40 issuer, bond counsel or other interested person, ~~with respect to projects~~
41 ~~for which allocations may be carried forward pursuant to section 146 of~~
42 ~~the code.~~ **SUCH THE** notice of intent shall be ~~considered~~ **DATED AND**
43 **NUMBERED** and confirmations shall be issued by the director to the issuers
44 on December 17. Any portions of the state ceiling for which bonds have
45 not been issued or **CARRIED FORWARD PURSUANT TO THIS SECTION OR** for which a

1 qualified mortgage credit certificate program has not been established by
2 5:00 p.m. December 26 shall be allocated by the director and confirmations
3 shall be ~~issued~~ PROVIDED to such issuers before January 1. Issuers shall
4 not file elections OF CARRYFORWARD PURPOSE with the federal government
5 under section 146 of the code until ~~an allocation~~ A CONFIRMATION has been
6 ~~issued~~ DELIVERED by the authority under this section for the bonds
7 pertaining to a project. The failure to file a notice of intent results
8 in the exclusion of the project from allocations to issuers of any portion
9 of the current calendar year state ceiling.

10 2. A security deposit equal to one percent of the principal amount
11 stated in the notice of intent shall be received by the authority within
12 five days after notification by the director that the project is eligible
13 for a ~~carry forward~~ CARRYFORWARD allocation. ~~No~~ A security deposit is NOT
14 required if the direct beneficiary of the bonds proceeds is this state or
15 a county, city, town or nonprofit entity, the issuer is a student loan
16 corporation, the project includes urban development action grant or
17 housing development grant financing, ~~is a project described in section~~
18 ~~1317(3)(N) of the tax reform act of 1986 or~~ is a qualified mortgage
19 revenue bond project or is a qualified mortgage credit certificate program
20 or the confirmation is issued by the director on or after December 26.
21 The security deposit is forfeited to the authority if bonds are not issued
22 within three years after the receipt of the deposit. For bonds that are
23 issued from and after December 31, 2015, any security deposit made in
24 relation to the project for which the bonds are issued shall be refunded
25 if the bonds are issued within three years after the receipt of the
26 deposit that is required under this paragraph, whether or not
27 ~~carry forward~~ CARRYFORWARD allocation is used.

28 C. NOTWITHSTANDING SUBSECTION B OF THIS SECTION AND SECTION 35-904,
29 ON WRITTEN NOTICE TO THE DIRECTOR, AN ISSUER MAY REALLOCATE ALL OR A
30 PORTION OF ANY CARRYFORWARD CONFIRMATION WITHIN THE SAME CARRYFORWARD
31 PURPOSE. A REALLOCATION MADE PURSUANT TO THIS SUBSECTION MUST BE
32 CONSISTENT WITH THIS SECTION AND WITH APPLICABLE FEDERAL LAW. A
33 REALLOCATION MADE PURSUANT TO THIS SUBSECTION DOES NOT INCREASE THE
34 AGGREGATE AMOUNT OF THE ORIGINAL CARRYFORWARD CONFIRMATION TO WHICH THE
35 REALLOCATION RELATES OR EXTENDS THE TERM OF THE ORIGINAL CARRYFORWARD
36 CONFIRMATION DURING WHICH THE BONDS MUST BE ISSUED. REALLOCATION OF
37 CARRYFORWARD CONFIRMATION BY AN ISSUER WILL NOT RESULT IN A REFUND OF ANY
38 SECURITY DEPOSIT PREVIOUSLY RECEIVED BY THE AUTHORITY ON ACCOUNT OF THE
39 ORIGINAL CARRYFORWARD CONFIRMATION. THE CERTIFICATE OF CLOSING SHALL
40 INDICATE TO THE AUTHORITY IF THE CARRYFORWARD CONFIRMATION WAS
41 REALLOCATED.

APPROVED BY THE GOVERNOR JUNE 20, 2023.

S.B. 1718

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 20, 2023.