

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/5/01
A Bill

HOUSE BILL 1952

5 By: Representative Hunt
6
7

8 **For An Act To Be Entitled**

9 AN ACT TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE
10 TITLE 15, CHAPTER 5, SUBCHAPTER 6, CONCERNING THE
11 ALLOCATION OF THE STATE VOLUME CAP FOR PRIVATE
12 ACTIVITY BONDS, TO CONFORM IT TO FEDERAL TAX
13 LAWS; TO AMEND ARKANSAS CODE 15-5-207 CONCERNING
14 THE POWERS AND DUTIES OF THE ARKANSAS DEVELOPMENT
15 FINANCE AUTHORITY; TO REPEAL ARKANSAS CODE TITLE
16 15, CHAPTER 5, SUBCHAPTER 5, THE ARKANSAS PRIVATE
17 ACTIVITY BOND ACT OF 1985; TO DECLARE AN
18 EMERGENCY; AND FOR OTHER PURPOSES.
19

20 **Subtitle**

21 TO AMEND THE LAW ON THE ALLOCATION OF
22 THE STATE VOLUME CAP FOR PRIVATE
23 ACTIVITY BONDS TO CONFORM TO FEDERAL TAX
24 LAW AND REPEAL THE ARKANSAS PRIVATE
25 ACTIVITY BOND ACT OF 1985.
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 *SECTION 1. Arkansas Code 15-5-601 is amended to read as follows:*
31 *15-5-601. Bonds affected.*

32 *(a) This subchapter shall be effective for the calendar year ~~1987~~ 2001*
33 *and thereafter and may be relied upon by issuers of affected bonds,*
34 *beneficiaries of the proceeds from and owners of the bonds, and other*
35 *participants in the issuance of the bonds with respect to all affected bonds*
36 *issued on and after ~~January 1, 1987,~~ notwithstanding the subsequent enactment*

1 ~~of this act~~ January 1, 2001.

2 (b) As used in this subchapter, unless the context requires otherwise:

3 (1) "Affected bonds" means bonds subject to the "state ceiling";

4 and

5 (2) "State ceiling" shall have the same meaning as used in

6 Section 146 of the Internal Revenue Code of 1986 as it existed on January 1,

7 2001.

8

9 SECTION 2. Arkansas Code 15-5-603 is amended to read as follows:

10 15-5-603. Aggregate ~~amounts~~ percentages allocated.

11 (a) The aggregate of the state ceiling for the State of Arkansas
12 ~~imposed by the Internal Revenue Code of 1986, applicable to private activity~~
13 ~~bonds or affected bonds in calendar years 1987 and thereafter is and for each~~
14 calendar year shall be allocated on a percentage basis as follows:

15 ~~(1) The Arkansas Development Finance Authority is allocated for~~
16 ~~calendar year 1987 the following amounts for the purposes stated:-~~

17 ~~(A) For multi family residential housing, thirty million~~
18 ~~dollars (\$30,000,000); and~~

19 ~~(B) For industrial development, seventy five million~~
20 ~~dollars (\$75,000,000);~~

21 ~~(2)(1)~~ The Arkansas Development Finance Authority is allocated
22 for calendar year ~~1988~~ 2001 and for each year thereafter the following
23 amounts for the purposes stated:

24 (A) For multi family residential housing, ~~fifteen million~~
25 ~~dollars (\$15,000,000)~~ ten percent (10%) of the aggregate state ceiling;

26 (B) For single family residential housing, ~~twenty five~~
27 ~~million dollars (\$25,000,000)~~ seventeen percent (17%) of the aggregate state
28 ceiling; and

29 (C) For industrial development, ~~fifty million dollars~~
30 ~~(\$50,000,000)~~ thirty-three percent (33%) of the aggregate state ceiling;

31 ~~(3)(2)~~ However, the Arkansas Development Finance Authority, by
32 resolution of its board of directors, may provide that the total amount of
33 ~~ninety million dollars (\$90,000,000)~~ sixty percent (60%) of the aggregate
34 state ceiling allocated to the authority for calendar years ~~1988~~ 2001 and
35 thereafter may be redistributed among the purposes stated in amounts other
36 than those set forth in this subsection; and

1 ~~(4)~~(3) The Arkansas Student Loan Authority is allocated ~~fifteen~~
2 million dollars ~~(\$15,000,000)~~ ten percent (10%) of the aggregate state
3 ceiling for calendar year ~~1988~~ 2001 and for each calendar year thereafter for
4 bonds issued to provide student loans.

5 (b) To the extent any amounts of the aggregate state ceiling allocated
6 pursuant to subsection (a) of this section are not used prior to ~~October 1~~
7 September 1 in any year, such amounts shall be allocated pursuant to
8 subsection (c) of this section.

9 (c) The remaining ~~balance of the state ceiling~~ thirty percent (30%) of
10 the aggregate state ceiling plus any amounts not used by September 1 in each
11 year pursuant to subsection (b) of this section is allocated to all other
12 affected bonds issued by all issuers of such bonds within the state,
13 regardless of whether such issuers are at the state level or at the local
14 level, pursuant to rules and regulations established by the Arkansas
15 Development Finance Authority promulgated in compliance with the Arkansas
16 Administrative Procedure Act, § 25-15-201 et seq., in the amounts set forth
17 in filings made by or on behalf of issuers.

18
19 SECTION 3. Arkansas Code 15-5-604 is amended to read as follows:

20 15-5-604. Filing by issuer ~~prior to~~ of reservation of volume cap and
21 notice of issuance of bonds.

22 (a) In order to ~~assure~~ reserve an allocation of the state ceiling to
23 an issue of affected bonds prior to the issuance by delivery and payment of
24 such bonds, a reservation filing by or on behalf of the issuer must be made
25 with the President of the Arkansas Development Finance Authority not more
26 than ~~forty five (45)~~ sixty (60) days prior to the ~~issuance of such bonds~~
27 projected issuance date of the affected bonds. Each reservation filing shall
28 be assigned a priority number in accordance with § 15-5-607.

29 ~~(b) Such filing shall cease to be effective to assure allocation of a~~
30 ~~portion of the state ceiling:~~

31 ~~(1) As to filings made on or before July 31 of any calendar~~
32 ~~year, unless the bonds have been issued by delivery and payment and written~~
33 ~~notice of such issuance has been given to the president within forty five~~
34 ~~(45) days after the date of such filing; or~~

35 ~~(2) As to filings made on or after August 1 of any calendar~~
36 ~~year, unless the bonds have been issued by delivery and payment and written~~

1 notice of such issuance has been given to the president by the date which is
2 the later of October 1 of the same calendar year or is the later of forty-
3 five (45) days after the date of such filing, but in no event after January 4
4 of the following calendar year.

5 (b) In order for a reservation of a portion of the state ceiling to be
6 effective to allocate volume cap to the bonds, the bonds shall be issued by
7 delivery and payment, and a notice of the issuance of the bonds shall be
8 filed with the President of the Arkansas Development Finance Authority within
9 sixty (60) days after the date of the reservation filing, unless:

10 (1) The deadline is extended pursuant § 15-5-604(d); or

11 (2) If the reservation is filed after November 1, by December 31
12 of the applicable calendar year.

13 (c)(1) For reservation filings received by the president of the
14 authority prior to September 1 of each calendar year, volume cap shall be
15 reserved and allocated based on the priority number assigned in accordance
16 with subsection (a) of this section.

17 (2) For reservation filings made on or after September 1 of each
18 calendar year, or for reservation filings made once a volume cap shortage has
19 been declared in accordance with the rules and regulations of the authority,
20 volume cap shall be reserved and allocated in accordance with the rules and
21 regulations of the authority.

22 (3) The authority shall promulgate rules and regulations to
23 provide for the declaring of a volume cap shortage and to reserve and
24 allocate volume cap in cases of a shortage declaration in accordance with the
25 Arkansas Administrative Procedure Act.

26 ~~(e)(d)(1)~~ In the event that a reservation filing so made expires by
27 reason of failure to issue the bonds or to give the required notice within
28 the applicable period stated above in subsection (b) of this section, a new
29 filing shall be made which shall be accorded priority in accordance with its
30 new date and number time of filing.

31 (2)(A) The president of the authority may extend the applicable
32 period for issuing the bonds by up to sixty (60) days in accordance with the
33 rules and regulations promulgated by the authority.

34 (B) The rules and regulations may provide for the payment
35 of an additional fee by the issuer to extend the issuance period and may
36 provide for the filing of an explanatory statement as to the reasons the

1 bonds were not issued during the original applicable period.

2 (C) The authority shall promulgate rules and regulations to
3 provide for extending the applicable period for issuing the bonds in
4 accordance with the Arkansas Administrative Procedure Act.

5
6 SECTION 4. Arkansas Code 15-5-605 is amended to read as follows:

7 15-5-605. ~~No filing prior to bond issuance~~ Special rules for
8 allocation of volume cap for multifamily residential housing bonds.

9 ~~In the event that no filing with the President of the Arkansas~~
10 ~~Development Finance Authority has been made with respect to an issue of~~
11 ~~affected bonds prior to the issuance of such bonds, notice of issuance of~~
12 ~~such bonds on or before December 31 of any calendar year may be filed with~~
13 ~~the president upon or after issuance of such bonds, but not later than~~
14 ~~January 4 of the following calendar year, and such filing shall be accorded~~
15 ~~priority in accordance with its date and number.~~

16 (a) Notwithstanding § 15-5-604(c), the priority allocation of volume
17 cap to multifamily residential housing bonds, whether the bonds are issued by
18 the Arkansas Development Finance Authority or by any other issuer, shall not
19 be determined based solely on the date of the reservation filing.

20 (b) Multifamily residential housing bonds shall be granted a priority
21 based upon the decision of the authority in accordance with rules and
22 regulations establishing criteria to determine priority for multifamily
23 residential housing bonds.

24 (c) The rules and regulations may provide for the priority of the
25 allocation to be based upon the need for multifamily residential housing in
26 the particular area of the state in which the project is to be located, the
27 characteristics of the proposed project, and any other factors as determined
28 necessary by the authority.

29 (d) The authority shall promulgate rules and regulations to establish
30 criteria to determine priority for multifamily residential housing bonds in
31 accordance with the Arkansas Administrative Procedure Act.

32
33 SECTION 5. Arkansas Code 15-5-606 is amended to read as follows:

34 15-5-606. Balance of state ceiling - Carryforwards.

35 ~~(a) In the event that the aggregate number of all effective filings~~
36 ~~with the President of the Arkansas Development Finance Authority does not~~

1 ~~exhaust the state ceiling for any calendar year, the balance of the state~~
2 ~~ceiling for that calendar year is allocated to all other affected bonds~~
3 ~~issued within the state during that calendar year in the order and amounts by~~
4 ~~which they are issued by delivery and payment notwithstanding that no filing~~
5 ~~has been made under this subchapter with respect to such bonds.~~

6 ~~(b)(1)(A)(a)(1)~~ If the aggregate number of all effective filings with
7 the president does not exhaust the state ceiling for any calendar year, the
8 balance of such state ceiling may be carried forward for one (1) or more
9 carryforward purposes if any issuer makes an irrevocable election identifying
10 carryforward purposes and the balance to be used for each carryforward
11 purpose by filing an election with the president on December 31 of that year.

12 ~~(B)(2)~~ However, no such filing shall be effective unless
13 approved by the president.

14 ~~(2)(b)~~ Carryforwards elected with respect to any purpose shall be used
15 in order of the calendar years in which they arose. Carryforward purposes
16 shall be those permitted by Section 146(f)(5) of the Internal Revenue Code of
17 1986.

18 ~~(3)(c)(1)~~ Carryforwards previously elected with respect to any purpose
19 pursuant to the provisions of § 4 of the Proclamation of the Governor dated
20 November 30, 1986, for the calendar year ending December 31, 1986, are hereby
21 ratified and confirmed.

22 (2) Carryforwards previously elected with respect to any purpose
23 pursuant to the provisions of the law prior to January 1, 2001 are ratified
24 and confirmed.

25
26 SECTION 6. Arkansas Code 15-5-207, concerning the powers and duties of
27 the Arkansas Development Finance Authority, is amended to add an additional
28 subsection to read as follows:

29 (c) All applications filed with the Arkansas Development Finance
30 Authority for direct loans authorized under § 15-5-207(b) shall be treated,
31 handled, and considered in the same manner as set forth for other loan
32 applications in § 15-5-409.

33
34 SECTION 7. [THE ARKANSAS CODE REVISION COMMISSION IS NOT REQUIRED TO
35 CODIFY THIS SECTION.] This act is intended to be retroactive to January 1,
36 2001 for the purpose of conforming Arkansas law to changes in the federal

1 Internal Revenue Code.

2

3 SECTION 8. Arkansas Code 15-5-501 through 15-5-511 are repealed.

4 ~~15-5-501. Title.~~

5 ~~This subchapter may be referred to and cited as the "Arkansas Private~~
6 ~~Activity Bond Allocation Act of 1985".~~

7

8 ~~15-5-502. Definition.~~

9 ~~As used in this subchapter, unless the context otherwise requires,~~
10 ~~"affected bonds" means "private activity bonds", as defined in the Tax Reform~~
11 ~~Act of 1984, excluding any such obligations which are not subject to any such~~
12 ~~volume limitations under federal law, and including any obligations so~~
13 ~~subject to such a limitation under federal law, other than qualified mortgage~~
14 ~~bonds and qualified veterans' mortgage bonds under § 103A of the Internal~~
15 ~~Revenue Code.~~

16

17 ~~15-5-503. Applicability.~~

18 ~~This subchapter may be relied upon by issuers of affected bonds,~~
19 ~~beneficiaries of the proceeds from and owners of such bonds, and other~~
20 ~~participants in the issuance of such bonds with respect to all affected bonds~~
21 ~~issued after May 1, 1985.~~

22

23 ~~15-5-504. Delegation of functions.~~

24 ~~The President of the Arkansas Development Finance Authority may~~
25 ~~delegate, in writing, functions under this subchapter to other officers and~~
26 ~~employees within the Arkansas Development Finance Authority.~~

27

28 ~~15-5-505. Aggregate of state ceiling—Allocation.~~

29 ~~The aggregate of the state ceiling for the State of Arkansas imposed by~~
30 ~~the Tax Reform Act of 1984 applicable to affected bonds is and shall be~~
31 ~~allocated as follows:~~

32 ~~(1) Twenty five million dollars (\$25,000,000) is allocated to affected~~
33 ~~bonds issued by the Arkansas Development Finance Authority in 1985, fifty~~
34 ~~million dollars (\$50,000,000) is allocated to affected bonds issued by the~~
35 ~~Arkansas Development Finance Authority in 1986, and in subsequent years in~~
36 ~~the amounts set forth in subsequent legislation of the General Assembly until~~

1 ~~November 1 of each calendar year or until such time prior to November 1 as~~
2 ~~the Arkansas Development Finance Authority may specify, at which time such~~
3 ~~amounts allocated under this subdivision as are not subject to a filing~~
4 ~~pursuant to § 15-5-506 as of that date shall be allocated in accordance with~~
5 ~~subdivision (3) of this section;~~

6 ~~(2) Fifty million dollars (\$50,000,000) is allocated to affected bonds~~
7 ~~issued by the Arkansas Student Loan Authority in 1985, thirty million dollars~~
8 ~~(\$30,000,000) is allocated to affected bonds issued by the Arkansas Student~~
9 ~~Loan Authority in 1986, and in subsequent years in amounts set forth in~~
10 ~~subsequent legislation of the General Assembly until November 1 of each~~
11 ~~calendar year or until such time prior to November 1 as the Arkansas Student~~
12 ~~Loan Authority may specify, at which time such amounts allocated under this~~
13 ~~subdivision as are not subject to a filing pursuant to § 15-5-506 as of that~~
14 ~~date shall be allocated in accordance with subdivision (3) of this section;~~
15 ~~and~~

16 ~~(3) To all other affected bonds issued by all issuers of such bonds~~
17 ~~within the state regardless of whether such issuers are at the state level or~~
18 ~~at the local level, pursuant to rules and regulations established by the~~
19 ~~Arkansas Development Finance Authority promulgated in compliance with the~~
20 ~~Arkansas Administrative Procedure Act, § 25-15-201 et seq., in the amounts~~
21 ~~set forth in filings made by or on behalf of issuers and in the order that~~
22 ~~such filings are made, as provided in this subchapter, and without regard to~~
23 ~~population or other considerations.~~

24
25 ~~15-5-506. Filing required—Time for filing—Expiration.~~

26 ~~(a) In order to assure an allocation of the state ceiling to an issue~~
27 ~~of affected bonds prior to the issuance by delivery and payment of such~~
28 ~~bonds, a filing by or on behalf of the issuer must be made with the President~~
29 ~~of the Arkansas Development Finance Authority, hereafter referred to as the~~
30 ~~"president", not more than forty five (45) days prior to the issuance of such~~
31 ~~bonds.~~

32 ~~(b) Such filing shall cease to be effective to assure allocation of a~~
33 ~~portion of the state ceiling.~~

34 ~~(1) As to filings made on or before July 31 of any calendar~~
35 ~~year, unless the bonds have been issued by delivery and payment and written~~
36 ~~notice of such issuance has been given to the president within forty five~~

1 ~~(45) days after the date of such filing; or~~

2 ~~(2) As to filings made on or after August 1 of any calendar~~
3 ~~year, unless the bonds have been issued by delivery and payment and written~~
4 ~~notice of the issuance has been given to the president by the date which is~~
5 ~~the later of October 1 of the same calendar year or forty five (45) days~~
6 ~~after the date of such filing, but in no event after January 4 of the~~
7 ~~following calendar year.~~

8 ~~(c) In the event that a filing so made expires by reason of failure to~~
9 ~~issue the bonds or to give the required notice within the applicable period~~
10 ~~stated above, a new filing may be made which shall be accorded priority in~~
11 ~~accordance with its new date and number.~~

12
13 ~~15-5-507. Notice of issuance required where filing not made.~~

14 ~~In the event that no filing with the President of the Arkansas~~
15 ~~Development Finance Authority has been made with respect to an issue of~~
16 ~~affected bonds prior to the issuance of such bonds, notice of the issuance of~~
17 ~~such bonds on or before December 31 of any calendar year may be filed with~~
18 ~~the president upon or after the issuance of such bonds, but not later than~~
19 ~~January 4 of the following calendar year, and such filing shall be accorded~~
20 ~~priority in accordance with its date and number.~~

21
22 ~~15-5-508. Balance of state ceiling—Allocation.~~

23 ~~In the event that the aggregate number of all effective filings with~~
24 ~~the President of the Arkansas Development Finance Authority does not exhaust~~
25 ~~the state ceiling for any calendar year, the balance of the state ceiling for~~
26 ~~that calendar year is allocated to all other affected bonds issued within the~~
27 ~~state during that calendar year in the order and amounts by which they are~~
28 ~~issued by delivery and payment, notwithstanding that no filing has been made~~
29 ~~under this subchapter with respect to such bonds.~~

30
31 ~~15-5-509. Records.~~

32 ~~(a) The Arkansas Development Finance Authority shall maintain~~
33 ~~continuous cumulative records of the filings made under this subchapter.~~

34 ~~(b) For such purpose, the filings under this subchapter shall be dated~~
35 ~~and numbered by the President of the Arkansas Development Finance Authority~~
36 ~~in the order made.~~

