

Date of Hearing: May 4, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE  
Matthew Dababneh, Chair  
AB 1195 (Ridley-Thomas) – As Introduced February 27, 2015

**SUBJECT:** California Debt Limit Allocation Committee: American Recovery and Reinvestment Act of 2009

**SUMMARY:** Makes changes to the California Debt Limit Allocation Committee (CDLAC) to reflect the American Recovery and Reinvestment Act (ARRA) of 2009. Specifically, **this bill:**

- 1) Revises the definition of "private activity bond" to include Section 142 (k) of the Internal Revenue Code (IRC). (refer to existing federal law below)
- 2) Revises the definition of "state ceiling" to include the amount specified by Section 142 (k) of the IRC. (refer to existing federal law)
- 3) Amends the findings and declarations to include:
  - a) Sections 1112 and 1401 of the ARRA establish an aggregate amount of bond authority that can be issued in each state. Said amount may be determined from time to time by federal law, federal notice, or both federal law and notice;
  - b) Section 142(k) of the IRC establishes a volume ceiling on the aggregate amount of qualified education facility bonds that can be issued in each state. The qualified educational facilities volume ceiling is the product of ten dollars (\$10) multiplied by the state population in each calendar year;
  - c) Section 142(k)(5)(B)(i) of the IRC authorizes each state to allocate the qualified educational facilities volume ceiling in the manner the state determines appropriate; and,
  - d) A substantial public benefit is served by constructing educational facilities for the state's children.

**EXISTING STATE LAW** establishes the CDLAC which states in the findings and declarations:

- 1) The Tax Reform Act of 1986 (Public Law 99-514) establishes a unified volume ceiling on the aggregate amount of private activity bonds that can be issued in each state. The unified volume ceiling is the product of seventy-five dollars (\$75) multiplied by the state population in 1987 and fifty dollars (\$50) multiplied by the state population in each succeeding calendar year.
- 2) The federal act requires each state to allocate its volume ceiling according to a specified formula unless a different procedure is established by Governor's proclamation or state legislation.
- 3) Therefore, it is necessary to designate a state agency and create an allocation system to administer the state unified volume ceiling.

- 4) A substantial public benefit is served by promoting housing for lower income families and individuals.
- 5) A substantial public benefit is served by preserving and rehabilitating existing governmental assisted housing for lower income families and individuals.
- 6) A substantial public benefit is served by providing federal tax credits or reduced interest rate mortgages to assist teachers, principals, vice principals, assistant principals, and classified employees who are willing to serve in high priority schools to purchase a home. (Government Code, Section 8869.90 et seq.)

**EXISTING FEDERAL LAW:**

- 1) Establishes Section 142(k) of the IRC which provides for a separate volume ceiling, also apportioned to the states, for Qualified Public Education Facility Bonds (QPEFB). QPEFBs are designed to provide tax-exempt conduit financing for turnkey private development of public elementary and secondary school facilities. (26 U.S.C. Sec. 42 (k))
  - a) Defines “qualified public educational facility” as any school facility which is:
    - i) part of a public elementary school or a public secondary school, and
    - ii) owned by a private, for-profit corporation pursuant to a public-private partnership agreement with a State or local educational agency.
- 2) Created, on February 13, 2009, in direct response to the economic crisis and at the urging of President Obama, Congress passed the ARRA of 2009. The three immediate goals of the ARRA were: create new jobs and save existing ones, spur economic activity and invest in long-term growth, foster unprecedented levels of accountability and transparency in government spending. In 2011, the original expenditure estimate of \$787 billion was increased to \$840 billion to be in line with the President's 2012 budget and with scoring changes made by the Congressional Budget Office since the enactment of the ARRA. In addition to offering financial aid directly to local school districts, expanding the Child Tax Credit, and underwriting the computerization of health records, the ARRA was targeted at infrastructure development and enhancement. (26 U.S.C. Secs. 54a and 1400U-1)

**FISCAL EFFECT:** None.

**COMMENTS:**

AB 1195 designates the CDLAC as the state agency authorized to administer the QPEFBs and authorizes the CDLAC to allocate federal bond funds to finance public school facilities. Government Code, Section 8869.80 establishes that CDLAC will be the state's allocating agency for the award and administration of the limited federal private activity bond authority, called the Private Activity Volume Ceiling. Section 142 (k) of the federal IRC provides for a separate volume ceiling, also apportioned to the states, for QPEFB. As with the Private Activity Volume Ceiling, the federal IRC requires CDLAC to be authorized by Governor's proclamation or state legislation to administer and allocate the QPEFB Volume Ceiling. AB 1195 will permit CDLAC to allocate this federal resource for the development of public education schools and related improvements.

***Need for the bill:***

According to the author,

*"Public elementary and secondary schools have limited financing options for the construction or improvement of their facilities. In contrast, private developers have more flexibility in their ability to finance transaction and access to resources. In acknowledgement of these differences, Section 142 (k) of the federal IRC created a type of tax-exempt private activity bond that can be used to finance school facilities called QPEFB. These bonds are designed to provide tax-exempt conduit financing for turnkey private development of public elementary and secondary school facilities. The tax-exempt private activity bond proceeds can be used to fund the following project: school buildings, any functionally related and subordinate facility and land with respect to a school building, including any stadium or other facility primarily used for school events, and any property subject to accelerated depreciation under Section 168 of the IRC for use in a school facility. QPEFBs are apportioned to the states but fall outside the current limits the federal government places on private activity bond authority. Federal law requires that each state designate an entity to administer QPEFBs in order to allocate the bonds."*

***Background:***

The CDLAC is a three-member body comprised of the State Treasurer as Chair, the Governor, and the State Controller. CDLAC was created in 1985 by a Governor proclamation in response to the 1984 Tax Reform Act, which imposed an annual limit on the dollar amount of tax-exempt private activity bonds that may be issued in a state. Private activity bonds included student loan bonds and industrial development bonds (including exempt facility bonds, small-issue industrial development bonds, and bonds for industrial parks). The annual limit was derived by multiplying the state's population by \$150, resulting in a \$3.8 billion ceiling at that time. The Act also required each state to designate an entity to allocate the state's ceiling among various state and local issuers.

The 1986 Tax Reform Act made major changes to the allocation of private activity bond authority. It reduced the annual volume cap to \$75 per capita in 1986 and 1987 and \$50 per capita thereafter. The Act also brought bonds for single-family and multifamily housing under the state ceiling. As a result, a new Governor's proclamation was issued in 1986 re-affirming CDLAC as the state's sole entity responsible for allocating the annual ceiling, and expressly authorizing CDLAC to establish procedures and reserve amounts of the ceiling for certain purposes or issuers. In 1987, the California State Legislature statutorily established CDLAC by enacting Chapter 943.

The 1998 Omnibus Budget Act raised the volume cap on private activity bonds to \$75 per capita or a minimum of \$225 million. However, the increase would take place incrementally over the years 2003 through 2007.

The Community Renewal Tax Relief Act of 2000 accelerates the scheduled increase contained in the 1998 Act by raising the volume cap to \$62.50 per capita of the state's population or \$187.5 million, whichever is higher, for calendar year 2001 and \$75 per capita or \$225 million, whichever is higher, in calendar year 2002 and thereafter. The 2000 Act also allows for the volume cap to be indexed for inflation starting in calendar year 2003.

***QPEDB:***

A qualified public educational facility is any school facility which is part of a public elementary school or a public secondary school that is owned by a private, for-profit corporation pursuant to a public-private partnership agreement with a State or local education agency. A public-private partnership agreement is required under the IRC for each QPEFB issuance. The IRC defines this as an agreement under which the corporation agree to construct, rehabilitate, refurbish, or equip a school facility, and at the end of the term of the agreement, to transfer the school facility to such agency for no additional consideration, and the term of which does not exceed the term of the issue to be used to provide the school facility. Essentially, the bond proceeds are loaned to a private for-profit developer, who builds the school and/or provides the depreciable assets. The school is then leased to the school district on a long-term basis. At or before the maturity date of the bonds, the developer must transfer the assets to the public school agency at no cost.

QPEFBs do not fall under the private activity volume cap that the CDLAC administers. These bonds have their own federally-determined allocation which is the great of \$10 per capita or \$5million dollars for each state. California is eligible to receive approximately \$380 million per year. States may further allocate the amounts provided in the manner that the state deems appropriate.

***Purpose:***

The purpose of CDLAC is to implement Section 1301 of the Federal Tax Reform Act of 1986 and Section 146 of the IRC which impose a limit on the amount of tax-exempt private activity bonds which a state may issue in a calendar year (i.e. the annual state ceiling). Section 146(d), as amended by the Community Renewal Tax Relief Act of 2000, permits a state to set its annual ceiling at \$187,500,000 or an amount equal to \$62.50 per capita of its population, whichever is higher, in calendar year 2001. In calendar year 2002 and thereafter, the ceiling will rise to \$225,000,000 or an amount equal to \$75 per capita, whichever is higher. Beginning in calendar year 2003, the ceiling will be adjusted annually for inflation.

The actions of CDLAC are fundamentally defined and limited by federal tax law. Federal tax law defines the term "private activity bond"; limits the volume of private activity bonds which a state may issue in a calendar year; defines the types of programs and projects which qualify for tax-exempt bond financing under the volume cap; and specifies recordkeeping requirements.

CDLAC responsibilities include:

- 1) To set the annual state ceiling: CDLAC is required to establish the state ceiling as soon as practical after the start of each calendar year.
- 2) Allocate the State Ceiling: CDLAC is granted the sole authority for allocating the annual ceiling.
- 3) Other Administrative Functions: CDLAC is authorized to prepare forms, establish procedures, set priorities, require a performance deposit, assess fees, and perform other administrative functions as necessary.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California State Treasurer (Sponsor)

**Opposition**

None on file.

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