

# FINAL BILL REPORT

## SHB 1761

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Synopsis as Enacted

**Brief Description:** Limiting private activity bond issues by out-of-state issuers.

**Sponsors:** House Committee on Capital Budget (originally sponsored by Representatives Dunshee and Ormsby; by request of Washington State Housing Finance Commission).

**House Committee on Capital Budget**  
**Senate Committee on Financial Institutions, Housing & Insurance**

### **Background:**

#### Tax-Exempt Private Activity Bonds.

The federal tax code classifies state and local bonds as either governmental bonds or private activity bonds. Governmental bonds are for projects that benefit the general public and are issued by government entities. Private activity bonds are issued for the benefit of private entities. Generally, the interest on state and local governmental bonds is exempt from federal taxation, and the interest on most private activity bonds is not tax exempt. However, when private activity bonds are used for projects that also have a substantial public benefit, the bonds may qualify for federal tax exempt status. Qualifying activities include housing, manufacturing, education, and environmental facilities. Because interest earned by investors on these bonds is not subject to the federal income tax, investors are willing to accept a lower interest rate, and this lower rate reduces the costs of the project to the issuer and the project developer.

Tax-exempt private activity bonds are not obligations or pledges of the full faith and credit of the state or its political subdivisions. Tax-exempt private activity bonds are non-recourse bonds. The repayment of the bond is the responsibility of the user of the bond proceeds.

#### State Bond Cap Allocation.

Federal law limits the total dollar amount of certain tax-exempt private activity bonds that may be issued annually in a state. Each state's "bond cap" is calculated according to a federal formula. For 2011 Washington's bond cap is \$638.8 million. The allocation of the state's bond cap is determined by statute as follows: housing, 32 percent; "small issue" manufacturing, 25 percent; student loans, 15 percent; "exempt facilities" such as local transportation, energy, and environmental facilities, 20 percent; and a "remainder/redevelopment" category, 8 percent. The Department of Commerce (Commerce) administers

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the state's Bond Cap Allocation Program (BCAP). The BCAP authorizes the issuance of tax-exempt private activity bonds, reviews and approves projects for compliance with federal and state law, and monitors bond issuances to ensure that the state does not exceed the annual total.

Tax-exempt private activity bonds not subject to the bond cap are those used for capital projects owned by 501(c)(3) nonprofit organizations, such as health care facilities, higher education buildings and facilities, and local community facilities such as YMCAs, job training facilities, and museums.

#### Using Tax-Exempt Private Activity Bonds for Washington Projects.

Project developers pursuing use of tax-exempt private activity bonds must work with a bond issuing authority (authority). In Washington there are five statewide authorities and a number of local authorities. The statewide authorities are the Washington State Housing Finance Commission, the Washington Economic Development Finance Authority, the Washington State Higher Education Facilities Authority, the Washington State Health Care Facilities Authority, and the Tobacco Settlement Authority. These statewide authorities are limited by law to financing projects within the state. Examples of local authorities include the industrial development corporations of the Port of Bellingham and Spokane County, and the Seattle, Tacoma, and Vancouver Housing Authorities.

An authority assesses a given project and financing options. If the project qualifies for tax-exempt private activity bonds and is in a category that is subject to bond cap allocation, the authority applies to the BCAP for approval to issue bonds against the bond cap for that category. State law prescribes the process and criteria for requesting and granting such approval.

Under federal law, tax-exempt private activity bonds may not be issued for a project until approved by each government having jurisdiction over the area in which the facility is to be located. A public hearing and approval by the elected body is the standard method for obtaining public approval.

#### Out-of-State Bond Issuing Authorities.

Three states—Wisconsin, Missouri, and Colorado—have laws allowing in-state bond issuing authorities to finance projects in all 50 states. The most recent is the Wisconsin Public Finance Authority (PFA), established in legislation enacted in 2010.

The PFA is authorized to issue tax-exempt and taxable bonds for projects located within or outside Wisconsin and may apply to any unit of government, within or outside the state, for an allocation of the tax-exempt private activity bond cap. Before issuing bonds on any economic development, housing, health, or education facilities in Wisconsin, the PFA must receive approval from the Wisconsin Housing and Economic Development Authority or the Wisconsin Health and Educational Facilities Authority. The Wisconsin law is silent on state-level approvals or requirements the PFA must seek or meet in other states in order to issue bonds. However, the law does prohibit the PFA from issuing bonds to finance a capital improvement project until a political subdivision within whose boundaries the project is to be located has approved the financing.

**Summary:**

An issuer of private activity bonds, formed or organized under the laws of another state and proposing to issue bonds for a project within Washington, is required to provide specific information to the relevant Washington statewide issuing authority and receive its approval to proceed to public hearing.

The following information must be received by the authority at least 120 days prior to the public hearing for the proposed bond issuance: (1) a copy of the proposed notice of public hearing; (2) the maximum stated principal amount of the bond; (3) the facility description and location; (4) the finance plan; (5) the bond issuer's name; (6) the facility owner or principal user; (7) how the project will meet Washington's public policy objectives and requirements, and those of the authority; and (8) payment of a project review fee established by the authority.

If the authority finds that the facility and information submitted are consistent with the state's laws, public policy, and best interests, then the authority must authorize the relevant government unit in writing to proceed with the public hearing. If the authority finds the facility and information submitted inconsistent with the state's laws, public policy, and best interests, the public hearing may not proceed and the bonds may not be issued by the out-of-state issuer.

Each statewide bond issuing authority that is notified by an out-of-state bond issuer of a proposal to issue bonds in Washington must report to the appropriate legislative committees documenting: the number, description, cost, and location of a proposed project; whether the project was approved by the issuing authority; and its reasons for a disapproval. Reports must be submitted annually from 2011-2014, and every five years after.

Commerce is prohibited from making an allocation of the state bond cap to a bond issuing authority formed or organized under the laws of another state.

**Votes on Final Passage:**

House	96	0	
Senate	48	1	(Senate amended)
House	97	0	(House concurred)

**Effective:** July 22, 2011