

SENATE BILL REPORT

SSB 5618

As Failed Senate, March 5, 2011

Title: An act relating to limiting private activity bond issues by out-of- state issuers.

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

Sponsors: Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senators Chase, Kline and Hobbs; by request of Washington State Housing Finance Commission).

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/15/11, 2/16/11 [DPS, DNP].

Failed Senate: 21-28.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5618 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Haugen and Keiser.

Minority Report: Do not pass.

Signed by Senators Benton, Ranking Minority Member; Fain.

Staff: Edward Redmond (786-7471)

Background: The federal tax code classifies state and local bonds as either governmental bonds or private activity bonds. Generally, the interest on state and local governmental bonds is exempt from federal taxation, whereas the interest on most private activity bonds is not tax exempt. 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. When private activity bonds are used for projects that also have a substantial public benefit, called qualified private activities, the bonds may qualify for federal tax exempt status. Qualifying activities include housing, manufacturing, education, and environmental facilities.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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.

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 based on a certain dollar amount per capita multiplied by the state's official population. For 2011 Washington, based on this formula, yielded a state bond cap of \$638,831,300.

The Department of Commerce (Commerce) administers 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. The BCAP may reallocate unused bond cap allocations within any of the five categories to other categories after July 1, and before the end of the calendar year, may reallocate unused allocations to one or more issuers as carry-forward to be used within three years.

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.

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. 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. An authority that has its project accepted is awarded a Certificate of Approval by the BCAP.

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.

Summary of Substitute Bill: 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, must provide specific information to the relevant Washington statewide issuing authority and receive its approval to proceed to public hearing. The provided information includes, but is not limited to a copy of the proposed notice of public hearing, the maximum stated principal amount of the bond, facility description and location, and how the project will meet Washington's public policy objectives and requirements, and those of the authority. Such

information must be received by the authority at least 120 days prior to the public hearing for the proposed bond issuance.

The authority must authorize the relevant government unit in writing to proceed with the public hearing if the authority finds that the facility and information submitted is consistent with the state's laws, public policy, and best interests. If the authority finds that the facility and information submitted is 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.

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.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Last year Wisconsin created a new bond issuer with the purpose of issuing bonds in all 50 states. In Wisconsin the bond issuer has to get approval from the state issuing authority but the Wisconsin law does not require the issuer to seek similar authorization when issuing bonds to other states. If an out-of-state issuer is providing bonds in Washington, the state should be able to evaluate whether or not that issuer is providing the same benefits to the state as a statewide issuer. This bill ensures that the limited bond cap the state has does not go to out-of-state issuers. The technical amendment makes it clear that the bill is aimed at bond issuers formed or created under the laws of another state.

Persons Testifying: PRO: Kim Herman, Housing Finance Commission; Donna Fincke, Health Care Facilities Authority.