

Agency: Washington State Housing Finance Commission

**WSHFC'S STATE LEGISLATIVE CAMPAIGN TO REGULATE OUT-OF-STATE BOND ISSUERS**

Legislative Campaign: State Campaign

**Introduction:**

During the last decade, the Washington State Housing Finance Commission has become aware of bonds being issued in Washington by issuers based in other states. On two occasions, once for a religious college and once for a religious high school, issuers based in other states (Missouri and Colorado, respectively) had issued tax exempt bonds that would not have been allowed under Washington law. However, it was not until 2009, when the Wisconsin Legislature created the Public Finance Authority (PFA), that the Commission became concerned about out of state issuers becoming competitors to Washington's five statewide bond issuing authorities.

The PFA was created in Wisconsin for the explicit purpose of being a national bond issuer. However, during the creation of the PFA, the Wisconsin legislature provided that the PFA could not issue bonds in Wisconsin for housing, economic development, educational or health care facilities without the approval of two previously existing Wisconsin state bond issuers. No such prior approval was required if the PFA intended to issue bonds in the other 49 states.

In 2010, the Commission became aware that the State of Illinois had passed legislation regulating the issuance of bonds by out of state issuers by requiring the approval of the Governor before such bonds could be issued. Following discussions with the Illinois agency, the Commission wrote a letter to the PFA making them aware of Washington's concerns about out of state issuers and indicating we intended to seek legislation to regulate the issuance of bonds in Washington by out of state issuers.

The Commission also became aware of the fact that the PFA was staffed and operated by a private for-profit company from California that was under scrutiny because of its operating procedures and the profits of its owners while operating two governmental organizations in California. This added to the desire of the Commission to seek legislation to regulate out of state issuers proposing to issue bonds in Washington.

**Drafting Legislation with Other Statewide Issuers:**

Working with the Commission's bond counsel and bond counsel for the four other existing statewide issuers, draft legislation was developed that would require the approval of the Governor before an out of state issuer could issue bonds in Washington, similar to the Illinois law. We also added a prohibition against an out of state issuer receiving an allocation of Washington's normally scarce Private Activity Bond Cap as an additional regulating factor to bond issuance by an out of state issuer. The partnership forged between the five statewide issuing authorities during this drafting process remained in place throughout the legislative process.

**Coordinating with the Governor and State Agencies:**

Following the development of draft legislation, the Commission met with the Governor's Office and with the Department of Commerce, which allocates Private Activity Bond Cap in Washington, to obtain their buy-in on the proposed legislation. During this process, the Governor asked that her office not be involved and suggested that

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the appropriate statewide issuing authority review and approve (or deny) permission for a proposed bond issue by an out of state issuer. The Department of Commerce did not have any suggested revisions for the draft and supported the draft legislation.

**Obtaining Legislative Sponsors:**

Once the draft legislation was ready, the Commission's Executive Director approached legislators with whom the Commission had previously worked to sponsor the legislation. State Representative Hans Dunshee, Chair of the House Capital Budget Committee, sponsored the agency request bill in the House (House Bill 1761) with Representative Timm Ormsby co-sponsoring. Newly elected State Senator (former State Representative) Maralyn Chase, sponsored the agency request bill in the Senate (Senate Bill 5618) with Senator Adam Kline and Senator Steve Hobbs co-sponsoring. All legislators were asked to sponsor the bills because they were familiar with the five statewide bond issuing authorities in Washington and had worked on legislation dealing with tax exempt bonds in the past.

**Working the Bills during the Legislative Process:**

House Bill 1761 was referred to the House Capital Budget Committee, as anticipated. Senate Bill 5618 was referred to the Senate Financial Institutions, Housing and Insurance Committee, chaired by Senate co-sponsor, Steve Hobbs. Both bills were arranged to be heard early in the session through work with committee staff and the committee chairs.

The House Capital Budget Committee is a very active and knowledgeable committee. The Commission and other issuing authorities were asked by the committee to provide a significant amount of information to the committee regarding their history of bond issuances for the past ten years, their outstanding debt and a sample of the type of projects for which they had issued bonds during that period. All of this occurred after HB 1761 was heard in committee but before any committee action was taken on the bill.

The Senate Financial Institutions, Housing and Insurance Committee (FIHI) was reorganized during this session of the legislature. The previous chair had not been re-elected in 2010 and the former Vice Chair of the committee, Senator Hobbs, was the new chair. In addition, several of the former members of the committee had not returned and several new members had been appointed to the committee. Therefore, while the Commission had worked with the committee previously, it was under new leadership and had new members. The committee also had a history of working very cooperatively with the Republican minority and this meant we had to have their consent to move the bill out of committee.

Working with our partner bond issuing agencies, the Commission testified before both committees in support of the legislation. It was necessary to request a small technical amendment in the bill language in both committees

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based on further input and concerns from bond counsel that worked with local government entities that issued bonds in Washington. There was no opposition to either bill during hearings and the House committee voted the amended bill out of committee unanimously. However, in the Senate, the ranking Republican member raised concerns about the bill but agreed to allow the amended bill to move out of committee on a 4-2 vote only at the request of the chair.

**A Funny Thing Happened on the way to Passage:**

The Senate was the first body to take up the legislation on the floor. SB 5618 was expected to easily pass with support from the majority Democratic Caucus of the Senate. However, when the bill was brought up for a floor vote, a conservative group of Democratic Senators, known as the "Road Kill Caucus", decided to teach newly elected Senator Chase, who is very liberal and had been trying to amend and defeat legislation she considered too conservative on the floor, despite previous approval by the Senate Democratic Caucus. Seven members of the Road Kill Caucus voted with the Republican Majority and the Senate bill, the first sponsored by Senator Chase to reach the floor, went down to defeat. An effort to reconsider did not receive enough votes. House Bill 1761, on the other hand, passed out of the House by a vote of 96-0 with both Democrat and Republican support.

When HB 1761 was heard in the Senate FIHI committee, the ranking Republican member again raised concerns about the bill that needed to be addressed. By working with the other members of the Republican caucus on the committee and the committee chair to delay a vote, the Commission and our partners were able to provide a significant amount of information to the Ranking member about the benefits received by his district from the issuance of tax exempt bonds by Washington statewide issuers. The final argument that cemented the Senator's support was the suggestion that if a Washington state issuer did something he didn't like, he could call them to Olympia and take them to task. However, should an out of state issuer do something he didn't like through a bond issue in his district, he was not likely to get on an airplane and fly to Wisconsin to take them to task.

In addition, we agreed to amend the bill on the floor to add reporting requirements by statewide issuers to keep the legislature informed about the outcome of proposed bond issues by out of state issuers to ease the Senator's concerns that we were not just stifling honest competition. Having reached this agreement, HB 1761 moved out of committee by a vote of 5-1.

As agreed, HB 1761 was amended on the Senate floor to include the reporting requirements with the support of Committee Chair Hobbs and passed the Senate 48-0. The House concurred in the amendments 96-0 and Substitute House Bill 1761 was signed into law by the Governor on April 29, 2011.

**Attachments:** SHB 1761 and Final Bill Report SHB 1761

# 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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*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.*

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

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1761**

Chapter 211, Laws of 2011

62nd Legislature  
2011 Regular Session

ISSUANCE OF BONDS--OUT-OF-STATE ISSUERS

EFFECTIVE DATE: 07/22/11

Passed by the House April 14, 2011  
Yeas 97 Nays 0

FRANK CHOPP

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**Speaker of the House of Representatives**

Passed by the Senate April 7, 2011  
Yeas 48 Nays 1

BRAD OWEN

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**President of the Senate**

Approved April 29, 2011, 4:08 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1761** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

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**Chief Clerk**

FILED

April 29, 2011

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1761**

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AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

**State of Washington                      62nd Legislature                      2011 Regular Session**

**By** House Capital Budget (originally sponsored by Representatives Dunshee and Ormsby; by request of Washington State Housing Finance Commission)

READ FIRST TIME 02/22/11.

1            AN ACT Relating to limiting private activity bond issues by out-of-  
2 state issuers; amending RCW 39.46.020 and 39.86.140; and adding a new  
3 section to chapter 39.46 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            **Sec. 1.** RCW 39.46.020 and 2001 c 299 s 15 are each amended to read  
6 as follows:

7            Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9            (1) "Bond" means any agreement which may or may not be represented  
10 by a physical instrument, including notes, warrants, or certificates of  
11 indebtedness, that evidences an indebtedness of the state or a local  
12 government or a fund thereof, where the state or local government  
13 agrees to pay a specified amount of money, with or without interest, at  
14 a designated time or times to either registered owners or bearers,  
15 including debt issued under chapter 39.50 RCW.

16            (2) "Host approval" means an approval of an issue of bonds by an  
17 applicable elected representative of the state or local government,  
18 having jurisdiction, for purposes of section 147(f)(2)(A)(ii) of the



1 internal revenue code, over the area in which a facility is located  
2 that is to be financed with bonds issued by an issuer that is not the  
3 state or a local government.

4 (3) "Local government" means any county, city, town, special  
5 purpose district, political subdivision, municipal corporation, or  
6 quasi municipal corporation, including any public corporation created  
7 by such an entity.

8 ((+3)) (4) "Obligation" means an agreement that evidences an  
9 indebtedness of the state or a local government, other than a bond, and  
10 includes, but is not limited to, conditional sales contracts, lease  
11 obligations, and promissory notes.

12 ((+4)) (5) "State" includes the state, agencies of the state, and  
13 public corporations created by the state or agencies of the state.

14 ((+5)) (6) "Treasurer" means the state treasurer, county  
15 treasurer, city treasurer, or treasurer of any other municipal  
16 corporation.

17 NEW SECTION. Sec. 2. A new section is added to chapter 39.46 RCW  
18 to read as follows:

19 (1) It is the policy of this state that in order to maintain an  
20 effective system of monitoring the use of federal subsidies within the  
21 state, facilities within the state proposed to be financed with bonds  
22 issued by an issuer formed or organized under the laws of another state  
23 must receive prior approval from the statewide issuer authorized by the  
24 laws of Washington to issue bonds for the proposed project in  
25 accordance with this section.

26 (2)(a) At least one hundred twenty days prior to the public hearing  
27 for the proposed issuance of bonds for a project located in this state  
28 by an issuer formed or organized under the laws of another state, the  
29 issuer must notify the statewide issuer authorized under the laws of  
30 Washington to issue bonds for the proposed project and provide the  
31 information required under (b) of this subsection.

32 (b) The following items and information must be received by the  
33 statewide issuer authorized under the laws of Washington to issue bonds  
34 for the proposed project:

35 (i) A copy of the proposed notice of public hearing pertaining to  
36 the facilities, providing the date and location of the proposed  
37 hearing;

1 (ii) The maximum stated principal amount of the bonds;  
2 (iii) A description of the facility, including its location;  
3 (iv) A description of the plan of finance;  
4 (v) The name of the issuer of the bonds;  
5 (vi) The name of the initial owner or principal user of the  
6 facility;  
7 (vii) A description of how the project will meet the public policy  
8 requirements and objectives of this state including the policies of the  
9 statewide issuer under Washington law; and  
10 (viii) A check in the amount established by the statewide issuer  
11 under Washington law to perform the review.  
12 (c) If the statewide issuer authorized to issue the bonds under  
13 Washington law determines that the facility and the items and  
14 information submitted under (b) of this subsection are consistent with  
15 the laws and public policy of the state and are in the best interest of  
16 the state, then the statewide issuer shall issue a written approval  
17 under this section authorizing the governmental unit to grant its host  
18 approval of the public hearing in its discretion.  
19 (d) If the statewide issuer authorized to issue the bonds under  
20 Washington law determines that the facility and the items and  
21 information submitted under (b) of this subsection are not consistent  
22 with the laws and public policy of the state and are not in the best  
23 interest of the state, then the public hearing may not proceed and the  
24 bonds may not be issued by an issuer formed or organized under the laws  
25 of another state.  
26 (3)(a) By December 1, 2011, annually each December 1st until  
27 December 1, 2014, and December 1st every five years thereafter, each  
28 statewide issuer receiving the notice required by subsection (2) of  
29 this section from an issuer formed or organized under the laws of  
30 another state shall, within existing funds, submit a report to the  
31 appropriate committees of the legislature.  
32 (b) Each report under (a) of this subsection must provide, for  
33 annual reports the following information from the previous fiscal year,  
34 and for other reports the following information from each of the  
35 previous fiscal years:  
36 (i) The number of proposed projects for which the statewide issuer  
37 received notice and the information described under subsection (2) of  
38 this section;

- 1 (ii) A description of the projects for which notice was submitted;
- 2 (iii) The dollar amount of each proposed project;
- 3 (iv) The location of each proposed project;
- 4 (v) Whether the proposed project was approved by the statewide
- 5 issuer; and
- 6 (vi) For any project that was not approved by the statewide issuer,
- 7 the reasons for the statewide issuer's decision.

8 **Sec. 3.** RCW 39.86.140 and 2010 1st sp.s. c 6 s 8 are each amended  
9 to read as follows:

10 (1) No issuer may receive an allocation of the state ceiling  
11 without a certificate of approval from the agency. The agency may not  
12 make an allocation of the state ceiling to an issuer formed or  
13 organized under the laws of another state.

14 (2) For each state ceiling allocation request, an issuer shall  
15 submit to the agency, no sooner than ninety days prior to the beginning  
16 of a calendar year for which an allocation of the state ceiling is  
17 being requested, a form identifying:

- 18 (a) The amount of the allocation sought;
- 19 (b) The bond use category from which the allocation sought would be
- 20 made;
- 21 (c) The project or program for which the allocation is requested;
- 22 (d) The financing schedule for which the allocation is needed; and
- 23 (e) Any other such information required by the agency, including
- 24 information which corresponds to the allocation criteria of RCW
- 25 39.86.130.

26 (3) The agency may approve or deny an allocation for all or a  
27 portion of the issuer's request. Any denied request, however, shall  
28 remain on file with the agency for the remainder of the calendar year  
29 and shall be considered for receiving any allocation, reallocation, or  
30 carryforward of unused portions of the state ceiling during that  
31 period.

32 (4) After receiving an allocation request, the agency shall mail to  
33 the requesting issuer a written certificate of approval or notice of  
34 denial for an allocation amount, by a date no later than the latest of  
35 the following:

- 36 (a) February 1st of the calendar year for which the request is
- 37 made;

1 (b) Fifteen days from the date the agency receives an allocation  
2 request; or

3 (c) Fifteen days from the date the agency receives a recommendation  
4 by the board with regard to a small issue allocation request, should  
5 the board choose to review individual requests.

6 (5)(a) For requests of the state ceiling of any calendar year, the  
7 following applies to all bond use categories except housing and student  
8 loans:

9 (i) Except for housing and student loans, any allocations granted  
10 prior to April 1st, for which bonds have not been issued by July 1st of  
11 the same calendar year, shall revert to the agency on July 1st of the  
12 same calendar year for reallocation unless an extension or carryforward  
13 is granted;

14 (ii) Except for housing and student loans, any allocations granted  
15 on or after April 1st, for which bonds have not been issued by October  
16 15th of the same calendar year, shall revert to the agency on October  
17 15th of the same calendar year for reallocation unless an extension or  
18 carryforward is granted.

19 (b) For each calendar year, any housing or student loan  
20 allocations, for which bonds have not been issued by December 15th of  
21 the same calendar year, shall revert to the agency on December 15th of  
22 the same calendar year for reallocation unless an extension or  
23 carryforward is granted.

24 (6) An extension of the deadlines provided by subsection (5) of  
25 this section may be granted by the agency for the approved allocation  
26 amount or a portion thereof, based on:

- 27 (a) Firm and convincing evidence that the bonds will be issued  
28 before the end of the calendar year if the extension is granted; and
- 29 (b) Any other criteria the agency deems appropriate.

30 (7) If an issuer determines that bonds subject to the state ceiling  
31 will not be issued for the project or program for which an allocation  
32 was granted, the issuer shall promptly notify the agency in writing so  
33 that the allocation may be canceled and the amount may be available for  
34 reallocation.

35 (8) Bonds subject to the state ceiling may be issued only to  
36 finance the project or program for which a certificate of approval is  
37 granted.

1           (9) Within three business days of the date that bonds for which an  
2 allocation of the state ceiling is granted have been delivered to the  
3 original purchasers, the issuer shall mail to the agency a written  
4 notification of the bond issuance. In accordance with chapter 39.44  
5 RCW, the issuer shall also complete bond issuance information on the  
6 form provided by the agency.

7           (10) If the total amount of bonds issued under the authority of a  
8 state ceiling for a project or program is less than the amount  
9 allocated, the remaining portion of the allocation shall revert to the  
10 agency for reallocation in accordance with the criteria in RCW  
11 39.86.130. If the amount of bonds actually issued under the authority  
12 of a state ceiling is greater than the amount allocated, the entire  
13 allocation shall be disallowed.

Passed by the House April 14, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 29, 2011.

Filed in Office of Secretary of State April 29, 2011.