

AMENDED IN SENATE AUGUST 17, 2010

AMENDED IN SENATE JUNE 15, 2010

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2560

Introduced by Assembly Member Brownley
(Coauthor: Senator Hancock)

February 19, 2010

An act to add Section 12001.6 to the Education Code, relating to education finance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2560, as amended, Brownley. Education finance: federal tax credit bond volume cap.

Existing law assigns specified amounts of the state's 2009 federal tax credit bond volume cap to the State Department of Education and the California School Finance Authority, to be assigned and distributed to school districts, county offices of education, and charter schools, as specified.

This bill would authorize the department to assign and distribute the state's 2010 federal tax credit bond volume cap for qualified school construction bonds to or for the benefit of school districts and county offices of education and would authorize the ~~authority~~ *California School Finance Authority* to assign and distribute the state's 2010 federal tax credit bond volume cap for qualified school construction bonds to or for the benefit of charter schools, or to be further assigned and distributed to one or more issuers in the state for the benefit of charter

schools, as determined by the authority. *The bill would allow a charter school to apply for the federal qualified school construction bond volume cap if it meets specified criteria.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) In 2009, the United States Congress passed and the President
4 signed into law the American Recovery and Reinvestment Act of
5 2009 (Public Law 111-5) in order to provide funding and other
6 economic stimulus to foster economic recovery among the states.

7 (b) The federal tax credit bond volume cap for qualified school
8 construction bonds is included in the federal American Recovery
9 and Reinvestment Act of 2009 and can be used to lower the cost
10 of financing the construction, rehabilitation, or repair of a public
11 school facility or for the acquisition of land where a school will
12 be built.

13 (c) On March 17, 2010, the United States Department of the
14 Treasury released the second allocation authority of eleven billion
15 dollars (\$11,000,000,000) in federal tax credit bond volume cap
16 for the issuance of qualified school construction bonds, of which
17 six billion six hundred million dollars (\$6,600,000,000) will be
18 allocated directly to the states and four billion four hundred million
19 dollars (\$4,400,000,000) will be allocated to 103 large, local
20 educational agencies based upon the enrollment of pupils who
21 qualify for the federal free or reduced price meal program.

22 (d) In order to allocate the seven hundred twenty million
23 fifty-eight thousand dollars (\$720,058,000) in federal tax credit
24 bond volume cap for qualified school construction bonds provided
25 to California in 2010, this act is necessary to provide the authority
26 to the department and the California School Finance Authority to
27 make distributions to local educational agencies and eligible charter
28 schools.

29 SEC. 2. Section 12001.6 is added to the Education Code, to
30 read:

1 12001.6. (a) The Legislature hereby finds and declares that
2 the federal tax credit bond volume cap for qualified school
3 construction bonds designated to California by the federal
4 American Recovery and Reinvestment Act of 2009 (Public Law
5 111-5), together with Internal Revenue Service Notice 2010-17
6 issued pursuant thereto, does not constitute federal moneys, federal
7 funds, or funds of any kind for any purpose under this code.

8 (b) The department is authorized to assign and distribute the
9 state's 2010 federal tax credit bond volume cap for qualified school
10 construction bonds to or for the benefit of school districts and
11 county offices of education in the state.

12 (c) There is hereby assigned to the department six hundred
13 fifty-one million six hundred fifty-two thousand dollars
14 (\$651,652,000) of the state's 2010 federal tax credit bond volume
15 cap for qualified school construction bonds.

16 (1) A school district or county office of education may apply
17 for the federal tax credit bond volume cap for qualified school
18 construction bonds if it meets all of the following eligibility criteria:

19 ~~(A) The project for which the federal qualified school~~
20 ~~construction bond authorization may be applied received approval~~
21 ~~from the Division of the State Architect before the application was~~
22 ~~submitted.~~

23 ~~(B)~~

24 (A) The project is funded by local ~~voter-approved~~
25 *voter-approved* bonds issued by the school district. A county office
26 of education and a school district with an enrollment of 2,500 or
27 less may use other forms of financing with the submission of a
28 resolution adopted by the county board of education or governing
29 board of the school district authorizing the issuance of the
30 financing.

31 ~~(C)~~

32 (B) The governing board of the school district or county board
33 of education has adopted a resolution committing the district or
34 county office to ~~meet or exceed~~ *consider* the criteria of the
35 Collaborative for High Performance Schools or the criteria on
36 sustainable school design, construction, and operation of the
37 Leadership in Energy and Environmental Design ~~and commits the~~
38 ~~district or county office to ensure that every~~ *when developing and*
39 *approving all subsequent* new school, new building, and major
40 modernization ~~project meets those criteria~~ *projects*.

1 ~~(2) A school district or county office of education that received~~
2 ~~a 2009 federal tax credit bond volume cap for qualified school~~
3 ~~construction bonds is not eligible to apply.~~

4 (2) *A school district or county office of education that received*
5 *a 2009 allocation but did not make any issuance may apply for*
6 *2010 federal tax credit bond volume cap for qualified school*
7 *construction bonds nine months after the effective date of this*
8 *section.*

9 (3) A school district or county office of education that received
10 a 2009 or 2010 federal tax credit bond volume cap for qualified
11 school construction bond allocation from the United States
12 Department of the Treasury is not eligible to apply.

13 (4) Five business days after the enactment of this legislation,
14 the department shall post the application form on its Internet Web
15 site.

16 (A) An application must be submitted via certified mail.

17 (B) ~~An application may not be postmarked until 20~~ *shall not be*
18 *postmarked until 30* business days after the enactment of this
19 legislation.

20 (C) An application shall include the total number of enrolled
21 pupils who qualify for the federal free and reduced priced meal
22 program and the total overall pupil enrollment for the 2008–09
23 school year.

24 (5) An application not meeting the conditions set forth in
25 paragraphs (1) and (4) shall be returned to the applicant.

26 (6) Applications meeting the conditions set forth in paragraphs
27 (1) and (4) shall be accepted on a first-come-first-served basis by
28 date of postmark. If this program is oversubscribed, order of
29 allocation shall be established using the following criteria:

30 (A) First, earliest date of postmark.

31 (B) *Second, the project for which the federal qualified school*
32 *construction bond authorization will be applied received approval*
33 *from the Division of the State Architect before the application was*
34 *submitted.*

35 ~~(B) Second,~~

36 (C) *Third,* the greater percentage of pupils who qualify for the
37 federal free and reduced priced meals program and are enrolled in
38 the applying school district or county office of education in the
39 2008–09 school year. The department shall certify the number of

1 pupils who qualify and the overall enrollment and calculate the
2 percentage to the nearest one-hundredth of 1 percent.

3 (7) The department shall authorize the 2010 federal tax credit
4 bond volume cap for qualified school construction bonds no sooner
5 than December 1, 2010.

6 (8) The department shall maintain a waiting list of eligible
7 school districts and county offices of education that did not receive
8 an allocation in the order established pursuant to paragraph (6).

9 (9) An applicant may not apply for more than twenty-five
10 million dollars (\$25,000,000) of 2010 federal tax credit bond
11 volume cap for qualified school construction bonds.

12 (10) A school district or county office of education applying
13 for 2010 federal tax credit bond volume cap for qualified school
14 construction bonds authorization shall certify in its application
15 that it will fulfill all of the federal qualified school construction
16 bond program requirements, *including both of the following*
17 *requirements:*

18 (A) *Within six months of the date of issuance, the school district*
19 *or county office of education shall enter into a contract or contracts*
20 *for use of an amount of bond proceeds equal to 10 percent of the*
21 *authorization.*

22 (B) *Within three years of the date of issuance, the school district*
23 *or county office of education shall spend 100 percent of the bond*
24 *proceeds for a qualified purpose.*

25 (11) Fifteen days after bond issuance, the school district or
26 county office of education shall submit to the department a copy
27 of the appropriate federal Internal Revenue Service Form,
28 Information Return for Tax-Exempt Bonds, as confirmation of
29 issuance.

30 (12) Thirty days after the completion of the expenditure the
31 recipient shall submit a completion report to the department. The
32 completion report must be certified by the bond counsel of the
33 school district or county office of education.

34 (13) If any or all of the federal qualified school construction
35 bond authorizations to a school district or county office of
36 education are not issued within six months from the date of
37 authorization, any or all unused federal qualified school
38 construction bond authorizations shall revert to the department.
39 No extensions shall be provided.

1 (A) The department shall reallocate any remaining federal
2 qualified school construction bond allocation to school districts
3 or county offices of education that were eligible and applied for
4 the authorization but did not receive an allocation.

5 (B) Reverted 2010 federal tax credit bond volume cap for
6 qualified school construction bonds shall be allocated to school
7 districts or county offices of education pursuant to the order of
8 priority established by paragraph (6).

9 (C) The department shall allocate reverted federal qualified
10 school construction bond authorizations as they are available and
11 until all are issued.

12 (d) The California School Finance Authority, established
13 pursuant to Section 17172, is authorized to assign and distribute
14 the state's 2010 federal tax credit bond volume cap for qualified
15 school construction bonds to or for the benefit of charter schools,
16 or to be further assigned and distributed to one or more issuers in
17 the state for the benefit of charter schools, as determined by the
18 authority.

19 (1) There is hereby assigned to the California School Finance
20 Authority, established pursuant to Section 17172, sixty-eight
21 million four hundred six thousand dollars (\$68,406,000) of the
22 state's 2010 federal tax credit bond volume cap for qualified school
23 construction bonds, to be issued for the benefit of charter schools,
24 or to be further assigned and distributed to one or more issuers in
25 the state for the benefit of charter schools, as the authority shall
26 determine.

27 ~~(2) The parameters specified in "Borrowing Authority~~
28 ~~Parameters and Application," dated February 10, 2010, as~~
29 ~~developed by the California School Finance Authority and~~
30 ~~referenced in Resolution 10-04 of the authority, shall apply to all~~
31 ~~applications submitted to the California School Finance Authority~~
32 ~~for the state's 2010 federal tax credit bond volume cap for qualified~~
33 ~~school construction bonds. If an applicant uses any 2010 federal~~
34 ~~tax credit bond volume cap in conjunction with a bond that will~~
35 ~~serve as a local match for purposes of the Charter School Facilities~~
36 ~~Program established by Section 17078.52, the applicant, in addition~~
37 ~~to the requirements of this section, shall comply with all of the~~
38 ~~requirements of the Charter School Facilities Program.~~

1 (2) A charter school may apply for the federal qualified school
2 construction bond volume cap if it meets all of the following
3 criteria:

4 (A) The charter school is operated as, or is operated by, a
5 nonprofit entity.

6 (B) The charter school has an approved charter in place that
7 is current at the time of application and continuously through the
8 date of bond issuance.

9 (C) The chartering authority certifies that the charter school is
10 in good standing and is in compliance with the terms of its charter.

11 (D) The charter school provides the level of classroom-based
12 instruction specified in paragraph (1) of subdivision (e) of Section
13 47612.5.

14 (E) The applicant has completed at least three full school years
15 of instructional operation as a charter school as of the end of the
16 previous school year.

17 (3) Five business days after the effective date of this section,
18 the California School Finance Authority shall post the application
19 form and fee schedule on its Internet Web site.

20 (4) An application shall not be postmarked until 30 business
21 days after the effective date of this section.

22 (5) Following a review of all applications and a preliminary
23 award of borrowing authority, the California School Finance
24 Authority shall ask applicants to provide additional information
25 as necessary for the issuance of the bonds.

26 (6) Applications that meet the conditions set forth in paragraph
27 (2) shall be considered by the California School Finance Authority
28 on a first-come-first-served basis by date of postmark. If the
29 program is oversubscribed, staff shall present a priority list to the
30 authority pursuant to paragraph (7).

31 (7) In the event that the program is oversubscribed, priority
32 shall be assigned first to those charter schools that are best able
33 to demonstrate to the California School Finance Authority, in its
34 sole discretion, that they will be capable of accessing the capital
35 markets or be privately placed with an investor. The order of
36 allocation shall be established using the following criteria:

37 (A) Applicants who are able to obtain credit enhancement for
38 a qualified school construction bond financing, including a bank
39 letter of credit, who contribute substantial equity to a project, or

1 *who are otherwise able to obtain investment-grade credit ratings*
2 *shall receive priority over other applicants.*

3 *(B) In the event that multiple applicants satisfy the criteria*
4 *described in subparagraph (A), priority shall be assigned to*
5 *applications with the earliest postmark date. An application that*
6 *is hand delivered and does not have a postmark date will be ranked*
7 *based on the time the application is received by the California*
8 *School Finance Authority.*

9 *(8) Applicants shall not apply for more than twenty-five million*
10 *dollars (\$25,000,000) of qualified school construction bond*
11 *authorization per project.*

12 *(9) Subsequent application cycles may be considered if*
13 *borrowing authority for qualified school construction bonds*
14 *remains available after the initial application period.*

15 *(10) Subject to the sole discretion of the California School*
16 *Finance Authority, any authorization to borrow qualified school*
17 *construction bond proceeds is contingent on the issuance of the*
18 *qualified school construction bonds by December 31, 2011, after*
19 *which time the authorization expires and the authority may allocate*
20 *the authorization to another qualified applicant.*

21 *(11) The California School Finance Authority shall allocate*
22 *reverted federal qualified school construction bond authorization*
23 *as it becomes available and until all of the authorization is issued.*

24 *(12) If an applicant uses any federal tax credit bond volume*
25 *cap in conjunction with a bond that will serve as a local match*
26 *for purposes of the Charter School Facilities Program established*
27 *by Section 17078.52, the applicant, in addition to the requirements*
28 *of this section, shall comply with all of the requirements of the*
29 *Charter School Facilities Program.*

30 SEC. 3. This act is an urgency statute necessary for the
31 immediate preservation of the public peace, health, or safety within
32 the meaning of Article IV of the Constitution and shall go into
33 immediate effect. The facts constituting the necessity are:

34 In order to access federal stimulus tax credits at the earliest
35 possible opportunity, it is necessary that this act take effect
36 immediately.