

Senate Bill No. 205

CHAPTER 11

An act to amend the heading of Article 1 (commencing with Section 12000) of Chapter 1 of Part 8 of Division 1 of Title 1 of, and to add Section 12001.5 to, the Education Code, relating to education finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 25, 2010. Filed with
Secretary of State March 25, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 205, Hancock. Education finance: federal tax credit bond volume cap.

Existing federal law authorizes the Internal Revenue Service to publish the maximum face value amount of qualified school construction bonds, as defined, that may be allocated by the United States Department of the Treasury to each state pursuant to the federal American Recovery and Reinvestment Act of 2009.

This bill would assign 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. The bill would exempt the assignment and distribution of the federal tax credit bond volume cap under the bill from the rulemaking provisions of the Administrative Procedure Act.

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

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

SECTION 1. The heading of Article 1 (commencing with Section 12000) of Chapter 1 of Part 8 of Division 1 of Title 1 of the Education Code is amended to read:

Article 1. Allocation of Federal Funds and Federal Tax Credit Bond Volume Cap

SEC. 2. Section 12001.5 is added to the Education Code, to read:

12001.5. (a) The Legislature hereby finds and declares that the federal tax credit bond volume cap for qualified school construction bonds designated for the state by the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), together with Internal Revenue Service

Notice 2009-35 issued pursuant thereto, does not constitute federal moneys, federal funds, or funds of any kind for any purpose under this code.

(b) There is hereby assigned to the State Department of Education, seven hundred million dollars (\$700,000,000) of the state's 2009 federal tax credit bond volume cap for qualified school construction bonds, to be further assigned and distributed to or for the benefit of school districts and county offices of education in the state, as the State Department of Education shall determine.

(c) (1) There is hereby assigned to the California School Finance Authority, established pursuant to Section 17172, seventy-three million five hundred twenty-five thousand dollars (\$73,525,000) of the state's 2009 federal tax credit bond volume cap for qualified school construction bonds, to be issued 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 the authority shall determine.

(2) The parameters specified in "Borrowing Authority Parameters and Application," dated February 10, 2010, as developed by the California School Finance Authority and referenced in Resolution 10-04 of the authority, shall apply to all applications submitted to the California School Finance Authority for the state's 2009 federal tax credit bond volume cap for qualified school construction bonds. If an applicant uses any 2009 federal tax credit bond volume cap in conjunction with a bond that will serve as a local match for purposes of the Charter School Facilities Program established by Section 17078.52, the applicant, in addition to the requirements of this section, shall comply with all of the requirements of the Charter School Facilities Program.

(d) (1) Any of the state's 2009 federal tax credit bond volume cap for qualified school construction bonds assigned to the State Department of Education pursuant to subdivision (b) that has not resulted in the issuance of qualified school construction bonds by December 31, 2009, shall be added to the state's volume cap for 2010, in accordance with subsection (e) of Section 54F of the Internal Revenue Code, and assigned as set forth in this section. Those districts and county offices of education that received an assignment from the State Department of Education by December 31, 2009, and notification from the State Department of Education that they were granted an extension to issue bonds through March 31, 2010, shall have an additional 120 days from the effective date of this legislation to issue bonds.

(2) Any of the state's 2009 federal tax credit bond volume cap for qualified school construction bonds originally assigned to the State Department of Education in 2009 pursuant to subdivision (b) that does not result in the issuance of qualified school construction bonds within 120 days from the effective date of this legislation shall revert to the state, and shall be reallocated in accordance with the process established pursuant to state law for allocating the 2010 federal tax credit bond volume cap for qualified school construction bonds.

(3) The department shall reassign to a school district any 2009 federal tax credit bond volume cap for qualified school construction bonds that was directly allocated to the district by the United States Internal Revenue Service pursuant to Internal Revenue Service Notice 2009-35, did not result in the issuance of qualified school construction bonds by December 31, 2009, and was reallocated by the district to the state no later than 30 days after the effective date of this section. The department shall grant the school district 120 days from the effective date of this section to issue the qualified school construction bonds. Any of the state's federal tax credit bond volume cap for qualified school construction bonds assigned to a school district described in this paragraph that does not result in the issuance of qualified school construction bonds within 120 days from the effective date of this section shall revert to the state and shall be reallocated by the department in accordance with the process established pursuant to state law for allocating the 2010 federal tax credit bond volume cap for qualified school construction bonds.

(e) (1) Any of the state's 2009 federal tax credit bond volume cap for qualified school construction bonds assigned to the California School Finance Authority pursuant to subdivision (c) that has not resulted in the issuance of qualified school construction bonds by December 31, 2009, shall be added to the state's volume cap for 2010, in accordance with subsection (e) of Section 54F of the Internal Revenue Code, and allocated as set forth in this section. Any charter school that received an allocation from the California School Finance Authority prior to December 31, 2009, shall retain its allocation pursuant to the resolution of the California School Finance Authority.

(2) Any of the state's 2009 federal tax credit bond volume cap for qualified school construction bonds originally allocated to the California School Finance Authority in 2009 pursuant to subdivision (c) that does not result in the issuance of qualified school construction bonds by December 31, 2010, shall be retained by the California School Finance Authority, and reallocated in accordance with the qualified school construction bond parameters established by the California School Finance Authority.

(f) Notwithstanding any other provision of law, in order to further the purposes of the federal American Recovery and Reinvestment Act of 2009, and allow school districts to issue federal tax credit bonds as expeditiously as possible, the assignment and distribution of the federal tax credit bond volume cap by the State Department of Education and the California School Finance Authority under this section are exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(g) It is the intent of the Legislature that the parameters and conditions adopted by the department and the California School Finance Authority be comparable where practical and applicable in order to ensure consistency and equity in the state level assignment and distribution of the federal tax

credit bond volume cap, including, but not limited to, maximum tax credit amounts per project or school district.

(h) Notwithstanding any other provision of this section, issuers within the state may issue qualified school construction bonds in any manner permitted by federal law, including, but not limited to, as tax credit bonds or federal subsidy bonds.

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

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