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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 1. GENERAL [8000 - 8899.95] (Division 1 enacted by Stats. 1943, Ch. 134.)

CHAPTER 11.8. California Debt Limit Allocation Committee [8869.80 - 8869.94] (Chapter 11.8 repealed (by Sec. 1) and added by Stats. 1987, Ch. 943, Sec. 2.5.)

8869.80. The Legislature hereby finds and declares all of the following:

- (a) The Tax Reform Act of 1986 (Public Law 99-514) establishes a volume ceiling on the aggregate amount of private activity bonds that can be issued in each state. The volume ceiling is the product of seventy-five dollars (\$75) multiplied by the state population in 1987 and fifty dollars (\$50) multiplied by the state population in each succeeding calendar year.
- (b) Sections 1112 and 1401 of the American Recovery and Reinvestment Act of 2009 (26 U.S.C. Secs. 54a and 1400U-1) establish an aggregate amount of bond authority that can be issued in each state. Said amount may be determined from time to time by federal law, federal notice, or both federal law and notice.
- (c) The federal act requires each state to allocate its volume ceiling according to a specified formula unless a different procedure is established by Governor's proclamation or state legislation.
- (d) Therefore, it is necessary to designate a state agency and create an allocation system to administer the state volume ceiling.
- (e) A substantial public benefit is served by promoting housing for lower income families and individuals.
- (f) A substantial public benefit is served by preserving and rehabilitating existing governmental assisted housing for lower income families and individuals.
- (g) A substantial public benefit is served by providing federal tax credits or reduced interest rate mortgages to assist teachers, principals, vice principals, assistant principals, and classified employees who are willing to serve in high priority schools to purchase a home.

(Amended by Stats. 2021, Ch. 344, Sec. 1. (AB 447) Effective January 1, 2022.)

8869.81. This chapter is enacted to implement the state volume limit established in Section 1301 of the Federal Tax Reform Act of 1986 (Public Law 99-514), Sections 1112 and 1401 of the American Recovery and Reinvestment Act of 2009 (26 U.S.C. Secs. 54a and 1400U-1), and Sections 142(k) and 146 of the Internal Revenue Code.

(Amended by Stats. 2015, Ch. 277, Sec. 2. (AB 1195) Effective January 1, 2016.)

8869.82. (a) As used in this chapter, unless the context otherwise requires, the terms defined in this section shall have the following meanings:

- (1) "Committee" means the California Debt Limit Allocation Committee established pursuant to Section 8869.83.
- (2) "Fund" means the California Debt Limit Allocation Committee Fund created pursuant to Section 8869.90.
- (3) "Internal Revenue Code" means the Internal Revenue Code of 1986 (26 U.S.C. Sec. 1 et seq.), as amended from time to time.
- (4) "Issuer" means any local agency or state agency authorized by the Constitution or laws of the state to issue private activity bonds.
- (5) "Local agency" means any political subdivision of the state within the meaning of Section 103 of the Internal Revenue Code (26 U.S.C. Sec. 103), or any entity that has the power to issue private activity bonds on behalf of that political subdivision.

(6) "MBTCAC" means the California Tax Credit Allocation Committee created by Section 50199.8 of the Health and Safety Code.

(7) "Private activity bond" means a part or all of any bond, or other instrument, required to obtain a portion of the state's volume cap pursuant to Sections 142(k) and 146 of the Internal Revenue Code (26 U.S.C. Secs. 142(k) and 146) in order to be tax-exempt, including, generally, all of the following, as those bonds are defined in the Internal Revenue Code:

(A) Exempt facility bonds, except bonds for airports, docks and wharves, and certain solid waste facilities.

(B) Qualified mortgage bonds.

(C) Qualified small issue bonds.

(D) Qualified student loan bonds.

(E) Qualified redevelopment bonds.

(F) The nonqualified amount of an issue of governmental bonds (including advance refunds) exceeding fifteen million dollars (\$15,000,000), as provided in Section 141(b)(5) of the Internal Revenue Code (26 U.S.C. Sec. 141(b)(5)).

(8) "Private activity bond limit" means any portion of the state ceiling allocated or transferred to a state agency or local agency pursuant to this chapter.

(9) "State" means the State of California.

(10) "State agency" means the state and all state entities, including joint powers authorities of which the state or agency or instrumentality thereof is a member, empowered to issue private activity bonds, the interest on which is exempt from income tax under Section 103(a) of the Internal Revenue Code (26 U.S.C. Sec. 103(a)), including nonprofit corporations described in Section 150(d) of the Internal Revenue Code (26 U.S.C. Sec. 150(d)), authorized to issue qualified scholarship funding bonds.

(11) "State ceiling" includes all of the following:

(A) The amount specified by Section 146(d) of the Internal Revenue Code (26 U.S.C. Sec. 146(d)) for each calendar year commencing in 1986.

(B) The amount reserved to the state pursuant to Sections 1112 and 1401 of the American Recovery and Reinvestment Act of 2009 (26 U.S.C. Secs. 54a and 1400U-1).

(C) The amount specified by Section 142(k) of the Internal Revenue Code (26 U.S.C. Sec. 42(k)).

(b) Pursuant to Section 146(e) of the Internal Revenue Code (26 U.S.C. Sec. 146(e)), this chapter governs the allocation of the state ceiling among the state agencies and local agencies in this state having authority to issue private activity bonds.

(c) Any portion of the state ceiling allocated or transferred by or under the authority of this chapter shall become the private activity bond limit for the issuer of which that portion is allocated or transferred for any private activity bonds issued by that issuer.

(Amended by Stats. 2015, Ch. 277, Sec. 3. (AB 1195) Effective January 1, 2016.)

8869.83. (a) There is in state government the California Debt Limit Allocation Committee, consisting of six members as follows:

(1) The Treasurer, or his or her designee.

(2) The Controller, or his or her designee.

(3) The Governor, or his or her designee.

(4) The Director of Housing and Community Development, who shall be a nonvoting member.

(5) The Executive Director of the California Housing Finance Agency, who shall be a nonvoting member.

(6) A representative from local government who shall be a nonvoting member, selected by two voting members of the committee.

(b) The Treasurer shall serve as chairperson of the committee and the office of the Treasurer shall provide an executive director and any administrative assistance and support staff that is needed for the committee to operate. The chairperson shall keep, or cause to be kept, minutes and other records and documents of the committee. The committee may, by resolution, delegate to one or more of its members, its executive director, or any other official or employee of the committee any powers and duties that it may deem proper, including, but not limited to, the power to enter into contracts on behalf of the committee.

(c) Members of the committee shall serve without compensation.

(d) Two voting members of the committee shall constitute a quorum. The affirmative vote of two voting members of the committee shall be necessary for any action taken by the committee. However, the committee may, by unanimous vote, delegate to its chairperson the authority to carry out any acts empowered to it under this chapter.

(Amended by Stats. 2008, Ch. 211, Sec. 4. Effective January 1, 2009.)

8869.84. (a) The committee shall, as soon as is practicable after the start of each calendar year, determine and announce the state ceiling for the calendar year.

(b) The entire state ceiling for each calendar year is hereby allocated to the committee to further allocate to state and local agencies as provided in this chapter.

(c) The committee shall prepare application forms and announce procedures for receipt and review of applications from state and local agencies desiring to issue private activity bonds.

(d) The committee may at any time, before or after granting any allocations in any calendar year to any state agencies or local agencies, announce priorities or reservations of any part of the state ceiling not theretofore allocated either for certain categories of bonds or categories of issuers.

(e) The committee may require any issuer making an application to the committee or MBTCAC for allocation of a portion of the state ceiling to make a deposit, as determined by the committee, of up to 1 percent of the portion requested. If an allocation is not given, the deposit shall be returned. If an allocation is given, the deposit shall be kept, in proportion to the amount of allocation given, until bonds are issued. Upon that issuance, the deposit shall be returned to the issuer in an amount equal to the product of (1) the amount of the deposit retained times (2) the ratio between the amount of bonds issued divided by the amount of allocation granted. If no bonds are issued prior to the expiration of the allocation, the deposit shall be kept. However, in cases where only a portion or none of the bonds are issued, the committee may return all or part of the deposit if it determines there is good cause to do so. Any portion of a deposit kept shall be deposited in the fund.

(f) The committee may transfer part of the state ceiling to the MBTCAC, to be used for qualified mortgage bonds and exempt facility bonds or for qualified residential rental projects, as those terms are used in the Internal Revenue Code, together referred to as "housing bonds," with directions and conditions pursuant to which MBTCAC may allocate those amounts to issuers of housing bonds at both the state and local levels. In carrying out these functions, MBTCAC shall act solely as directed or authorized by the committee. If the committee makes the transfer to MBTCAC authorized by this subdivision, the references in Sections 8869.85, 8869.86, 8869.87, and 8869.88 to the "committee" shall, for purposes of any housing bonds, be deemed to mean MBTCAC.

(g) (1) The committee may establish the Extra Credit Teacher Home Purchase Program to provide federal mortgage credit certificates and reduced interest rate loans funded by mortgage revenue bonds to eligible teachers, principals, vice principals, assistant principals, and classified employees who agree to teach or provide administration or service in a high priority school. Priority for assistance shall be given to eligible teachers, principals, vice principals, and assistant principals.

(2) For purposes of this program, the following definitions shall apply:

(A) "High priority school" means a state K–12 public school that is ranked in the bottom half of the Academic Performance Index developed pursuant to subdivision (a) of Section 52052 of the Education Code. However, priority shall be given to schools that are ranked in the lowest three deciles.

(B) "Classified employee" means an employee of a school district, employed in a position not requiring certification qualifications.

(3) The committee may make reservations of a portion of future calendar year state ceiling limits for up to five future calendar years for that program. The committee may also make future allocations of the state ceiling for up to five years for any issuer under that program. Any future allocation made by the committee shall constitute an allocation of the state ceiling for a future year specified by the committee and shall be deemed to have been made on the first day of the future year so specified. The committee may condition allocations under the Extra Credit Teacher Home Purchase Program on any terms and conditions that the committee deems necessary or appropriate, including, but not limited to, the execution of a contract between the teacher, principal, vice principal, assistant principal, or classified employee and the issuer whereby the teacher, principal, vice principal, assistant principal, or classified employee agrees to comply with the terms and conditions of the program. The contract may include, among other things, an agreement by the teacher, principal, vice principal, assistant principal, or classified employee to teach or provide administration or service in a high priority school for a minimum number of years, and provisions for enforcing the contract that the committee deems necessary or appropriate.

(4) If a teacher, principal, vice principal, assistant principal, or classified employee does not fulfill the requirements of a contract entered into pursuant to paragraph (3), the issuer of the mortgage credit certificate or mortgage revenue bond may recover as an

assessment from the teacher, principal, vice principal, assistant principal, or classified employee a monetary amount equal to the lesser of (A) one-half of the teacher's, principal's, vice principal's, assistant principal's, or classified employee's net proceeds from the sale of the related residence or (B) the amount of monetary benefit conferred on the teacher, principal, vice principal, assistant principal, or classified employee as a result of the federal mortgage credit certificate or reduced interest rate loan funded by a mortgage revenue bond, offset by the amount of any federal recapture, as defined by Section 143(m) of the Internal Revenue Code. The assessment may be secured by a lien against the residence, which shall decline in amount over the term of the contract as the teacher, principal, vice principal, assistant principal, or classified employee fulfills the term of the contract, and which shall be collected at the time of sale of the residence. Any assessment collected pursuant to this paragraph shall be used for the issuer's costs in administering the Extra Credit Teacher Home Purchase Program. The issuers shall report annually to the committee the total amount of any assessments collected pursuant to this paragraph and how those assessments were used by the issuer.

(5) If the committee establishes the Extra Credit Teacher Home Purchase Program pursuant to this subdivision, the committee shall report annually to the Legislature the results of the program, including all of the following:

(A) The amount of state ceiling limits allocated to or reserved for the program.

(B) The agencies to which state ceiling limits were issued.

(C) The number of loans or mortgage credit certificates issued to teachers, principals, vice principals, assistant principals, and classified employees.

(D) The schools or school districts at which recipients of assistance are employed, aggregated by decile in which the schools rank on the Academic Performance Index and by the percentage of uncredentialed teachers employed at the schools.

(6) The committee shall not make any reservations of future calendar year state ceiling limits or future allocations of the state ceiling pursuant to this subdivision on or after January 1, 2004, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date. However, reservations and allocations made prior to that date shall remain valid.

(Amended by Stats. 2011, Ch. 239, Sec. 1. (SB 562) Effective January 1, 2012.)

8869.85. (a) Each state agency shall apply to the committee for allocation of a portion of the state ceiling, supplying any information which the committee may require. The application may be for a specific project, or it may be for a designated dollar amount, to be utilized for projects or programs at the discretion of the state agency. No private activity bonds issued by any state agency shall be deemed to receive the benefit of any portion of the state ceiling unless the committee has allocated or permitted the transfer of a portion of the state ceiling to the state agency. The allocation may be on any terms and conditions as the committee may determine.

(b) Any local agency may apply to the committee for an allocation of a portion of the state ceiling, supplying any information which the committee may require. Applications from local agencies may only be for specific projects or programs. No private activity bond issued by a local agency shall be deemed to receive the benefit of any portion of the state ceiling unless the committee has allocated or permitted the transfer of a portion of the state ceiling to the local agency. The allocation may be upon any terms and conditions as the committee may determine.

(c) Any allocation made pursuant to this section shall be irrevocable upon issuance of bonds pursuant thereto at least to the extent of the amount of the bonds so issued. No allocation shall permit the state agency or local agency which receives it to use all or any portion of the allocation for a carryforward pursuant to Section 146(f) or Section 142(k)(5)(B)(ii) of the Internal Revenue Code, unless the committee expressly allows use of the allocation for a carryforward.

(d) No allocation made to a state agency or a local agency pursuant to this section may be transferred by the initial recipient thereof to any other state agency or local agency unless the committee expressly permits the transfer. With the committee's permission, any state or local agency may, by resolution, transfer to any other local agency or to any state agency or back to the committee all or any portion of the agency's private activity bond limit. Any such transfer shall be made in writing and may be general or limited and subject to any terms and conditions as may be set forth in the resolution or under the committee's permission, as long as the transfer is irrevocable upon issuance of bonds pursuant to the transfer, at least to the extent of the amount of the bonds so issued. Each transferee shall maintain a written record of the transfer in its records for at least the term of all private activity bonds issued pursuant to the transfer. No transfer may be made pursuant to this section in return for any payment of cash, property, or other marketable thing of value.

(Amended by Stats. 2015, Ch. 277, Sec. 4. (AB 1195) Effective January 1, 2016.)

8869.86. (a) Subject to any limitations on transferred private activity bond limit as may be provided in subdivision (d) of Section 8869.85, any state agency or local agency may utilize its private activity bond limit for any of the following:

(1) The issuance of private activity bonds.

(2) If permitted by the committee, to make a carryforward election pursuant to Section 142(k) or Section 146(f) of the Internal Revenue Code.

(3) If permitted by the committee, to make a transfer to any state agency, local agency, or the committee.

(b) Prior to issuing any private activity bonds, the issuer shall, in the bond resolution or other similar action giving approval for the issuance of bonds, specifically designate to the bond issue a portion of the private activity bond limit available or expected to be available to that issuer. The designation shall be irrevocable upon the issuance of the bonds to the extent of the amount thereof.

(c) Each state agency and local agency shall notify the committee in writing, as directed by the committee, after any of the following:

(1) The issuance of any private activity bonds.

(2) Any action taken pursuant to subdivision (d) of Section 8869.85 to transfer any portion of its private activity bond limit.

(3) Any election to treat all or any portion of the state agency's or local agency's private activity bond limit as a carryforward pursuant to Section 142(k) or Section 146(f) of the Internal Revenue Code. The committee shall keep the notices in its records for a period no less than the term of all private activity bonds issued as described in the notices.

(Amended by Stats. 2015, Ch. 277, Sec. 5. (AB 1195) Effective January 1, 2016.)

8869.87. The committee may request local agencies and state agencies to provide the committee with information pertaining to the amount and purpose of anticipated future private activity bond issues, or any other information which may be useful to the committee in performing its duties and responsibilities under this chapter.

(Added by Stats. 1987, Ch. 943, Sec. 2.5.)

8869.88. The committee may transfer any private activity bond limit directly to any joint powers authority created pursuant to Chapter 5(commencing with Section 6500) of Division 7 of Title 1. This section is specifically intended to be an expressed statement of an alternative allocation as provided in Temporary Treasury Regulations Section 1.103(n)-3T, A-14 and A-15, to the extent the regulations, or any successor thereto or similar regulations, are applicable to private activity bonds.

(Added by Stats. 1987, Ch. 943, Sec. 2.5.)

8869.89. Notwithstanding any other provision of this chapter, the committee may, upon any terms and conditions as it determines, authorize the use of a portion of the state ceiling, as contemplated by Section 146(n) of the Internal Revenue Code, in connection with the issuance by any state agency or local agency or mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, as those terms are defined in Section 25(c) of the Internal Revenue Code.

(Added by Stats. 1987, Ch. 943, Sec. 2.5.)

8869.90. (a) The committee may charge fees to the lead underwriter, the bond purchaser, or the bond issuer to cover the committee's costs in carrying out the duties and responsibilities set out in this chapter. Any fees received shall be deposited in the California Debt Limit Allocation Committee Fund, which is hereby created. All money in the fund shall be available, when appropriated, for expenses of the committee and the Treasurer.

(b) Until the time that fees are received by the committee and appropriated pursuant to this chapter for the expenses of the committee, the committee may borrow any money as may be required for the purpose of meeting necessary expenses of initial organization and operation of the committee.

(c) Any moneys received by the committee from fees or deposits beginning in fiscal year 1987–88, shall also be deposited into the fund.

(Amended by Stats. 1988, Ch. 77, Sec. 1. Effective April 14, 1988.)

8869.91. This chapter is intended to provide a full, fair, flexible, and workable means of utilizing the state ceiling available under the Internal Revenue Code, and it shall be liberally construed and implemented to achieve those purposes.

(Added by Stats. 1987, Ch. 943, Sec. 2.5.)

8869.92. To the extent that any provision of this chapter is held to be inconsistent with or repugnant to the federal law, the provision shall be given effect in accordance with its terms to the greatest extent possible and consistent with federal law and an inconsistency shall have no effect on the remaining provisions of the chapter.

(Added by Stats. 1987, Ch. 943, Sec. 2.5.)

8869.93. The Treasurer, or his or her designee, is designated as the state official to certify that an issue of private activity bonds meets the requirements of Section 142(k) or Section 146 of the Internal Revenue Code of 1986, as amended, and to take any and all actions as may be necessary or appropriate in connection therewith.

(Amended by Stats. 2015, Ch. 277, Sec. 6. (AB 1195) Effective January 1, 2016.)

8869.94. (a) The committee may adopt, amend, or repeal rules and regulations pursuant to this chapter without complying with the procedural requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2), except as described in subdivision (b).

(b) The committee shall provide a notice of proposed action as described in Section 11346.5. The notice of proposed action shall be provided to the public at least 21 days before the close of the public comment period, and the committee shall schedule at least one public hearing as described in Section 11346.8 before the close of the public comment period. The committee shall maintain a rulemaking file as described in Section 11347.3. The final version of the regulations shall be accompanied by a final statement of reasons as described in subdivision (a) of Section 11346.9.

(c) These rules and regulations shall be effective immediately upon adoption by the committee.

(d) The committee may also adopt, amend, or repeal emergency rules and regulations pursuant to this chapter. The adoption, amendment, or repeal of these regulations is conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning of Section 11346.1.

(e) This section shall remain operative only until January 1, 2029, and as of that date is repealed.

(Amended by Stats. 2023, Ch. 739, Sec. 1. (AB 346) Effective January 1, 2024. Repealed as of January 1, 2029, by its own provisions. See later version added by Sec. 2 of Stats. 2023, Ch. 739.)

8869.94. (a) The committee may adopt, amend, or repeal rules and regulations pursuant to this chapter as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). The adoption, amendment, or repeal of these regulations is conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning of Section 11346.1.

(b) This section shall become operative on January 1, 2029.

(Repealed (in Sec. 1) and added by Stats. 2023, Ch. 739, Sec. 2. (AB 346) Effective January 1, 2024. Operative January 1, 2029, by its own provisions.)