

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 7069 PCB WMC 24-04 Private Activity Bonds

SPONSOR(S): Ways & Means Committee, McClain

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 7054

FINAL HOUSE FLOOR ACTION: Y's 109

N's 1

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 7069 passed the House on March 6, 2024, as CS/SB 7054.

The bill substantially revises Part VI, Private Activity Bonds, of ch. 159, F.S. The bill modernizes, updates, and streamlines out-of-date provisions throughout the part, and codifies certain Division of Bond Finance (Division) rules related to the administration of private activity bonds. Specifically, the bill:

- Provides legislative intent to maximize the annual use of private activity bonds to finance improvements, projects, and programs serving public purposes and benefitting the social and economic well-being of Floridians;
- Refines and adds definitions used throughout;
- Revises the regions, pools, and timelines related to bond allocations to consolidate infrequently used pools and expedite usage of bonds;
- Codifies current rules and procedures related to requests for volume limitation by notice of intent to issue, evaluating such notices, and the division's role in final certification of bond issuance;
- Allows for all volume cap allocated in a confirmation to be entitled to be carried forward, rather than limiting to specific types of projects or basing it on the amount of the confirmation;
- Replaces the existing processes for requesting and granting allocation of volume cap with an electronic application wherein all Notices and Issuance Reports will be submitted on the Division's website in lieu of via certified/overnight mail;
- Repeals the Division's rulemaking authority;
- Combines the purposes of Florida First Business allocation pool, the Manufacturing Facility Bond pool, and the existing State allocation pool;
- Consolidates a number of regions from the existing Regional Allocation Pools and specifies that the regional pools are specific to affordable housing projects; and
- Amends related statutes to correct cross references and outdated references.

The bill was approved by the Governor on May 31, 2024, ch. 2024-220, L.O.F., and will become effective on January 1, 2025.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Private Activity Bonds

State and local governments receive direct and indirect tax benefits under the Internal Revenue Code (the “Code”) and associated federal tax regulations that typically result in lower borrowing costs for capital projects through the issuance of tax-exempt bonds.¹ The tax exemption lowers the cost of capital because the interest earnings on taxable bonds carry a tax liability, allowing investors to receive the same rate of return while charging a lower interest rate.²

Tax-Exempt Status of Governmental & Private Activity Bonds

Bonds issued by state and local governments, and conduit issuers on their behalf,³ are classified as either governmental bonds,⁴ or private activity bonds (“PABs”).⁵ Governmental bonds are those bonds which are issued to finance programs and projects that are owned, operated, or used by, governmental entities, including construction, maintenance, and repair of public infrastructure;⁶ and which have only a *de minimis* benefit to private businesses.⁷ All other bonds issued by state and local governments are considered PABs.⁸ PABs can be issued by designated state agencies and units of local government, including conduit issuers, to finance projects that are owned, operated, or used by, nongovernmental, private businesses, that provide a public benefit.

Generally, interest on governmental bonds excluded from gross income for federal income tax purposes⁹ and the interest on PABs is taxable;¹⁰ however, Congress has authorized the issuance of tax-exempt PABs as a mechanism to subsidize the development of capital projects by private businesses that provide a public purpose by affording such projects the same tax benefits as governmental bonds.¹¹ Such projects include affordable housing projects, public works projects (e.g., utility, water, sewage, solid waste facilities), and projects that will be used by 501(c)(3) non-profit organizations.¹² These types of projects are deemed to provide sufficient public benefits to merit excluding the interest on the PABs issued to finance such projects from gross income for federal

¹ United States Department of the Treasury, Internal Revenue Service “Publication 4078, Tax-Exempt PABs” (Rev. 9-2019) Catalog Number 34662G, available at <https://www.irs.gov/pub/irs-pdf/p4078.pdf> (last visited Feb. 2, 2024).

² For example, if the interest earnings on taxable bonds carry a tax liability of 35% of the interest earnings, the after-tax rate of return on taxable bonds that yield a 10% rate of return before taxes is equivalent to tax-exempt bonds that yield a 6.5% rate of return; the investor receives the same return in both instances but, by issuing tax-exempt bonds capital can be raised at an interest cost that is 3.5 percentage points lower. The greater the yield spread between taxable and tax-exempt bonds, the greater the nominal savings. See Congressional Research Service, “Tax-Exempt Bonds: A Description of State and Local Government Debt,” updated February 15, 2018, available at: <https://crsreports.congress.gov/product/pdf/RL/RL30638> (last visited Feb. 2, 2024).

³ Conduit issuers include governmental and quasi-governmental agencies and corporations, such as special districts, industrial development authorities, local housing finance authorities, and other agencies statutorily authorized to issue PABs (e.g., the Florida Housing Finance Corporation and the Florida Development Finance Corporation).

⁴ Treas. Reg. § 1.141-1(b).

⁵ I.R.C. § 141(a).

⁶ United States Department of the Treasury, Internal Revenue Service “Publication 4079, Tax-Exempt Governmental Bonds” (Rev. 9-2019) Catalog Number 34663R, available at <https://www.irs.gov/pub/irs-pdf/p4079.pdf> (last visited Feb. 2, 2024).

⁷ If more than 10% of the proceeds will be used by a private business (the “private business use test”) and more than 10% of the proceeds will be secured by property used by a private business (the “the private security or payment test”), then the bonds will satisfy both prongs of the private business tests will be considered PABs and not governmental bonds. Additionally, if more than the lesser of 5% of the proceeds or \$5 million will be used to make or finance loans to persons or entities other than governmental units, then the bonds will satisfy the private loan financing test and will be considered PABs and not governmental bonds. See I.R.C. § 141(b)-(c).

⁸ I.R.C. § 141(a).

⁹ I.R.C. § 103(a).

¹⁰ I.R.C. § 103(b)(1).

¹¹ Congressional Research Service, “PABs: An Introduction,” updated January 31, 2022, available at: <https://crsreports.congress.gov/product/pdf/RL/RL31457> (last visited Feb. 2, 2024).

¹² I.R.C. §§ 142-145.

income tax purposes.¹³ As such, governments can incentivize the private sector to invest in infrastructure and develop programs and projects that benefit their citizens by providing those private businesses with a more affordable (lower interest rate) source of funds through the issuance of tax-exempt PABs.¹⁴

The Division of Bond Finance

The Division of Bond Finance of the State Board of Administration of Florida (the Division) was created to provide capital financing for state agencies and associated entities by issuing and administering a variety of bonds authorized by s. 11, art. VII of the state constitution for education, environmental, transportation, state facilities, and insurance programs.¹⁵ The Division is administratively housed within the State Board of Administration, and is governed by the Governor and Cabinet.

Included in their duties is the administration of PABs, which includes calculating the volume cap, allocating those bonds from the federal grant of authority to end users across the state, and reporting their ultimate usage to the Internal Revenue Service to maintain tax exempt status.¹⁶ The Division receives and executes applications for use of PABs from local governments, end users, and conduit issuers such as the Florida Housing Finance Corporation and the Florida Development Finance Corporation.

Types of Tax-Exempt PABs

Since PABs were defined in 1968, Congress has more than doubled the purposes for which PABs can qualify for the tax exemption.¹⁷ A “qualified bond” (i.e., one that may be issued as tax-exempt) is any one of the following types of PABs¹⁸ that also meets the applicable requirements of Sections 146 and 147 of the Code:

- Exempt facility bonds¹⁹ that are issued to finance airports, docks and wharves, ***mass commuting facilities, facilities for the furnishing of water, sewage facilities, solid waste disposal facilities, qualified residential rental projects, facilities for the local furnishing of electric energy or gas, local district heating or cooling facilities, qualified hazardous waste facilities, high-speed intercity rail facilities***, environmental enhancements of hydro-electric generating facilities, qualified public educational facilities, qualified green building and sustainable design projects, qualified highway or surface freight transfer facilities, ***qualified broadband projects, and qualified carbon dioxide capture facilities***.
- ***Qualified mortgage bonds***²⁰
- Qualified veterans’ mortgage bonds²¹
- ***Qualified small issue bonds***²²

¹³ Tax-exempt status only applies to PABs that are “qualified bonds” as defined in I.R.C. § 141. See I.R.C. § 103(b).

¹⁴ *Supra*, note 7.

¹⁵ The Division currently reports ratings for more than 30 different bonds. See State of Florida Division of Bond Finance, *Summary of Bond Program Ratings*, available at <https://www.flabonds.com/state-of-florida-investor-relations-fl/additional-info/678?i=3> (last visited Feb. 5, 2024).

¹⁶ See *Generally*, “Florida Private Activity Bond Allocation Act,” Part VI, Ch. 159, F.S.; *Office of Program Policy Analysis and Government Accountability*, State Board of Administration of Florida, Bond Finance, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4041> (last visited Feb. 5, 2024).

¹⁷ *Supra*, note 12.

¹⁸ Those that are in ***bold italics*** are the ones that are subject to allocation of volume cap by the Division.

¹⁹ I.R.C. § 142(a) identifies 17 types of facilities that may be financed with exempt facility bonds. Additionally, Congress has identified two other types of bonds that are to be treated as if they were exempt facility bonds, enterprise zone facility bonds and empowerment zone facility bonds. See I.R.C. § 1394.

²⁰ I.R.C. § 143(a).

²¹ I.R.C. § 143(b).

²² I.R.C. §§ 144(a) and 7871(c). Qualified small issue bonds are frequently referred to as industrial revenue bonds (“IRBs”) or industrial development bonds (“IBDs”) and are issued to finance manufacturing facilities and farm property.

- **Qualified student loan bonds**²³
- **Qualified redevelopment bonds**²⁴
- Qualified 501(c)(3) bonds²⁵

PAB Volume Cap and State Ceiling

The federal government imposes an annual limit (“volume cap” or “volume limitation”) on the aggregate amount of certain types of tax-exempt PABs, that may be issued in each state and U.S. territory (the “state ceiling”).²⁶ The state ceiling is based on the state’s population and may be adjusted for inflation.²⁷ The inflation adjustments are published in a revenue procedure issued prior to the beginning of each calendar year.²⁸ The formula for calculating the state ceiling for 2024 is the greater of \$125 multiplied by the state population or \$378.23 million.²⁹ The Division has calculated Florida’s state ceiling for 2024 to be \$2,826,340,750.³⁰ The following table shows the historical increase to the state ceiling as the per capita rate and state population have increased.

Florida’s State Ceiling 2014-2023										
Calendar Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
IRS Per Capita	\$100	\$100	\$100	\$100	\$105	\$105	\$105	\$110	\$110	\$120
State Pop.	19.55M	19.89M	20.27M	20.61M	20.98M	21.30M	21.48M	21.73M	21.78M	22.24M
State Ceiling	\$1.96B	\$1.99B	\$2.03B	\$2.06B	\$2.15B	\$2.24B	\$2.26B	\$2.39B	\$2.40B	\$2.67B

While the Code provides a default formula for the allocation of volume cap, each state may, by law, provide its own formula for allocating its state ceiling.³¹ The Division is statutorily designated to allocate volume limitation to those entities authorized to issue PABs in Florida pursuant to the Florida Private Activity Bond Allocation Act³² and the rules promulgated thereunder.³³

Allocation of State Ceiling

For PABs subject to the state ceiling,³⁴ issuers must have sufficient volume cap under the Code or their state’s formula for allocating its state ceiling in order in order for the interest on those bonds to be

²³ I.R.C. § 144(b). Additionally, qualified scholarship funding bonds, established in I.R.C. § 150(d)(2), are analyzed under I.R.C. § 144(b).

²⁴ I.R.C. § 144(c).

²⁵ I.R.C. § 145.

²⁶ I.R.C. § 146. The economic rationale for the limitation on the amount tax-exempt PABs that may be issued stems from the inefficiency of the mechanism to subsidize private activity and the lack of congressional control of the subsidy absent such a limitation. *Supra*, note 12.

²⁷ I.R.C. § 146(d).

²⁸ In 2022 the formula for the state ceiling was the greater of \$110 multiplied by the state population or \$335,115,000. This amount increased in calendar year 2023 to the greater of \$120 multiplied by the state population or \$358,845,000. See § 3.20, Rev. Proc. 2021-45, available at: <https://www.irs.gov/pub/irs-drop/rp-21-45.pdf> and § 3.20, Rev. Proc. 2022-38, available at: <https://www.irs.gov/pub/irs-drop/rp-22-38.pdf> (last visited Feb. 2, 2024).

²⁹ See § 3.20, Rev. Proc. 2023-34, available at: <https://www.irs.gov/pub/irs-drop/rp-23-34.pdf> (last visited Feb. 2, 2024).

³⁰ Division of Bond Finance, *Act Summary*, available at <https://www.sbafla.com/bond/Other-Functions/Private-Activity-Bond-Allocation-Programs> (last visited Feb. 2, 2024).

³¹ I.R.C. § 146(e).

³² Part VI of chapter 159, F.S.

³³ Chapter 19A-4, F.A.C.

³⁴ The amounts of tax-exempt PABs issued as exempt facility bonds to finance mass commuting facilities, facilities for the furnishing of water, sewage facilities, privately owned solid waste disposal facilities, qualified residential rental projects, facilities for the furnishing local electric energy or gas, local district heating and cooling facilities, qualified hazardous waste facilities, privately owned high-speed intercity rail facilities, privately owned qualified broadband projects, and qualified carbon capture facilities, qualified mortgage revenue bonds, qualified small issue bonds, qualified student loan bonds, and qualified redevelopment bonds are subject to an annual volume cap and cannot exceed the amount allocated. Tax-exempt PABs issued to finance privately owned high-speed intercity rail facilities, privately owned qualified broadband projects, and qualified carbon capture facilities only need an allocation for 25% of the amount of any tax-exempt exempt facility bonds issued. I.R.C. §§ 142(a), 143, 144, and 146(g)(4)-(5). Certain types of PABs are not subject to the state ceiling but are subject to other annual or lifetime caps under the Code. The amounts of tax-exempt PABs issued to finance qualified public educational facilities, qualified green building and sustainable design projects, and qualified highway or surface freight transfer facilities are separately limited in I.R.C. § 142. Qualified public educational facilities are subject to a separate annual state

excluded from gross income for federal income tax purposes.³⁵ States have a variety of methods for distributing their state ceiling at the beginning of each year based on the purpose or type of the proposed PABs, the location of the project, and the issuer requesting an allocation of volume cap; additionally, the timeframe within which state ceiling is available for various types of projects varies greatly from state to state. There are two predominant methods for how volume cap is allocated in each state; one in which broad discretion is given to the program administrator to determine which issuers and projects should be allowed to access the tax-exempt market, and one in which the state legislature has established a detailed framework making the administration of the program a ministerial function based on legislative priorities.³⁶

Additionally, a number of state legislatures have designated percentages or set amounts of their state ceiling for affordable housing projects (multifamily and single-family housing bonds and mortgage credit certificates (“MCCs”), for low- and moderate-income families),³⁷ industrial development projects (manufacturing facility bonds), and public works projects (exempt facility bonds). The Division’s administration of Florida’s state ceiling is ministerial pursuant to a detailed legislative framework, with a first-come, first-served system with discrete pools reserved, for at least part of the year, for specific purposes and/or projects located in specified regions.

Current Allocation of Florida’s State Ceiling by the Division

The Division has calculated Florida’s state ceiling and allocated volume cap to issuers throughout the state pursuant to the Act since 1986. Prior to January 1 of each year, the Division calculates the state ceiling for the upcoming calendar year; then, on January 1 of each year, the Division allocates the state ceiling to the Manufacturing Facility Bond Pool (“MFBP”), among the 17 Regional Allocation Pools, to the Florida Housing Finance Corporation (“FHFC”), to the Florida First Business allocation pool (“FFBP”), and to the state allocation pool (the “State Pool”), all as described in the following table:³⁸

Current Allocation of Florida’s State Ceiling		
Pool/Entity	Amount ³⁹	Purpose/Limitations
MFBP	\$97.5 million	<ul style="list-style-type: none"> Available Jan 1 – Nov 15 to finance manufacturing facility projects

volume cap, which is the greater of \$10 per capita or \$5 million, as allotted in the manner the state determines appropriate pursuant to I.R.C. § 142(k)(5). See, s. 159.834, F.S. Qualified green building and sustainable design projects must receive designation from the United States Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency; exempt facility bonds issued to finance such project are subject to a lifetime volume cap of \$2 billion, allocated by the Secretary of the Treasury pursuant to I.R.C. § 142(l)(7)(B). Exempt facility bonds for qualified transfer facilities are subject to a lifetime volume cap of \$30 billion, allocated by the United States Secretary of Transportation pursuant to I.R.C. § 142(m)(2)(C).

³⁵ The aggregate face amount of tax-exempt PABs issued by a particular issuing authority during a calendar year cannot exceed such authority’s volume cap for such calendar year. I.R.C. § 146(a).

³⁶ California’s Debt Limit Allocation Committee has been delegated broad discretion to annually set priorities and method of allocation. See e.g., Cal. Govt. Code § 8869.80 et seq. (2021); Cal. Code Regs. Tit. 4, §§ 5010, 5020-5022, and 5150-5155; *California Debt Limit Allocation Committee (CDLAC)*, CALIFORNIA STATE TREASURER, available at <https://www.treasurer.ca.gov/cdlac/index.asp> (last visited Feb. 2, 2024). Some states have a hybrid approach, either setting aside only a portion of their state ceiling to be allocated at the discretion of the program administrator, or giving the program administrator discretion in the event that requests exceed the available state ceiling. See, Ga. Code Ann. §§ 36-82-195 – 36-82-196, Ariz. Rev. Stat. §§ 35-901 – 35-913, Va. Code Ann. § 15.2-5002, and Rule 122-4-02, Ohio Admin. Code. Comparatively, states including Texas and Washington allocate volume cap in accordance with prescriptive legislative frameworks similar to Florida.

³⁷ Typically, states that designate a portion of their state ceiling for affordable housing split it into two parts; either based on purpose (single-family housing bonds and MCCs vs. multifamily housing bonds) or based on the issuer (state-level housing agency vs. local HFAs). See, Ariz. Rev. Stat. §§ 35-901 – 35-913; Code Ann. § 15.2-5002; Me. Stat. tit. 10, § 363; Iowa Code § 7C, available at <https://www.legis.iowa.gov/docs/ico/chapter/7C.pdf>; Wash. Rev. Code § 39.86.120; and *Bond Cap Allocation Program*, WASHINGTON DEPARTMENT OF COMMERCE, <https://www.commerce.wa.gov/about-us/research-services/bond-cap-allocation-program/> (last visited Feb. 2, 2024).

³⁸ Section 159.804, F.S.

³⁹ Amounts shown for each pool are for calendar year 2024. See “2024 Private Activity Bond State Volume Cap Allocation By Pool,” available at <https://www.sbafla.com/bond/Portals/0/Content/FinancialInformation/2024%20PAB%20State%20Volume%20Cap%20Allocation%20By%20Pool%20with%20MAP.pdf?ver=2023-12-28-090525-327> (last visited Feb. 2, 2024).

		<ul style="list-style-type: none"> ○ Amount remaining on Nov 16 is transferred to the state pool • The first \$73,125,000 available to issuers on first come, first served basis, with \$14,620,000 is reserve for small counties Jan 1 – June 30; and the final \$24,375,000 requires Department of Commerce review and approval
Regional Allocation Pools	50% after MFBP (\$1,364,420,375)	<ul style="list-style-type: none"> • Available local issuers on first come, first served basis from Jan 1 – June 30 to finance projects within that region <ul style="list-style-type: none"> ○ Any amounts remaining on July 1 are transferred to FFBP • The amount distributed to each region is proportional to its share of the state population
FHFC	25% after MFBP (\$682,210,187.50)	<ul style="list-style-type: none"> • Available for FHFC to use to issue housing bonds; FHFC may assign a portion to other issuers to issue housing bonds <ul style="list-style-type: none"> ○ Amount remaining on July 1 is transferred to the state pool
FFBP	20% after MFBP (\$545,768,150)	<ul style="list-style-type: none"> • Available Jan 1 – Nov 15 to finance “Florida First Business projects”⁴⁰ <ul style="list-style-type: none"> ○ Amount remaining on Nov 16 is transferred to the state pool • Issuer must have project certified as a Florida first business project by Department of Commerce prior to requesting allocation
State Pool	5% after MFBP (\$136,442,037.50)	<ul style="list-style-type: none"> • Available Jan 1 – May 30 to finance “Priority Projects,”⁴¹ which may be subject to Governor’s review and approval <ul style="list-style-type: none"> ○ Amount remaining on June 1 is transferred to FFBP • Following inflows from FFBP available to all issuers after Nov 16 • Balance remaining on Dec 30 is available for carryforward

Manufacturing Facility Bond Pool

⁴⁰ “Florida First Business project” means (1) any project proposed by a business which qualifies as a target industry business or (2) any project providing a substantial economic benefit to this state. The department shall develop measurement protocols and performance measures to determine what competitive value a project by a target industry business will bring to the state which is certified by the Department of Commerce as eligible to receive an allocation from the FFBP. Section 159.803(11), F.S.

⁴¹ “Priority project” means (1) a solid waste disposal facility, (2) a sewage facility, (3) a water facility, which is operated by a member-owned, not-for-profit utility, or (4) any project which is to be located in an area which is an enterprise zone. Section 159.803(5), F.S.

When first created for the 1993 calendar year,⁴² \$75 million of the state ceiling was distributed to the MFBP.⁴³ Currently, \$97.5 million is distributed to the MFBP annually.⁴⁴ Following a large amount of PABs issued to finance manufacturing facilities in the late 1990s, requests for and issuances of PABs with volume cap for such projects has steadily declined over the past 20 years.⁴⁵

Regional Allocation Pools

Prior to the establishment of the regions for the Regional Allocation Pools, each county received a *pro rata* share of 50 percent of the state ceiling.⁴⁶ The Legislature created the Regional Allocation Pools for the 1988 calendar year,⁴⁷ and last revised the regions effective in 2000.⁴⁸ Currently, there are currently 17 statutorily created single- and multi-county regions (10 multi-county and seven single county geographic regions) that receive a *pro rata* share of the state ceiling.⁴⁹

In 2024, the three regions receiving the most volume cap were region 11 (Miami-Dade County) with over \$166.91 million, region 8 (Charlotte, Collier, Glades, Hendry, Lee, Monroe, and Sarasota Counties) with over \$120.97 million, and region 10 (Broward County) with over \$118.97 million.⁵⁰

⁴² Section 2, ch. 92-127, LAWS OF FLA.

⁴³ Section 159.804(1)(a), F.S.

⁴⁴ The portion of the state ceiling distributed to the MFBP increased by \$7.5 million on January 1, 1997, 1998, and 1999, pursuant to s. 159.804(1)(a), F.S., because more than 75 percent of the state ceiling distributed to the MFBP was used to issue qualified small issue bonds for manufacturing facilities prior to November 15 in each of the preceding years. There hasn't been a change to the amount of the state ceiling distributed to the MFBP since 1999.

⁴⁵ Approximately 70% of the state ceiling distributed to the MFBP for manufacturing facilities was allocated and issued in 1999; thereafter, PABs issued to finance manufacturing facilities steadily declined (65% of the state ceiling distributed to the MFBP was utilized in 2000, decreasing to 55% in 2005, and further decreasing to 17% in 2010, 13% in 2015, and then 10% in 2020).

⁴⁶ Section 1, ch. 85-282, Laws of Fla.

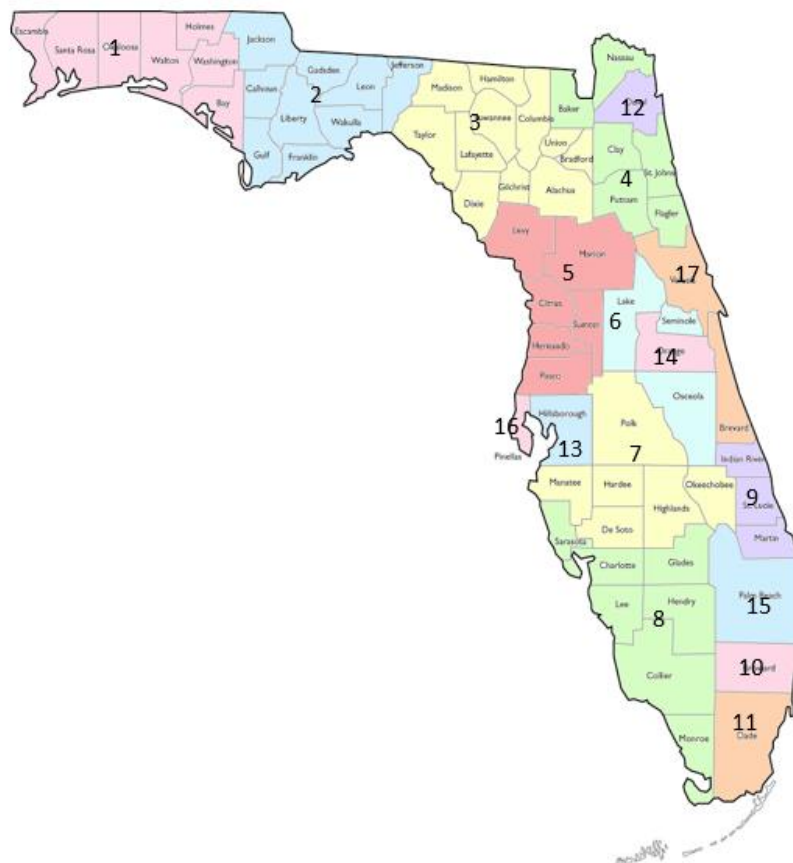
⁴⁷ Section 3, ch. 87-222, Laws of Fla.

⁴⁸ Section 1, ch. 99-173, Laws of Fla. (effective Jan. 1, 2000).

⁴⁹ Section 159.804(2)(b), F.S.

⁵⁰ Annual allocation information for calendar year 2024 by pool, including each of the regions, is available on the Division's website at <https://www.sbafla.com/bond/Portals/0/Content/FinancialInformation/2024%20PAB%20State%20Volume%20Cap%20Allocation%20By%20Pool%20with%20MAP.pdf> and <https://www.sbafla.com/bond/Other-Functions/Private-Activity-Bond-Allocation-Programs> (last visited Feb. 2, 2024).

The regional allocation pools are the only pools from which issuers located within a region, including housing finance authorities (“HFAs”) created pursuant to s. 159.604 F.S., can be allocated volume cap, subject to availability, for a majority of the calendar year, unless the proposed PABs will be issued to finance a project that is certified by the Department of Commerce as a Florida First Business project,⁵¹ or that meets the statutory definition of manufacturing facility⁵² project or priority project.⁵³ The majority of requests for and issuance of PABs with volume cap by from the regional allocation pools are for the issuance of multifamily and single-family housing bonds for low- and moderate-income families.



Florida Housing Finance Corporation (FHFC)

The volume cap allocated to FHFC must be used for “housing bonds” as defined in s. 159.803, F.S., these include both multifamily and single-family housing bonds for low- and moderate-income families.⁵⁴ During the first six months of the calendar year, FHFC may, in its discretion, assign any portion of its volume cap to any HFA for the issuance of housing bonds, taking into consideration the ability of the HFA to timely issue such PABs, the need and public purpose to be served by the issue, and the ability of the HFA to comply with the requirements of federal and state law.⁵⁵ This is the only provision in the Act that allows one issuer to transfer any portion of its volume cap to another issuer. However, FHFC has never transferred a portion of their volume cap to another issuer.

⁵¹ Section 159.803(11), F.S. “Florida First Business project” means any project which is certified by DEO as eligible to receive an allocation from the FFBP because it either (1) meets the criteria set forth in s. 288.106(4)(b), F.S., or (2) will provide a substantial economic benefit to this state.

⁵² Section 159.803(10), F.S. A “manufacturing facility” is a facility that meets the definition of “manufacturing facility” in I.R.C. § 144(a)(12)(C).

⁵³ Section 159.803(5), F.S. A “priority project” means (1) a solid waste disposal facility; (2) a sewage facility; (3) a facility for the furnishing of water, which is operated by a member-owned, not-for-profit utility; or (4) any project located in an enterprise zone designated pursuant to section 290.0065, F.S.

⁵⁴ Section 159.804(3)(a), F.S.

⁵⁵ Section 159.804(c)(3), F.S.

Florida First Business Allocation Pool (FFBP)

Established beginning in the 1996 calendar year,⁵⁶ the FFBP is available solely for those projects certified by Department of Commerce as “Florida First Business projects;” Department of Commerce must certify that the project either meets the criteria for targeted business industries or will provide a substantial economic benefit to this state.⁵⁷ From 1996-2002, the FFBP was used for a variety of solid waste disposal facility projects and qualified student loan bonds that were certified as Florida First Business projects. Thereafter, there were no projects certified as Florida First Business projects from 2003-2008, 2010-2017, or 2020 and the pool was not used. The amount of projects certified as Florida First Business projects has substantially increased over the last few years.⁵⁸

State Allocation Pool

The State Pool is available exclusively to finance Priority Projects from January 1 to June 1; except that it is available at all times for allocations to state agencies, and for those portions of governmental bonds requiring an allocation of volume cap under Code.⁵⁹ Priority Projects are unable to receive an allocation of volume cap prior to May 1 of any calendar year; the Division is required evaluate all requests submitted from January 1 through April 30 on May 1 to determine whether the total amount of volume requested exceeds the portion of the state ceiling allocated to the state pool.⁶⁰ If there is a sufficient amount, all requests for Priority Projects submitted before May 1 will receive an allocation of volume cap by May 15; however, if there is not a sufficient amount, the Division is required to forward all such requests to the Governor, who is required to establish an order within which such projects should receive an allocation of volume cap by June 1.⁶¹ The Division has only had to forward requests to the Governor for consideration twice in the past 20 years, in 2004 and 2023.⁶²

Annually on November 16, any state ceiling remaining in either the MFBP or FFBP is transferred to the state pool.⁶³ Such amount is available on first-come, first-served basis, except that those projects that weren’t selected by the Governor to receive an allocation on June 1, receive priority, in the order established by the Governor, for allocation of volume cap from any portion of the state ceiling transferred to the State Pool later in the calendar year; such projects would receive priority over non-priority projects already on the pending list.⁶⁴

Process to Obtain an Allocation of Volume Cap

After the project has obtained the public approval (by the applicable elected official or voter referendum of the appropriate governmental unit), if any, required by section 147(f) of the Code (the “TEFRA approval”), the issuer can request an allocation of volume cap by submitting an application, called a notice of intent to issue private activity bonds (a “Notice”), to the Division. Each Notice filed with the Division must include a certification that TEFRA approval has been obtained and be accompanied by an opinion or statement of bond counsel that the project to be financed with the requested allocation of volume cap may be financed with PABs and that allocation is required under the Code to issue such

⁵⁶ Section 11, ch. 95-416, Laws of Fla.

⁵⁷ Section 159.803(11), F.S.

⁵⁸ Florida First Business projects receiving volume cap from the FFBP since 2021 include high-speed rail facility projects (\$125M in 2021 and \$125M in 2023), a solid waste disposal facility project (\$350M in 2022), and a sewage facility project (\$250M in 2022).

⁵⁹ The Division has not received any requests for volume cap from state agencies, and for those portions of governmental bonds requiring an allocation of volume cap pursuant to section 146(m) of the Code.

⁶⁰ Section 159.807(2), F.S.

⁶¹ *Id.*

⁶² From 2005 through 2022, there were 1-2 Priority Projects requesting an allocation of volume cap from the State Pool prior to June 1 in 2006–09, 2014–16, and 2019–21, all of which were for solid waste and sewage facilities; in each of these years there was sufficient volume cap to fill all requests without sending to the Governor for ranking and all such requests received allocation by June 1.

⁶³ Section 159.809(4), F.S.

⁶⁴ Section 159.807(2), F.S.

Bonds and a nonrefundable filing fee.⁶⁵ The fee is \$100.00. The Division allocates volume cap, subject to availability, through written confirmations of allocation ("Confirmations").

The majority of notices are processed on a first-come, first-served basis based on a twenty-four-hour period from noon on one business day to noon the next business day.⁶⁶ This system applies to the Regional Allocation Pools, the first 75% of the volume cap in the MFBP,⁶⁷ and volume cap in the State after June 1. If there is insufficient volume cap available in the FFBP, the Division will forward all Notices to Department of Commerce, which will determine which one(s) will receive a Confirmation.⁶⁸ On any day when there is insufficient volume cap available in the appropriate pool(s) to issue Confirmations for all Notices, a random selection is held to determine the Notice(s) that will receive the available volume cap.⁶⁹ Any Notices for which there is insufficient volume cap following the random selection are placed on a pending list in case volume cap becomes available at a later date in the calendar year and will receive priority from the next available volume cap that may become available during the calendar year, prior to Notices received by the Division after that day's random selection, except that Notices on the pending list for Priority Projects pursuant to Section 159.807(2), F.S., will take priority from the next available volume cap available in the State Allocation Pool, regardless of when such other Notices were placed on the pending list.⁷⁰

Deadlines for Issuing PABs Pursuant to a Confirmation

Generally, PABs must be issued within 155 days of allocation or by December 29, whichever is earlier; after such time, the Confirmation ceases to be effective and the volume cap reverts to the appropriate pool.⁷¹ Confirmations from the FFBP expire on either October 1 or November 15, depending on the date on which they are issued,⁷² and confirmations from the MFBP expire the earlier of 90 days after issued or November 15.⁷³ These limits are tolled during a validation proceeding, if written notice is provided to the Division prior to the expiration.⁷⁴ Confirmations for Priority Projects and those of \$50 million or more are not subject to these time limitations and are valid through December 30.⁷⁵

End of Year Allocation and Carryforward Lottery

Unused allocations of volume cap may be carried forward for up to three years. The Code permits carryforward for the following types of projects that require an allocation of volume cap from the Division: mass commuting facilities, facilities for the furnishing of water, sewerage facilities, solid waste disposal facilities, multi-family housing projects, local electric or gas generating facilities, local district heating or cooling facilities, hazardous waste facilities, high speed rail facilities, single family housing bonds, student loan bonds, and redevelopment bonds.⁷⁶ Volume cap that is allocated for a Florida First Business project is entitled to be carried forward at the request of the Agency, if the Department of Commerce has approved the project to receive carryforward.⁷⁷ Additionally, volume cap that is allocated for Priority Projects and those projects of \$50 million or more are entitled to be carried forward

⁶⁵ Section 159.805(1), F.S., Except that FHFC is not required to submit a Notice to use the volume cap in its pool for PABs it issues prior to July 1 of any year and is not subject to the fee; However, FHFC must submit a Notice for volume cap it intends to use for PABs issued after July 1 no later than June 30 of such year. Section 159.804(3)(b), F.S.

⁶⁶ Section 159.805(1), F.S.

⁶⁷ All Notices that are eligible to receive Confirmation using the final 25% of volume cap in the MFBP are forwarded to the Department of Commerce to determine which ones will receive a Confirmation. Section 159.8081(2)(a), F.S.

⁶⁸ Section 159.8083, F.S.

⁶⁹ Section 159.805(6), F.S.

⁷⁰ *Id.*

⁷¹ Section 159.805(2), F.S.

⁷² Sections 159.809(2) and (3), F.S.

⁷³ Section 159.8081(3), F.S.

⁷⁴ Section 159.805(4), F.S. Except that pendency of a validation proceeding does not extend a Confirmation beyond December 29 of such year. Rule 19A-4.007(2), F.A.C.

⁷⁵ Section 159.805(4), F.S.

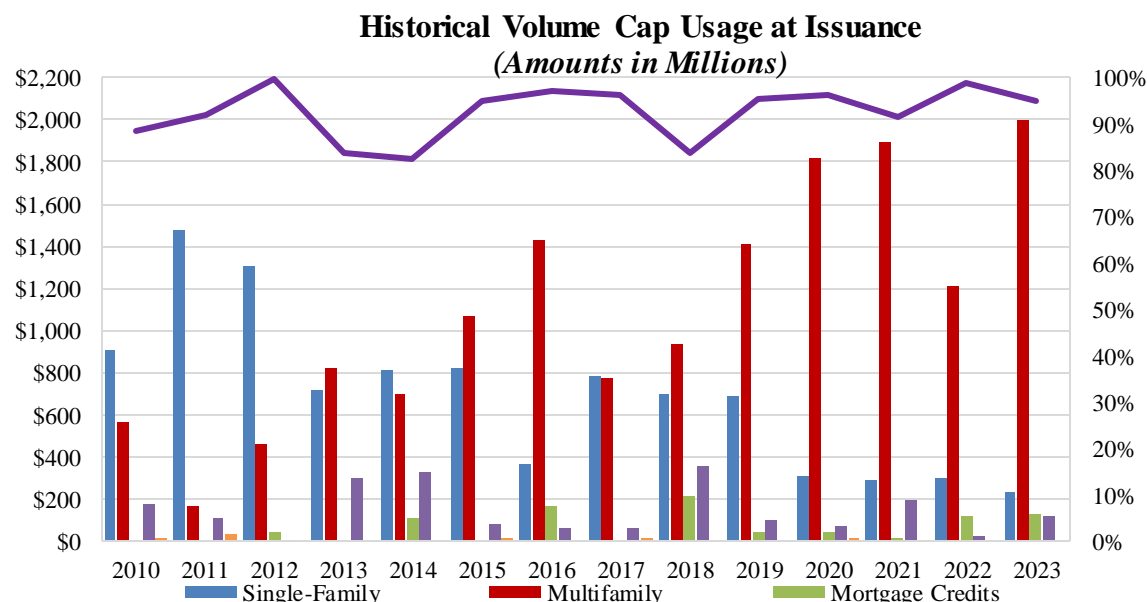
⁷⁶ I.R.C. § 146(f).

⁷⁷ Section 159.81(1), F.S.

at the request of the Agency.⁷⁸ All other requests for carryforward are subject to availability on December 30; such volume cap is allocated on a lottery basis to fund carryforward projects as defined by the Code.⁷⁹

Historical Utilization of Volume Cap in Florida

The majority of volume cap is allocated and used to issue multifamily and single-family housing bonds for low- and moderate-income families. From 2010 through 2023, approximately 92.5% of all volume cap (current year and carryforward) has been used for affordable housing (multifamily and single-family housing bonds and MCCs for low- and moderate-income families).



Increasing Demand

In recent years, demand for volume cap has exceeded the state ceiling. Since 2020, a growing number of regions have had requests for volume cap in excess of the portion of the state ceiling available in their Regional Allocation Pool.⁸⁰ When requests for volume cap exceed the amount available, the request is placed on a pending list to receive an allocation of volume cap if and when available; this is usually from the state pool after November 15. The number of requests and the amount on the pending list had increased dramatically over the past five years. As of January 26, 2024, there were 11 Notices, 10 of which are eligible for volume cap allocation from a Regional Allocation Pool and one of which is a Priority Project eligible for allocation from the State Pool after May 1, totaling \$1,214,725,019.72 on the pending list.⁸¹

Effect of Proposed Changes

The bill substantially revises Part VI, Private Activity Bonds, of Chapter 159, F.S. The bill modernizes, updates, and streamlines out-of-date provisions throughout the part, and codifies certain provisions from the Division's rules related to the administration of private activity bonds. Specifically, the bill:

⁷⁸ Section 159.81(2)(a)1., F.S.

⁷⁹ *Id.*

⁸⁰ Data on file with the Division.

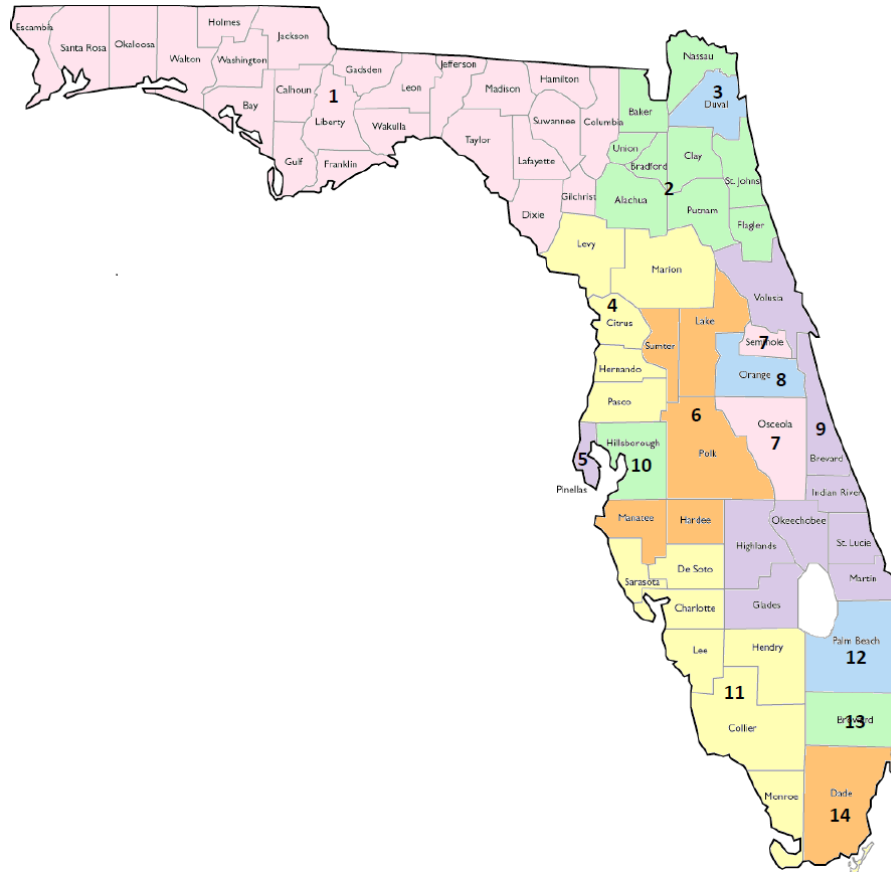
⁸¹ Division of Bond Finance, Act Summary, available at <https://www.sbafla.com/bond/Other-Functions/Private-Activity-Bond-Allocation-Programs> (last visited Feb. 2, 2024).

- Provides legislative intent to maximize the annual use of private activity bonds to finance improvements, projects, and programs serving public purposes and benefitting the social and economic well-being of Floridians;
- Refines and adds definitions used throughout;
- Revises the regions, pools, and timelines related to bond allocations to consolidate infrequently used pools and expedite usage of bonds, detailed below;
- Codifies current rules and procedures related to requests for volume limitation by notice of intent to issue, evaluating such notices, and the Division's role in final certification of bond issuance;
- Allows for all volume cap allocated in a Confirmation to be entitled to be carried forward, rather than limiting to specific types of projects or basing it on the amount of the Confirmation;
- Replaces the existing processes for requesting and granting allocation of volume cap with an electronic application wherein all Notices and Issuance Reports will be submitted on the Division's website in lieu of via certified/overnight mail;
- Repeals the Division's rulemaking authority; and
- Amends related statutes to correct cross references and outdated references.

The bill also combines the purposes of FFBP, MFBP, and the existing State Pool (prior to June 1, when available for Priority Projects). Into a single pool, the Economic Development Allocation Pool, which is available for all PABs other than those issued to finance affordable housing projects. The bill also consolidates a number of regions from the existing Regional Allocation Pools and specifies that the regional pools are specific to affordable housing projects. The following table describes new pools under the bill with amounts of volume cap shown as what they would be for calendar year 2024:

<i>Pool</i>	<i>Amount</i>	<i>Purpose/Availability</i>
Affordable Housing Allocation Pools	50% (approx. \$1.413B)	Available 1/1 – 9/30 for affordable housing projects <ul style="list-style-type: none"> • 1/1 – 5/31: Regional Affordable Housing Allocation Pools (11 regions) <ul style="list-style-type: none"> ○ Available on a first-come, first-served basis to issuers within each region for projects within such region • 6/1 – 9/30: Statewide Affordable Housing Allocation Pools (no regions) <ul style="list-style-type: none"> ○ Available for single and multifamily housing projects statewide ○ Initial priority for unfilled requests for allocation from the Regional Affordable Housing Allocation Pools (first pending multifamily, then pending single-family), available on first-come, first-served basis thereafter
FHFC Pool	25% (approx. \$706.6M)	Available 1/1 – 9/30 to FHFC for affordable housing projects
Economic Development Allocation Pool	25% (approx. \$706.6M)	Available 1/1 – 9/30 for all non-affordable housing projects <ul style="list-style-type: none"> • 1/1 – 5/31: Available following ranking by Secretary of Commerce <ul style="list-style-type: none"> ○ Applications received by 5/31 sent to the Department of Commerce ○ Secretary of Commerce has 15 days to rank order applications • 6/1 – 9/30: Available on a first-come, first-served basis with notification to the Department of Commerce
State Allocation Pool	Rollover on 9/30	Available 10/1 – 11/30 for all PABs on a first-come, first-served basis
Carryforward Allocation Pool	Rollover on 11/30	Carryforward requests submitted Dec 1 – 15; processed on Dec 15 (lottery)

Based on the changes to the regions that increase the number of counties within seven regions, a number of counties (small, medium, and large) will have access to more volume cap.⁸² The new regions for the Regional Affordable Housing Allocation Pools are shown in the following map:



II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

A. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁸² Under the bill the regions would have the following amounts of volume cap in 2024: Region 1, \$107,642,700; Region 2, \$73,462,066; Region 3, \$63,370,600; Region 4, \$85,988,646; Region 5, \$58,753,847; Region 6, \$110,486,088; Region 7, \$55,822,753; Region 8, \$89,994,465; Region 9, \$125,387,623; Region 10, \$92,922,847; Region 11, \$122,319,212; Region 12, \$92,391,603; Region 13, \$118,966,521; and Region 14, \$166,911,396.

2. Expenditures:

None.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

C. FISCAL COMMENTS:

None.