

801 CMR: EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

801 CMR 30.00: ALLOCATION OF STATE CEILING ON VOLUME OF PRIVATE ACTIVITY BONDS

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30.01: Purpose and Authority

801 CMR 30.00 is promulgated, pursuant to St. 1988, c. 211, to set forth the procedure to be followed by the Executive Office for Administration and Finance in allocating the Commonwealth of Massachusetts' state ceiling on the volume of private activity bonds, the interest on which is exempt from federal income taxes.

30.02: Definitions

Terms used herein shall have the meanings set forth in federal tax law.

Annual state ceiling means the state ceiling for private activity bonds subject to allocation in calendar year 1988 or in any succeeding calendar year.

Executive Office for Administration and Finance means the executive office, headed by the secretary of administration, established pursuant to M.G.L. c. 7, § 2, for the purpose of, *inter alia*, developing, coordinating, administering and controlling the financial policies and programs of the Commonwealth.

Department of Community Affairs means the department headed by the Secretary of Communities and Development, established pursuant to M.G.L. c. 23B, § 1, for the purpose of, *inter alia*, advancing programs of open and adequate housing for all citizens of the Commonwealth.

Massachusetts Industrial Finance Agency means the body politic and corporate headed by a board of directors, established pursuant to the provisions of M.G.L. c. 23A, § 31, for the purpose of, *inter alia*, borrowing money and issuing bonds for the purpose of financing industrial development facilities, pollution control facilities and waste disposal facilities.

Any reference to a date herein used without reference to a year shall mean that date in 1988 and in each succeeding calendar year.

30.03: Assignment to the Commonwealth of Massachusetts

Pursuant to St. 1988, c. 211, § 2, all of Massachusetts' annual state ceiling is assigned to the Commonwealth of Massachusetts. The Executive Office for Administration and Finance ("A&F") shall at its discretion allocate any of such state ceiling to issuers within the state, including municipalities and issuers of student loan bonds, housing bonds and other private activity bonds requiring allocation. A&F may also reassign any of the annual state ceiling to the Department of Community Affairs ("DCA") or to the Massachusetts Industrial Finance Agency ("MIFA") for further allocation or carryforward. Any such reassignment shall be in writing and shall be subject to such conditions as A&F may specify, including the prior approval by A&F of guidelines issued by DCA and MIFA, and shall specify when and if such reassignment shall expire.

30.04: Allocation Procedures

- (1) Issuers of private activity bonds may request an allocation of state ceiling from A&F in accordance with the procedures set forth in 801 CMR 30.04. In addition, issuers of solid waste disposal facility bonds requesting an allocation of state ceiling from A&F, shall also follow the procedures set forth in 801 CMR 30.05.
- (2) Requests for allocation shall be in writing and shall provide the following information prior to the anticipated issuance of the bonds for the project:
 - (a) Notice of intent to issue the bonds, from the proposed issuer;
 - (b) Issuer name and address;
 - (c) Name and brief description of the project;
 - (d) Location of the project;
 - (e) Name and address of the borrower (except where the borrower has not been finally determined);
 - (f) The bond financing amount;
 - (g) The date the financing for the project or program is expected to close and the bonds for the project or program to be issued; and
 - (h) Any other information the secretary of A&F may require from time to time.

30.05: Additional Requirements for Issuers of Solid Waste Disposal Facility Bonds

In determining whether to grant an allocation to a solid waste disposal project, the secretary will evaluate the request based on the merits of the project relative to other proposed projects, and based on the following policy considerations:

- (a) The degree to which the project has achieved a sufficient degree of readiness in terms of financial commitments and developmental approval, as evidenced by:
 1. Certification of preliminary official action and completion of all bond related public hearing requirements under federal law; and
 2. Evidence of the extent to which all permits or approvals required under federal or state law or local ordinance in order to authorize construction and operation of the project have been granted, or the extent to which the receipt of such permits and approvals is reasonably expected within the calendar year of the request for allocation.
 3. The extent to which the viability of the project depends on the availability of tax exempt financing in the amount applied for, as evidenced by a financial plan for the project detailing the principal elements of revenue and expense.
 4. The extent to which the project has obtained written commitments from municipal and/or commercial generators of waste to dispose of such waste at the project in relation to the number and duration of such commitments which are necessary to establish commercial viability under the project's financial plan.
 5. The extent to which the municipal and/or commercial generators of waste which are committed to the project are currently disposing of waste at landfills which are subject to closure within five years.
 6. Whether the project incorporates acceptable technology and procedure for reclamation of recyclable materials.
 7. The extent to which the proposed project is to be financed out of debt or equity sources which reduce the need for tax-exempt financing.
 8. The extent of the experience represented by the developer, owner and operator of the project with respect to development and operation of solid waste disposal facilities and related projects on a long-term, financially and environmentally sound basis.

30.06: Response to Request for Allocation

The secretary shall respond to each request for an allocation within 14 days. Failure to respond within 14 days shall be deemed to be a denial of the request. Responses shall be in writing and shall reference the project for which the allocation was requested. In granting an allocation to a project the secretary will specify the amount of the allocation being granted, and the date on or before which the bonds must be issued in order for the allocation to be effective. In addition, the secretary shall require from the issuer, within three days after the date of closing, certification from the issuer or bond counsel in writing of said closing, including the amount of the issue. If the secretary determines that a project will not be granted an allocation, the secretary will inform the proposed issuer, in writing, and may indicate whether a request for an allocation for that particular project may be resubmitted at a future date.

30.07: Duration of Allocation

Allocations of state ceiling granted by the secretary shall have an expiration date no later than November 30 of the calendar year in which such allocations are granted, unless an extension of such date, or a carryforward, is approved in writing by the secretary.

30.08: Carryforward of Unused Annual State Ceiling

A&F may carry forward any unused portion of annual state ceiling for any bonds eligible for a carryforward under federal tax law. No annual state ceiling may be allocated to carryforward projects prior to November 1.

30.09: Recordkeeping

A&F shall make reasonably available to the public information as to the amount of state ceiling not yet allocated and the expiration dates for all state ceiling allocated by it, and shall confirm upon request an allocation of state ceiling to a particular bond issue and the duration thereof.

In addition, if A&F assigns any state ceiling to DCA or MIFA, DCA and MIFA shall make reasonably available to the public information as to the amount of such state ceiling not yet allocated and the expiration dates for all state ceiling they have allocated, and shall confirm upon request an allocation of state ceiling to a particular bond issue and the duration thereof.

REGULATORY AUTHORITY

801 CMR 30.00: St. 1988, § 211.