

**Subpart B. BONDS**

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**CHAPTER 61. PRIVATE ACTIVITY BONDS—STATEMENT OF POLICY**

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*(Editor's Note: Under section 13 of the act of November 17, 1998 (P.L. 788, No. 100), 12 Pa. Code Chapter 61 is abrogated.)*

**Authority**

The provisions of this Chapter 61 issued under the Tax-Exempt Bond Allocation Act (73 P. S. §§ 397.1—397.8), unless otherwise noted.

**Source**

The provisions of this Chapter 61 adopted January 10, 1986, effective January 1, 1986, 16 Pa.B. 129; renumbered from 13 Pa. Code Chapter 55, May 16, 1997, effective May 17, 1997, 27 Pa.B. 2415. Immediately preceding text appears at serial pages (216279) to (216280) and (227375) to (227381).

**Cross References**

This chapter cited in 12 Pa. Code § 63.3 (relating to procedures).

**§ 61.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Tax-Exempt Bond Allocation Act (73 P. S. §§ 397.1—397.8).

*Enterprise zone*—An area certified by the Secretary under 12 Pa. Code Chapter 121 (relating to enterprise zone program—statement of policy). The term includes an area designated as a full zone as well as a planning zone.

*Exempt facility*—A project which is determined by the Federal government not to be subject to small issue project limitations. Examples are airports and waste disposal facilities.

*IDA Law*—The Industrial and Commercial Development Authority Law (73 P. S. §§ 371—385).

*Net new job*—A full-time job, or its equivalent, which increases the number of jobs at the project site above the number of jobs present before the project is started. The term does not include a job which is one of the following:

- (i) Being relocated from within this Commonwealth.
- (ii) Created by the construction of the project.
- (iii) Not intended to be permanent.

*Project*—An activity for which tax-exempt bonds may be used.

*Unused tax-exempt bond authority*—The total tax-exempt bond allocation for the Commonwealth, minus the amount allocated to approved projects as of a particular date.

#### Source

The provisions of this § 61.1 adopted January 10, 1986, effective January 1, 1986, 16 Pa.B. 129; amended January 30, 1987, effective retroactively to January 1, 1987, 17 Pa.B. 571. Immediately preceding text appears at serial pages (103701) to (103702).

### § 61.2. Initial allocations for Commonwealth agencies.

Other than allocations specifically authorized in Chapter 63 (relating to private activity bonds—allocations), no Commonwealth agency will be authorized a specific allocation. A Commonwealth agency may apply to the Secretary for an allocation for worthwhile projects consistent with section 5(a)(2)(i) and (iv) of the act (73 P. S. § 397.5(a)(2)(i) and (iv)) and §§ 61.4 and 61.5 (relating to project selection; and allocations of tax-exempt bond authority). The Secretary, in consultation with the Secretary of the Budget and the agency, will determine what portion of an allocation request a particular Commonwealth agency will receive.

#### Source

The provisions of this § 61.2 adopted January 10, 1986, effective January 1, 1986, 16 Pa.B. 129; amended January 30, 1987, effective retroactively to January 1, 1987, 17 Pa.B. 571; amended January 22, 1988, effective retroactively to January 1, 1988, 18 Pa.B. 386; amended August 23, 1991, effective August 24, 1991, 21 Pa.B. 3825. Immediately preceding text appears at serial page (125620).

### § 61.3. Restrictions on county allocations.

(a) Except as provided in subsection (b), allocations of tax-exempt bond authority to counties under § 61.5(3) (relating to allocations of tax-exempt bond authority) for small issue projects are subject to the following restrictions:

- (1) A project shall be expected to generate at least one net new job or preserve one full-time job for every \$50,000 of bond authority, within 3 years of the closing of the financing, to be eligible to receive an allocation. In order to satisfy this requirement, the applicant shall submit a letter, on the applicant's letterhead, certifying that as an inducement for the Department to approve its allocation request, the applicant expects to create or preserve the requisite number of jobs. Included in the letter shall be a statement enumerating the jobs to be preserved and created in each of the following categories: professional,

skilled, semiskilled, unskilled and others. This letter shall be submitted with the preliminary allocation request.

(2) An applicant who had a project approved after January 1, 1984 and who failed to meet its job projections within 3 years of closing, is not eligible to receive approvals on subsequent allocation requests.

(b) The Secretary may, on a project by project basis, waive the restrictions imposed in subsection (a) if the Secretary determines that the waiver carries out the purposes of the act. The Secretary will waive the restrictions for projects in enterprise areas and in Federal disaster relief areas. Waiver requests will be evaluated by the Secretary in accordance with section 4(a)(2) of the act (73 P. S. § 397.4(a)(2)).

#### Source

The provisions of this § 61.3 adopted January 10, 1986, effective January 1, 1986, 16 Pa.B. 129; amended January 30, 1987, effective retroactively to January 1, 1987, 17 Pa.B. 571. Immediately preceding text appears at serial pages (103702) to (103704).

#### Cross References

This section cited in 12 Pa. Code § 61.6 (relating to allocation procedures).

### § 61.4. Project selection.

In selecting projects which exceed a county's initial allocation, are exempt facilities, are to be funded from the 50% contingency reserve pool or are to be funded in the final allocation, the Secretary will select projects based on the following criteria:

- (1) Size of project.
- (2) Number of net new jobs created.
- (3) Economic distress of the area.
- (4) The project's consistency with the economic development plans of the Commonwealth and of municipalities and regions.
- (5) The amount of private funds leveraged by tax-exempt financing.
- (6) The ability to undertake the project without tax free financing.
- (7) The date the bonds are to be issued.

#### Source

The provisions of this § 61.4 adopted January 10, 1986, effective January 1, 1986, 16 Pa.B. 129; amended January 30, 1987, effective retroactively to January 1, 1987, 17 Pa.B. 571. Immediately preceding text appears at serial page (103704).

#### Cross References

This section cited in 12 Pa. Code § 61.2 (relating to initial allocations for Commonwealth agencies); and 12 Pa. Code § 61.7 (relating to reallocation).

**§ 61.5. Allocations of tax-exempt bond authority.**

The act allocates the Commonwealth's tax-exempt bond authority to five categories as follows:

(1) *Housing related bonds.* An amount equal to \$160 million will be allocated for housing related bonds, including qualified residential rental projects and qualified mortgage bonds as defined by sections 142(d) and 143(a) of the Internal Revenue Code (26 U.S.C.A. §§ 142(d) and 143(a)). Requests to apply the housing related bond allocation to specific projects or uses, including mortgage credit certificate programs, will be reviewed and may be approved or disapproved by the Board of the Housing Finance Agency. Application for housing related bond allocations shall be made to the Executive Director of the Housing Finance Agency.

(2) *Qualified student loan bonds.* An amount equal to \$50 million will be allocated to the Pennsylvania Higher Education Assistance Agency for qualified student loan bonds provided by section 144(b) of the Internal Revenue Code (26 U.S.C.A. § 144(b)).

(3) *Qualified small issue bonds.* An amount equal to \$175 million will be allocated for qualified small issue bonds under section 144(a) of the Internal Revenue Code. This amount will be allocated in accordance with the formula in § 63.1(d) (relating to allocations). Requests to apply this allocation to specific projects or uses will be reviewed and may be approved or disapproved by the Secretary. Application for allocations shall be made to the Private Capital Financing Office in the Department. The Secretary will provide allocations for qualified small issue bonds utilizing the procedure and subject to the requirements in § 63.3 (relating to procedures).

<i>County</i>	<i>Allocation</i>
Adams	\$400,000
Allegheny	\$14,785,000
Armstrong	\$400,000
Beaver	\$400,000
Bedford	\$400,000
Berks	\$6,457,000
Blair	\$4,188,000
Bradford	\$400,000
Bucks	\$9,445,000
Butler	\$5,471,000
Cambria	\$1,505,000
Cameron	\$400,000
Carbon	\$400,000
Centre	\$400,000
Chester	\$6,860,000
Clarion	\$400,000

<i>County</i>	<i>Allocation</i>
Clearfield	\$1,259,000
Clinton	\$400,000
Columbia	\$400,000
Crawford	\$3,981,000
Cumberland	\$400,000
Dauphin	\$400,000
Delaware	\$1,659,000
Elk	\$400,000
Erie	\$8,514,000
Fayette	\$400,000
Forest	\$400,000
Franklin	\$4,605,000
Fulton	\$400,000
Greene	\$400,000
Huntingdon	\$400,000
Indiana	\$400,000
Jefferson	\$2,242,000
Juniata	\$400,000
Lackawanna	\$574,000
Lancaster	\$4,327,000
Lawrence	\$3,439,000
Lebanon	\$2,530,000
Lehigh	\$2,508,000
Luzerne	\$5,681,000
Lycoming	\$400,000
McKean	\$3,609,000
Mercer	\$5,106,000
Mifflin	\$400,000
Monroe	\$1,214,000
Montgomery	\$17,270,000
Montour	\$2,175,000
Northampton	\$12,416,000
Northumberland	\$400,000
Perry	\$400,000
Philadelphia	\$6,240,000
Pike	\$400,000
Potter	\$400,000
Schuylkill	\$3,777,000
Snyder	\$400,000
Somerset	\$400,000

<i>County</i>	<i>Allocation</i>
Sullivan	\$400,000
Susquehanna	\$400,000
Tioga	\$400,000
Union	\$400,000
Venango	\$400,000
Warren	\$400,000
Washington	\$6,628,000
Wayne	\$400,000
Westmoreland	\$5,160,000
Wyoming	\$400,000
York	\$6,575,000
Totals	\$175,000,000

(4) *Other qualified private activity bonds.* An amount equal to \$166 million will be allocated to other qualified private activity bonds, including qualified redevelopment bonds as defined by section 144(c) of the Internal Revenue Code, exempt facility bonds as defined by section 142 (excluding section 142(d)) of the Internal Revenue Code, and enterprise zone bonds as defined by section 1394 of the Internal Revenue Code (26 U.S.C.A. § 1394), all of which are subject to the volume cap provided by section 146 of the Internal Revenue Code (26 U.S.C.A. § 146). Requests to apply this allocation to specific projects or uses will be reviewed and may be approved or disapproved by the Secretary. Applications for allocations shall be made to the Private Capital Financing Office in the Department. An allotment of at least 25% of the allocation provided in this paragraph is reserved for solid waste disposal projects.

(5) *Special allocation pool.* The Secretary may utilize not more than \$50 million for a special allocation pool for projects which require more bond authority than a given county has currently available to it. To qualify for consideration to use this pool, local issuing authorities shall demonstrate to the Secretary's satisfaction that they have acted responsibly in selecting projects which maximize long-term net new job creation, consistent with the intent of the act. Decisions regarding use of the special allocation pool for small issue purposes will be based upon the characteristics and merits of individual projects proposed, and upon the record of the issuing authority in utilizing industrial development financing to create or retain jobs. A project may be considered if the entire allocation for the county in which the project is proposed has been obligated. In determining approval or disapproval of allocation requests from this pool, the Secretary will consider the following:

- (i) The amount of the allocation available.
- (ii) The size of the project.
- (iii) The level of economic distress.
- (iv) The number of net new jobs to be created.

- (v) The ability to undertake the project without approval of the tax exempt financing.
- (vi) The amount of private funds leveraged.
- (vii) The project's consistency with the economic development plans of the Commonwealth and of municipalities and regions.
- (viii) The date the bonds are to be issued.

#### Source

The provisions of this § 61.5 adopted January 10, 1986, effective January 1, 1986, 16 Pa.B. 129; amended January 30, 1987, effective retroactively to January 1, 1987, 17 Pa.B. 571; amended January 22, 1988, effective January 1, 1988, 18 Pa.B. 386; amended April 1, 1988, effective retroactively to January 1, 1988, 18 Pa.B. 1492; corrected April 22, 1988, effective retroactively to January 1, 1988, 18 Pa.B. 1933; amended August 23, 1991, effective August 24, 1991, 21 Pa.B. 3825; amended April 17, 1992, effective April 18, 1992, 22 Pa.B. 1928; amended August 6, 1993, effective August 7, 1993, 23 Pa.B. 3705; amended May 27, 1994, effective May 28, 1994, 24 Pa.B. 2704; amended March 24, 1995, effective March 25, 1995, 25 Pa.B. 1082; amended June 21, 1996, effective June 22, 1996, 26 Pa.B. 2923; amended March 14, 1997, effective March 15, 1997, 27 Pa.B. 1369; amended February 27, 1998, effective February 28, 1998, 28 Pa.B. 1139. Immediately preceding text appears at serial pages (230854) to (230857).

#### Cross References

This section cited in 12 Pa. Code § 61.2 (relating to initial allocations for Commonwealth agencies); 12 Pa. Code § 61.3 (relating to restrictions on county allocations); and 12 Pa. Code § 61.6 (relating to allocation procedures).

### § 61.6. Allocation procedures.

Under the allocations in § 61.5 (relating to allocations of tax-exempt bond authority), to apply for approval of allocations for specific projects the following procedures shall be followed:

- (1) *Approval requirements.* The approval of an allocation for small issue and exempt facilities private activity bonds requires submission of a preliminary allocation request, submitted prior to the issuance of the bonds, and submission of a final allocation request and a copy of IRS Form 8038, Information Return for Private Activity Bond Issues, within 15 calendar days after closing.
- (2) *Preliminary allocation request (PAR).*
  - (i) A PAR will not be accepted until the project is approved by the Department if approval is required under the IDA Law.
  - (ii) A PAR shall be submitted by the industrial development authority or other authorized issuer. A PAR will not be accepted from the applicant's attorney. If submitted by an authorized issuer other than an industrial development authority, the PAR shall have attached sufficient information to determine use and eligibility for allocation.
  - (iii) A PAR, if properly completed and submitted, will be approved on a timely basis by the Department.

(iv) A PAR shall be properly completed. An improperly completed or submitted PAR will be returned for revision or correction.

(v) A PAR is valid for 90 calendar days after approval or until December 31 of the year in which it is approved, whichever is earlier. Failure to close within the prescribed period will result in the automatic loss of the preliminary allocation.

(vi) For projects which are also requesting funding through an Urban Development Action Grant (UDAG) or through the Pennsylvania Economic Development Financing Authority (PEDFA), the PAR is valid for 180 calendar days after approval or until December 31 of the year in which it is approved, whichever is earlier.

(vii) If the PAR expires prior to closing for a project, there will be a penalty period of 60 calendar days, after the date of expiration, before the Department will accept a new PAR for that project. To avoid this, the issuer, the applicant and the parties involved should be in agreement regarding the closing date and should be certain that details can be finalized by that date, before the PAR is submitted.

(viii) If an increase is requested, a PAR shall be submitted for the increased amount only.

(ix) If a project has a PAR for the original tax-exempt amount and a PAR for an increase, the closing shall be effected by the expiration date of the earliest PAR if there is to be one issuance.

(x) Allocations will not be granted for projects using private activity bonds for interim financing purposes.

(xi) Allocations for small issue projects will be granted based on the chronological order of receipt and up to an amount which in the aggregate equals a county's allocation.

(xii) A PAR is valid only during the calendar year in which it is approved.

(xiii) A PAR submitted in prior years is not valid for projects in subsequent years. A new PAR shall be submitted each year.

(xiv) A project closing prior to the issuance of a PAR, in excess of the approved amount of the PAR, closing after the PAR has expired or not filing a final allocation request (FAR) and IRS Form 8038 within the prescribed time periods will automatically have its allocation rescinded and risk loss of its tax-exempt status. Subsequent allocations granted with respect to financings which lost allocations for those reasons will require second closings to insure the tax-exempt status of the financings.

(xv) Neither project applications nor a PAR will be approved without the land cost, if the land is being financed.

(xvi) As required by § 61.3(a)(1) (relating to restrictions on county allocations), an applicant shall submit a letter, on the applicant's letterhead,



along with its PAR, certifying that as an inducement for the Department to approve its allocation request, the applicant expects to create or preserve the requisite number of jobs.

(3) *Final Allocation Request (FAR)*. A project receiving approval of a PAR shall submit a completed IRS Form 8038 and a FAR within 15 calendar days of the closing or the allocation will be rescinded, as indicated in this section, and the 60-calendar-day penalty period will be imposed.

(i) A FAR will not be accepted without IRS Form 8038. The date of closing and the tax-exempt amount shall be the same on both forms.

(ii) If the issuance amount on the FAR is less than the preliminary allocation amount approved by the Department, a decrease letter will be sent automatically, unless otherwise instructed by the authority.

#### Source

The provisions of this § 61.6 adopted January 10, 1986, effective January 1, 1986, 16 Pa.B. 129; amended January 30, 1987, effective retroactively to January 1, 1987, 17 Pa.B. 571; amended January 22, 1988, effective retroactively to January 1, 1988, 18 Pa.B. 386; amended August 23, 1991, effective August 24, 1991, 21 Pa.B. 3825; amended April 17, 1992, effective April 18, 1992, 22 Pa.B. 1928. Immediately preceding text appears at serial pages (161467) to (161469).

#### Cross References

This section cited in 12 Pa. Code § 63.1 (relating to allocations).

### § 61.7. Reallocation.

The act specifies that a two-tier reallocation process, for unused tax-exempt bond authority, is to occur each August 1 and November 1.

(1) *August 1 reallocation*. On August 1 of each year in which the act applies, the Secretary will determine the amount of unused tax-exempt bond authority available at the close of business July 31 of that year and reallocate this unused portion by September as follows:

(i) Fifty percent will be allocated for small issue use by local issuers.

(ii) Fifty percent will be retained by the Secretary as a contingency reserve for projects which are sponsored by Commonwealth agencies, exceed a county's reallocated amount or are exempt facilities. Allocations for these projects will be made at the Secretary's discretion.

(2) *November 1 reallocation*. On November 1 of each year in which the act applies, the Secretary will determine the amount of unused tax-exempt bond authority available at the close of business October 31 of that year and reallocate the unused portion at the Secretary's discretion consistent with the purposes of the act and the criteria established in § 61.4 (relating to project selection).

**Source**

The provisions of this § 61.7 adopted January 10, 1986, effective January 1, 1986, 16 Pa.B. 129; amended January 30, 1987, effective retroactively to January 1, 1987, 17 Pa.B. 571; amended August 23, 1991, effective August 24, 1991, 21 Pa.B. 3825; amended April 17, 1992, effective April 18, 1992, 22 Pa.B. 1928. Immediately preceding text appears at serial page (161470).

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