

## Chapter 202: REVENUE OBLIGATION SECURITIES PROGRAM

Summary: This Rule sets forth policies pursuant to which the Finance Authority of Maine (the Authority) may issue certificates of project approval and approve borrowers in response to applications by individuals, business enterprises and other eligible applicants requesting the Authority to issue tax-exempt or taxable revenue obligation securities to provide financing for eligible projects.

## 1. Eligible Projects.

- A. General. Projects are eligible for approval if they satisfy the requirements of the Finance Authority of Maine Act, 10 M.R.S.A. §961 and following (the Act), and other applicable law. Allocation of the State Ceiling imposed on the issuance of tax-exempt bonds is governed by Chapter 203 - Allocation of State Ceiling on Private Activity Bonds. Allocation of the national limitation on Recovery Zone Facility Bonds and Qualified Energy Conservation Bonds is governed by 10 MRSA §1074-A and 1074-B, respectively, and the provisions of this Rule.
- B. Repealed.
- C. Repealed.
- C.-1. Major Business Expansion Projects. A project is eligible as a major business expansion project if it is any building, structure, machinery, equipment or facility proposed to be constructed, rehabilitated, expanded, modernized or acquired in the State by a business entity, that has a projected cost of \$1,000,000 or more, that is projected to result in, directly or indirectly, a net gain of at least fifty (50) job opportunities within the State or the retention of at least fifty (50) jobs or a combination of at least fifty (50) jobs created or retained, and that benefits from financing assistance from the Authority pursuant to this rule including use of a capital reserve fund. A major business expansion project does not include electric rate stabilization projects or projects primarily involved in the provision of housing or retail sales to consumers. Financing assistance to a major business expansion project pursuant to this rule may not exceed \$25,000,000.
- D. Reasonable Expectation. At the time of issuance of the certificates of approval, the chief executive officer will determine whether a proposed project is an eligible project within the meaning of the Act. The chief executive officer's determination will be based on the reasonable expectations of projected use of the project set forth in the application and any additional documents required by the chief executive officer. A certificate of approval issued pursuant to this Rule and the Act shall be conclusive proof that a project is an eligible project within the meaning of the Act, but may not be relied upon as a determination that interest on the securities is exempt from Federal and State income taxation. The chief executive officer may issue a certificate of approval with conditions regarding the project or

use of the project if he deems it necessary or desirable to ensure that the project is eligible.

- E. Priority as to certain projects. Allocation of any national limitation on the issuance of bonds requiring allocation pursuant to Chapter 203 shall be awarded as provided in such Rule. For all other bonds, allocations shall be awarded on a first come, first served basis, with the following qualifications:
  - 1. In the case of Recovery Zone Facility Bonds, allocations must comply with 10 MRSA §1074-A;
  - 2. In the case of Recovery Zone Facility Bonds, in the event the Authority determines that the national allocation for the entire state is likely to be insufficient to allow award to all eligible applicants, the Authority may reserve allocations for certain projects regardless of order of application if the Authority determines in its discretion that such reservation is necessary to assure a reasonable geographic distribution of projects within the state.
- 2. Application. In order to provide the Authority with a basis to make the determinations required by the Act and these regulations, an applicant shall make an application, in one or more parts, which will include the following:
  - A. Repealed.
  - B. Repealed.
  - C. Repealed
  - D. An application fee calculated pursuant to section 8. The application fee is non-refundable.
  - E. A statement of the municipality in which the project is to be located that adequate provision is being made to meet any increased demand upon public facilities that might result from the project or that there is no increased demand.
  - F. A commitment from one or more purchasers or a letter of intent from one or more underwriters of the total amount of securities to be issued (required prior to scheduling a public hearing except for applications under Chapter 105 of the Authority's rules).
  - G. For securities exceeding \$1,000,000, and other instances where the Authority deems appropriate, the Authority shall be provided with a written assessment from the Maine Department of Environmental Protection of the environmental conditions known by the Department to exist. The Authority will not issue a certificate of approval for any project until that department's assessment has been received and considered by the Authority.
  - H. A description of the proposed project.

- I. A statement by the applicant explaining how the project will make a contribution to the economic growth of, the control of pollution in or the betterment of the health, welfare or safety of the inhabitants of the State. The statement should include information on payroll and the number of new or retained jobs.
  - J. A statement by the applicant explaining why the project will not result in a substantial detriment to existing business in the State. To the extent known to the applicant, the statement should describe the market to be served as a result of the proposed project and should set forth the names and addresses of any other businesses in the State known by the borrower to serve such market. If there are any such businesses known to the applicant, then to the extent known to the applicant, the statement should also describe the demand in such market, the capacity of such businesses serving such market, the efficiency of such businesses and why any arguably adverse economic effect of the project on such businesses is outweighed by the contribution which the project will make to the economic growth of, the control of pollution in or the betterment of the health, welfare or safety of the inhabitants of the State.
  - K. A breakdown of the purposes and amounts for which the proceeds of the issue will be expended.
  - L. A statement that the applicant will, to the extent possible, cooperate with representatives of the Department of Labor and the Department of Health and Human Services regarding opportunities for employment for recipients of services provided by those Departments.
  - M. With respect to Recovery Zone Facility Bonds, a statement by the applicant describing why the project will be beneficial to the county or counties in which it is located.
  - N. Such other information as the Authority may reasonably require, including such information as may be required for purposes of Chapter 203 - Allocation of State Ceiling on Private Activity Bonds, or for the purposes of 10 MRSA §§1074-A and 1074-B .
3. Additional Information for Certain Applications. With respect to certain types of projects, the Act requires the Authority to make additional determinations. Those projects include major business expansion projects, relocation of certain facilities, recycling and waste reduction projects, paper industry job retention projects, transmission facilities projects, pollution control facilities, energy generating system projects, energy distribution projects and certain hydroelectric facilities. In these cases, the application must provide such information as the Authority may reasonably require as a basis for such determinations.
4. Public Hearing. Prior to issuing a certificate of approval, the chief executive officer of the Authority shall convene and conduct a public hearing with respect to the application. As required by the Act, the applicant shall notify any businesses identified pursuant to section 2, subsection J of the date, time and place of the hearing and provide the Authority with a

copy of each notice. The chief executive officer may require such other or further notice as may be necessary or desirable to provide adequate notice to affected businesses.

5. Contribution. In determining whether or not to issue a certificate of approval for a project, the chief executive officer shall consider whether economic growth will be enhanced, jobs will be retained, pollution will be reduced or the health, welfare or safety of the inhabitants of the State will be improved.
6. Detriment. No certificate of approval will be issued for any project where the chief executive officer finds that implementation of the project is likely to cause economic detriment to one or more existing businesses, which detriment is substantial and would have a material adverse impact on such business. In determining whether or not to issue a certificate of approval, the chief executive officer shall consider whether the project serves a new market segment or a market segment not serviced by existing business in the State. In determining whether, as a result of the project, there will not be sufficient demand within the market area of the State to be served by the project to employ the efficient capacity of existing business, the chief executive officer shall consider whether the market is growing and whether the project would be likely to cause a significant, adverse change in the market shares of existing enterprises. For purposes of this section, "efficient capacity" means that part of the quantity of production or supply of services which is produced or supplied by businesses employing well-designed structures, equipment or techniques that are comparable to current practices.
7. Creditworthiness. In deciding whether to issue any securities for a project, the chief executive officer shall determine, on the basis of available information, that it is reasonable to expect that the applicant and any guarantor will be able to pay debt service upon the securities, or that adequate security is being provided to assure repayment of the securities. Where Authority credit enhancement is being provided, the following credit criteria shall apply in addition to those criteria set forth in Chapter 101 of the Rules of the Authority:
  - A. No application will be approved unless the borrower, or the borrower and guarantor combined, meets or exceeds the following financial performance criteria, as determined by the Authority:
    1. Profitability for the most recent three years of operations (new ventures are not ineligible but must clearly demonstrate ability to be profitable);
    2. Minimum ratio of current assets to current liabilities of 1.25 to 1;
    3. Maximum ratio of total debt to net worth of 3 to 1;
    4. Minimum debt service coverage ratio of 1.25 to 1 (net income after taxes, plus interest and depreciation, divided by annual debt service), both current and proposed;

5. Recent financial performance consistent with the applicable median quartile of firms in comparable businesses as reported in Robert Morris Associates Annual Statement Studies.

B. In its discretion, the Authority may waive one or more of the above criteria if the Authority determines that the borrower has demonstrated a strong likelihood of being able to repay the loan, or in the event that the borrower causes to be provided to the Authority an irrevocable letter of credit or other similar instrument or undertaking which the Authority deems sufficient to provide adequate third party security for repayment of the loan and which is in form and content satisfactory to the Authority.

C. No more than 90% of the total loan funds being provided to borrower for an eligible project may be credit enhanced by the Authority [except with respect to Major Business Expansion Projects, Electric Rate Stabilization projects, Worker's Compensation Residual Market Mechanism Projects, Paper Industry Retention Projects, and Transmission Facilities Projects]. The balance of the loan funds shall be provided by a Lender the Authority finds will adequately monitor the Borrower's performance of its loan obligations.

8. Fees, Expenses and Interest Rate.

A. On submission of the application, the applicant shall pay a non-refundable administrative fee of \$5,000.

The administrative fee required with the application is not credited against the administrative fee due upon issuance of the securities set forth below, but may be credited against the loan insurance fee set forth in Chapter 101 of the Rules of the Authority.

B. The chief executive officer may require the user to reimburse the Authority for its out-of-pocket expenses in connection with issuance of the securities, including without limitation charges of special counsel and costs of copying, mailing, phone calls, advertising and travel.

C. The applicant may be required to pay interest on the loan up to the maximum rate allowed under Federal law, including any spread or interest rate override.

D. Repealed.

E. In the event the Authority issues its certificate of approval, and upon the issuance of the securities, the applicant shall pay to the Authority an additional non-refundable administrative fee as follows:

Fee (as percentage of securities issued)

State Bond Ceiling Allocation Required	0.30% (minimum of \$10,000)
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8-A. (Section repealed May 15, 1990).

9. Housing. The Authority will not provide financing from proceeds of revenue obligation securities issued by the Authority for any housing which is eligible for financing by the Maine State Housing Authority except with respect to property which the Authority has acquired or may acquire on account or in anticipation of imminent or actual default under the mortgage insurance programs.
10. Major Business Expansion Projects. No application for a major business expansion project will be approved unless the Authority determines that the applicant is creditworthy and there is a strong likelihood that the revenue obligation securities will be repaid through the revenues of the project and any other sources of revenues and collateral pledged to the repayment of those securities. In order to make this determination, the Authority shall consider those factors necessary to measure and evaluate the sufficiency of the pledged revenues to repay the obligations, including:
  - A. Whether individuals or entities obligated to repay the obligations have demonstrated sufficient revenues from the project or from other sources to repay the obligations, and a strong probability that those revenues will continue to be available for the term of the revenue obligation securities;
  - B. Whether the applicant demonstrates a strong probability that the project will continue to operate and provide the public benefits projected to be created for the term of the revenue obligation securities;
  - C. Whether the applicant demonstrates that the benefits projected to be created by the project are enhanced through the use of financing assistance from the Authority;
  - D. Whether the applicant's creditworthiness is demonstrated by such factors as historical financial performance, management ability, its plan for marketing its product or service and its ability to access conventional financing;
  - E. Whether the applicant meets or exceeds industry average financial performance ratios commonly accepted in determining creditworthiness in that industry;
  - F. Whether the applicant demonstrates that the need for Authority assistance is due to the reduced cost and increased flexibility of the financing for the project that result from Authority assistance and not from an inability to obtain necessary financing without the capital reserve fund security provided by the Authority;
  - G. Whether collateral securing the repayment obligation is reasonably sufficient under the circumstances; and
  - H. Whether the applicant demonstrates that any project which claims a projected retention of jobs is one where those jobs are in jeopardy of being lost to the State without the Authority's financing.

11. Simultaneous Sale of Securities. The Authority may provide financing by selling simultaneously more than one issue of its revenue obligation securities.
12. Location of Collateral. In the case of Major Business Expansion Projects or other projects that carry Authority credit enhancement (including loan insurance) or that require an allocation of State Bond Ceiling, real estate or stationary machinery or equipment constituting a significant portion of collateral for repayment of revenue obligation securities shall be located within the State. Mobile machinery or equipment, including vessels, constituting a significant portion of collateral for repayment of revenue obligation securities shall be registered with and taxed by the State or municipal authorities, if the State or municipal authorities register or tax machinery or equipment of a type similar to the collateral and shall be stored or berthed in the State when not in use. Other types of collateral constituting a significant portion of collateral for repayment of revenue obligation securities shall be owned by or provided for the benefit of a person or business association with a place of business in the State.
13. Refunding Securities. With respect to any issue of revenue refunding securities to refund securities issued under current law or any predecessor provision, the Authority will not ordinarily require issuance of a new certificate of approval where there is no expansion of the project and no increase in the outstanding principal amount of the securities.
14. Credit Enhanced/§1053 Bonds. Where an applicant requests that revenue obligation securities be secured pursuant to 10 M.R.S.A. §1053, or otherwise requests Authority credit enhancement for securities, the applicant shall submit an application pursuant to the Authority's Mortgage Insurance Program Rule (Chapter 101), and, if an Electric Rate Stabilization Project, under the Authority's Electric Rate Stabilization Project Taxable Bond Program Rule (Chapter 107) and the provisions of such rules shall apply in addition to those of this rule, provided, however, that for major business expansion projects, the limitations on amount of financing assistance set forth in section 1 (C-1), above, and for Electric Rate Stabilization Projects, Workers' Compensation Residual Market Mechanism Projects, Paper Industry Retention Projects, and Transmission Facilities Projects, the limits set forth in 10 MRSA §1053(6), shall apply instead of those in Chapter 101, and provided further, for all credit enhanced projects, the criteria set forth in Section 7, and for Major Business Expansion projects, the criteria in Section 10, above, shall apply in addition to -- and to the extent of any direct conflict, instead of -- the criteria set forth in Chapter 101. In addition, in any case where credit enhancement is provided by the Authority under Chapters 101 or 107 for bonds to be issued pursuant to this Rule, the fee schedule in the applicable Chapter shall apply in addition to the fees set forth in this rule.
  - 1) Repealed.
  - 2) Repealed.
  - 3) Repealed.
  - 4) Repealed.
  - 5) A borrower shall also reimburse the Authority for its out-of-pocket expenses in

connection with processing an application for credit enhancement, including capital reserve fund security or with the capital reserve fund, including any fee payable in connection with servicing the loan, and all expenses in connection with the bond issue, including without limitation charges of counsel and costs of sale of bonds, copying, mailing, phone calls, advertising and travel.

- 6) Where application is made after issuance to obtain the Authority's and/or trustee's consent to transfer of collateral, if any, alteration of rights or other matters, the Authority may charge the borrower for the cost of the Authority's staff and trustee's staff utilized to review the application and for the Authority's and trustee's out-of-pocket expenses in connection with the application, including without limitation, charges of counsel.
- 14-A. Limited Applicability of the Rule to Taxable Issues: Except in the case of Major Business Expansion Projects, when an applicant requests that the interest on any issue of revenue obligation securities be includable in the gross income of the holders of the bonds, the following provisions of the Rule **shall not** apply to such application: 2(E), 2(G), 2(I), 2(J), 2(L), 3, 4, 5, 6, 13,. Provided, however, that these exclusions shall not obviate the requirements of any other rule which might apply.
  - 14-B. Provisions applicable only to tax-exempt bond issues. When application is made to the Authority to issue tax-exempt bonds, the Authority may contract with an underwriter for assistance in marketing the bonds and with bond counsel, and may select a trustee for the bondholders. All such selections shall be based primarily on demonstrated experience and ability on tax-exempt issuances. The Authority shall, in addition to the other requirements of this Rule, determine that the proposed financing qualifies as a tax-exempt bond under applicable provisions of the Internal Revenue Code, and shall require that the borrower covenant to take such action as may be necessary to preserve the tax-exempt status of the bonds.
  15. Implementation. The members delegate to the chief executive officer the authority to take any action, in the name and on behalf of the Authority, necessary or convenient to carry out this program and any financing pursuant to this Rule and the Act. Such actions include making any determination required by this Rule and the Act and signing any certificate of approval, inducement certificate or agreement, endorsement of note, assignment of mortgage, security agreement, loan agreement, trust indenture and other document or certificates necessary or convenient for carrying out this program and any financing. The chief executive officer shall also be authorized to enter into any transactions or agreements in the form of rate swaps, rate exchanges, and other transactions or agreements that the chief executive officer determines appropriate to reduce the risk of price changes with interest rate fluctuations. The chief executive officer may not delegate the responsibility of signing any certificate of approval or inducement certificate or agreement to any other person. For the purposes of this Rule, the chief executive officer shall be defined as the chief executive officer of the Authority, or any person acting under the supervisory control of the chief executive officer.
  16. Appeal to the Members. If an application for a certificate of approval is denied by the chief executive officer, the user shall have the right to appeal the decision of the chief executive

officer to the members of the Authority. Notice of the appeal, together with a statement of the reasons why the chief executive officer's decision should be reversed or modified, shall be given to the chief executive officer in writing within twenty days after the date on which the chief executive officer mailed the notice of decision to the user. The appeal shall be heard at a meeting of the members, and the user must be present to support the appeal. The members ordinarily meet once each month. The appeal shall be based on the record before the chief executive officer on the date of the decision. The decision of the chief executive officer shall be final unless seven or more members determine that the decision by the chief executive officer was arbitrary, capricious or an abuse of discretion, in which event the members may overturn or modify the decision of the chief executive officer and may direct the chief executive officer to take further action with respect to the application.

## BASIS STATEMENT

### Amendment 16

The rule amendment adds the changes required by LD 1530, applicable to Recovery Zone Facility Bonds and Qualified Energy Conservation Bonds.

#### ECONOMIC IMPACT ANALYSIS STATEMENT/ FISCAL IMPACT NOTE:

- A. This amendment will have no cost to the Authority other than costs that can be absorbed within allocated appropriations.
- B. Businesses that may use the program may be affected by the amendment.
- C. The amendment should have no effect on competition.
- D. The above statements are made based on existing demands for the program and analysis conducted at the time the underlying legislation was enacted.

The proposed amendment will not impose any costs on municipalities or counties.

**EMERGENCY FINDINGS:** The Authority found that emergency adoption of Amendment 16 was warranted to protect the welfare of the inhabitants of the state, in light of the emergency nature of LD 1530 and the risk that benefits provided by the American Restructure and Reinvestment Act, and added to the Rule by the amendment, might not be fully utilized by the state if not enacted on an emergency basis. Emergency adoption shall not be effective unless and until LD 1530 becomes law.

**NON-EMERGENCY COMMENTS:** The rule was published for public comment. Only one comment was received, from David Wright on behalf of the Maine Department of Environmental Protection. Mr. Wright suggested changes to the process by which the Authority obtains information from the Department on environmental conditions that may be related to a project funded with bonds issued under the rule. In essence, he suggested the Authority should require a Phase I and, if necessary, Phase II environmental site assessment (ESA), in lieu of a written assessment from the Department. The Authority considered Mr. Wright's comments, and declined to make the requested changes on the basis that the requirement for a written assessment is contained in the governing

statute, and that the assessment process was developed with the input of the Department and has worked well. In addition, the Authority is reluctant to require what can be costly environmental studies where no credit risk is being taken by the Authority.

EFFECTIVE DATE: June 4, 1984, original rule; October 22, 1984 (Amendment 1), amended sections 1 and 8 (C and D) and added section 10; January 19, 1985 (Amendment 2), modified section 8 and added section 11; May 8, 1985 (Amendment 3), added section 8(D); June 11, 1985 (Amendment 4), amended section 6; June 30, 1985 (Amendment 5), amended section 9; September 19, 1985 (Amendment 6), various revisions; April 20, 1986 (Amendment 7) added section 8(A); September 22, 1986 (Amendment 8), various revisions; November 4, 1987 (Amendment 9), various revisions; May 29, 1988 (Amendment 10), amended section 8(A) and added section 8(E); May 15, 1990 (Amendment 11), amended sections 8(A) and 8(E); repealed section (A) and added section 14(A); October 29, 1994, (Amendment 12); June 11, 1995 (Amendment 13) added Sections 1(C-1), 10, Amended Sections 3, 14, 14-A; January 26, 2000 (Amendment 14), changed sections 1(B), 1(C), 1(C-1), 2(D), 2(L), 3, 8(E), 10(B) and 15. August 27, 2005 (Amendment 15), changes to sections 1, 2, 3, 7, 8, 12, 14, 14-A, 15, and added section 14-B; February \_\_, 2010 (Amendment 16-Emergency), changes to sections 1(A) and 2(M), and added sections 1(E) and 2(N); June 13, 2010 (Amendment 16-Non-Emergency), changes to sections 1(A) and 2(M), and added sections 1(E) and 2(N).

AUTHORITY: 10 M.R.S.A. §§969-A(14); 1043, 1044, 1053, 1054.