# 94-457 FINANCE AUTHORITY OF MAINE

Chapter 201: MUNICIPAL SECURITIES APPROVAL PROGRAM

Summary: This rule sets forth standards pursuant to which the Finance Authority of Maine (the Authority) may issue certificates of approval, interest rate approvals and document approvals in response to applications by municipalities in connection with municipal issuances of tax-exempt 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, including eligibility for tax-exempt treatment under the federal Tax Code. 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.

B. Repealed.

C. Repealed.

D. Reasonable Expectation. At the time of issuance of the certificate 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.

2. Application.

Each application under this program will include the following:

A. The names of the user, and guarantor and the municipality.

B. Repealed.

C. Repealed.

D. Repealed.

E. Designation of the municipality's bond counsel for the issue.

F. Resolution of municipality authorizing the application.

G. 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.

H. A statement of the municipality 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.

I. A letter of intent or a commitment from one or more purchasers or underwriters of the total amount of securities to be issued (required prior to scheduling a public hearing).

J. For securities exceeding $1,000,000, and other instances where the Authority deems it appropriate, the Authority shall be provided a written assessment from the Maine Department of Environmental Protection to the Authority of all environmental conditions known to exist. The Authority will not issue a certificate of approval for any such project until that department's assessment has been received and considered by the Authority.

K. A description of the proposed project sufficient to enable the chief executive officer to determine that it is an eligible project within the meaning of the Act.

L. Repealed.

M. A statement by the user explaining how the project will make a contribution to the economic growth of, the control of pollution in or the betterment of the health of the inhabitants of the State. The statement should include information on payroll and the number of new or retained jobs.

N. A statement by the user explaining why the project will not result in a substantial detriment to existing business in the State. To the extent known to the applicant or the user, 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 or the user, 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 of the inhabitants of the State.

O. A breakdown of the purposes and amounts for which the proceeds of the issue will be expended.

P. Repealed.

Q. 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.

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 relocation of certain facilities, pollution control facilities, water supply system projects, energy generating system projects, energy distribution projects, certain hydroelectric facilities and energy conservation projects. 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 shall convene and conduct a public hearing with respect to any application by a municipality for issuance of a certificate of approval by the Authority. As required by the Act, the applicant shall notify any businesses identified in response to section 2, subsection N of the date, time and place of the hearing and provide the Authority with a copy of each notice. The Authority 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 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 of 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 that is produced or supplied by businesses employing well-designed structures, equipment or techniques that are comparable to current practices.

7. Repealed.

8. Approvals.

The chief executive officer is hereby authorized to make the determinations required by this rule and the Act and to issue certificates of project approval in the name and on behalf of the Authority. The chief executive officer may not delegate the responsibility of executing such certificates to any other persons.

9. Review.

Notice of approval or disapproval of a municipality's application for a certificate of project approval shall be provided promptly to the user and the municipality. The notice will provide that the user or the municipality may appeal the chief executive officer's denial of an application for a certificate of project approval to the members by notifying the chief executive officer in writing, provided that the chief executive officer receives such notice of appeal within fourteen (14) days after the user's and the municipality's receipt of notice of denial.

10. Repealed.

11. Expenses.

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

12. Repealed.

12-A Additional Administrative Fee. 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 (calculated as a percentage of the securities issued) as follows:

State Bond Ceiling Allocation Required 0.20% (minimum $5,000)

State Bond Ceiling Allocation Not Required 0.10% (minimum of $2,500)

13. Chief Executive Officer.

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.

STATUTORY AUTHORITY: 10 M.R.S.A. §969-A(14), §1061 *et seq*.

Effective October 22, 1984, various amendments were made to the rule. Sections 1 and 2.K were modified and section 10 was added to implement P. L. 1983, c. 699. Also, section 11 was added to expressly enable the Authority to recover out-of-pocket costs.

Effective May 8, 1985, section 12 was added to enable rebate of application fees in certain instances.

Effective June 11, 1985, section 6 was amended to give additional guidance to the chief executive officer in determining whether, if a project is approved, the efficient capacity in the industry will exceed the demand in the market

Effective June 11, 1985, section 13 was added to make more explicit the members' expectation, which has existed since this rule was first adopted, that actions and duties delegated to the chief executive officer (except execution of certificates and approvals referred to in section 8) may be performed either by the chief executive officer or by another Authority employee acting under the supervisory control of the chief executive officer. If the chief executive officer chooses to rely on an employee in making a decision on an application or performing any other function under this rule, the members continue to expect that the employee's training and experience will be at least commensurate with the employee's responsibilities under the program and that there will be continuing supervision by the chief executive officer.

Changes were made in section 12 effective April 20, 1986 to allow rebates of application fees. The change was deemed necessary due to anticipated Federal legislation restricting the State ceiling on certain tax-exempt bonds and resulting changes to Chapter 203 of the Authority's rules regarding allocation of the State ceiling.

Effective September 22, 1986, various amendments were made designed to implement the 1986 legislative amendments to the Act and to clarify certain provisions of the rule.

Effective November 4, 1987, the office space prohibition was amended to refer to professional office space, consistent with the 1987 Amendments to the Finance Authority of Maine Act.

EFFECTIVE DATE:

June 4, 1984, original rule

AMENDED:

October 22, 1984, amended sections 1 and 2(K) and added sections 10 and 11

May 8, 1985, added section 12

June 11, 1985, amended sections 6 and 8 and added section 13

December 28, 1985, various revisions

April 20, 1986, amended section 12

September 22, 1986, various revisions

November 4, 1987 revised section l(C)

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 4, 1996

NON-SUBSTANTIVE CORRECTIONS:

October 7, 1996 - minor spelling

March 17, 2000 - minor formatting

AMENDED:

August 27, 2005: changes to sections 1, 2 and 12, added section 12-A

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 17, 2025