# **94-457 FINANCE AUTHORITY OF MAINE**

**Chapter 203: ALLOCATION OR STATE CEILING ON PRIVATE ACTIVITY BONDS**

**Summary**: This rule establishes policies and procedures with respect to allocations and carryforward designations of the State ceiling available to the Authority.

**1. Definitions**

A. "Authority" means the Finance Authority of Maine.

B. "Form 8038" means U.S. Internal Revenue Service Form 8038, Information Return for Private Activity Bond Issues, or any substitute or replacement thereof applicable to the bond issue.

C. "Solid waste energy project" means a project designed to convert solid waste to electricity or steam and to reduce substantially the use of solid waste landfills as determined by the Authority.

D. "Carryforward" shall have the same meaning as in 26 USCA § 146(f), as amended.

E. "DEP" means the Maine Department of Environmental Protection.

F. "State ceiling" means the limit established by Federal law [26 USCA § 146(d), as amended] on the amount of private activity bonds which may be issued annually by the State of Maine and any of its political subdivisions, excluding, for purposes of this rule, that portion of the limit not allocated to the Authority pursuant to applicable law or Executive Order.

G. "Private activity bonds" means, for purposes of this rule, obligations defined as private activity bonds under current Federal law and the Internal Revenue Code of 1986 other than housing or housing-related bonds.

G-1. "Professional office space" shall have the same meaning as that term is defined in Chapter 105 of the Authority's rules.

H. "Small issue bonds" means qualified small issue bonds as defined in the 26 USCA §144(a), as amended and also means, for purposes of this rule, obligations other than solid waste energy projects for which the Authority has been authorized under applicable law or Executive Order to issue allocations of the State ceiling.

**2. State Allocation System**

In lieu of the allocation of the State ceiling provided under Federal law, that portion of the State ceiling allocated to the Authority pursuant to applicable State law shall be allocated to issuers of private activity bonds as provided in this rule, provided that the Authority shall observe specific reservations for designated categories of projects and repooling dates pursuant to any applicable State law, and the categorical reservations in section 3 shall be subject to such law.

**3. Categorical Reservations**

A. [Deleted. Effective November 4, 1987).

B. Twenty-five million dollars ($25,000,000) of the State ceiling is reserved until December 24 of each year for small issue bonds.

C. During the period from December 24 through December 31 of each year, there will be no categorical reservations of the State ceiling.

**4. Small Issue Restrictions**

Small issue bonds must comply with applicable provisions of Federal and State law. In addition, no State ceiling allocation will be made for the following projects or bond issues:

A. Motels, hotels or other facilities charging for overnight transient accommodations, other than full service hotels containing meal service facilities and convention facilities which will be located in and result in rehabilitation or improvement of buildings which are unoccupied, and which meet the requirements of 10 M.R.S.A. §§ 1041-A(4) or 1061-A(3).

B. Projects consisting primarily of storage or warehouse facilities, unless, at the time application is made to the Authority for a certificate of approval, one or more persons has agreed in writing to use an entire facility for its intended purpose for the term of the bond issue in connection with the user's primary business.

C. Projects where agreements to occupy at least 75% of the project for not less than two years (one year in the case of the State of Maine or its departments, agencies or instrumentalities) from the date of closing of the bond issue (or from the date occupancy is permitted in the case of projects involving substantial rehabilitation or new construction) do not exist at the time of Authority approval of certain bond documents. This limitation shall not apply in the case of reconstruction of existing building projects meeting the requirements of 10 M.R.S.A. §§ 1041-A(4) or 1061A(3).

D. Any project a significant element of which is space for retail sales of consumer goods for household use to customers who personally visit the space to view or obtain the goods. In determining whether a retail element of a project is significant, the Authority shall consider the principal purpose of the project, the portion of the project available for retail sales, and whether the project will provide economic benefits to the State which will be enhanced by the retail element, provided that no allocation of the Federal ceiling will be made if the space intended for retail sales exceeds 25% of the total building space available in the project. This limitation does not apply in the case of reconstruction of existing building projects meeting the requirements of 10 M.R.S.A. §§ 1041-(4) or 1061-A(3).

E. Except as permitted by 10 M.R.S.A. §§ 1041-A and 1061-A, no allocation for any project 35% or more of the building space of which, on a square footage basis, is intended to be used for professional office space.

F. Reconstruction of existing building projects which have been rehabilitated within five years before the date of the bond issue.

G. [Deleted].

H. Projects a significant purpose of which is to provide housing.

**5. Restrictions on Solid Waste Energy Projects**

No allocation for any solid waste energy project will be made unless the Authority has received the following with respect to the project:

A. DEP certification that all licenses and permits required by DEP with respect to the project have been issued or that none are required;

B. Power contract specifying the power price, completion deadline and any output limit;

C. Put or pay contracts for waste or waste handling agreements with municipalities and other users; and

D. Other materials demonstrating that the project will expeditiously commence installation, construction and operation.

**6. Reservations for Solid Waste Energy Projects**

A. No more than 35 days before the scheduled date of closing of a series of bonds for a solid waste energy project, an issuer may provide the Authority with the following:

i. A copy of draft Form 8038 containing the following information: Issuer's name and address, Part I information, and Part V information,

ii. Certification of bond counsel to the issuer of the scheduled bond closing date,

iii. Certification of bond counsel to the issuer that the interest on the bonds will be exempt from Federal taxation under applicable law provided an allocation of the State ceiling is obtained, and

iv. The items described in subsection A, B, C and D of section 5, or satisfactory evidence that such items will be received within 35 days.

B. If requested by the issuer, following receipt by the Authority of the items described in Subsection A of this section 6, the Authority may reserve for the project for one or more periods not exceeding in total 35 days for any one project in any one calendar year, the lesser of the amount of the bonds or the amount remaining unallocated. or unreserved for other projects or categories of projects under the State ceiling, provided that in the event the Authority determines that the sum of the allocations expected to be requested for solid waste energy projects in any calendar year exceeds the allocation of State ceiling anticipated to be available for such projects in that calendar year, the Authority may, in its discretion, award the issuer a partial reservation based on the minimum amount necessary for the project to commence implementation without substantial financial prejudice, as reasonably determined by the Authority, or on such other equitable basis as the Authority may deem necessary or desirable.

C. [Deleted].

D. Reservations issued pursuant to this section prior to August 15, 1986 shall be of no force or effect.

E. In order to be considered as a potential issuer for purposes of this section or section 7.C, solid waste energy projects may notify the Authority of their intent to issue private activity bonds, which notice shall include the amount anticipated to be issued and a detailed schedule indicating steps remaining prior to anticipated closing. The Authority may require such further information as it deems necessary in order to determine when such project is likely to require an allocation.

**6-A. Reservations for Small Issue Bonds**

From that portion of the State ceiling reserved for small issue bonds, the Authority may issue specific reservations for projects in accordance with the following procedure:

A. If the Authority has not made the election under subsection H of this section 6-A with respect to all or part of any calendar year, all applications for projects which do not have a valid and effective reservation under this section at the time of such election will be ranked against each other according to the following criteria:

i. Number of full time direct jobs created in the State per dollar of small issue bond financing. For purposes of this section, full time jobs shall be jobs providing not less than 1,820 hours of paid employment per year, and shall not include temporary construction jobs. This criterion will be given double weight.

ii. Number of full time direct jobs retained and number of part time jobs created and retained per dollar of small issue bond financing. This criterion will be given single weight.

iii. Economic impact of the project as measured by:

(a) projected annual payroll of all direct jobs created or retained per dollar of small issue bond financing, and

(b) estimated annual dollar volume of sales from project to customers outside the State per dollar of small issue bond financing. This criterion will be given single weight.

iv. Impact on economy of distressed areas as measured by:

(a) employment percentage change in the labor market area of the project (as defined by the Maine Department of Labor) minus five year population percentage change in that labor market area over the five most recent years for which numbers are available, and

(b) labor market area unemployment rate less statewide average unemployment rate, using most recent annual figures. This criterion will be given single weight.

v. Other considerations justifying giving increased weight to a project based on public policy goals. This factor will be given half weight.

B. The Authority may require such information and certification from each applicant as it deems necessary or desirable in order to verify or determine the applicability of each of the criteria to each applicant.

C. Each project shall be given a numerical ranking on each criterion and an overall ranking equal to its average ranking on all criteria as weighted under subsection A.

D. Under subsection A, paragraph v, projects shall be ranked according to the number of the following considerations which are applicable to each project, as determined by the Authority:

i. The project will result in the rehabilitation of an existing building at least 50 years old, which is located in an existing commercial area of a municipality in which a substantial public benefit will result from rehabilitation, as certified by an authorized official representing the municipality;

ii. The project will provide or promote expanded markets for Maine natural resource products or increases the productivity of a textile, apparel or footwear manufacturer;

iii. The project involves the sale or distribution of goods and the project will obtain 50 percent or more of its new material, supplies and inventory from unaffiliated Maine suppliers; and

iv. The project will make a significant contribution to the protection of the environment of the State.

E. Projects will receive reservations of the State ceiling in rank order to the extent of the State ceiling then available for small issue bonds, as designated by the Authority. Reservations for particular projects shall lapse on the earlier of:

i. The date on which DEP denies an application for a license or permit required for the project;

ii. The date on which the Authority denies an application for a certificate of approval for a project;

iii. A date subsequent to the reservation established by the Authority or applicable Executive Order as the date on which reservations lapse; or

iv. December 24 of each calendar year.

F. [Deleted).

G. [Deleted].

H. At any time that the members of the Authority determine that the State ceiling available for small issue bonds is equal to or exceeds the reasonably foreseeable demand for such State ceiling for small issue bonds, the Authority may elect to issue reservations for projects for one or more periods not exceeding in total 35 days in any calendar year upon receipt of certification of bond counsel to the issuer of the scheduled bond closing date and that interest on the bonds will be exempt from Federal income taxation under applicable law provided an allocation of State ceiling is obtained, which reservation shall be available only to those projects which have an unexpired certificate of approval from the Authority and which have obtained all necessary DEP approvals or certification that none are required. Upon the election by the Authority to proceed under this subsection, this procedure shall be followed in lieu of the procedure set forth in subsection A through E of this section until the Authority terminates the election. Reservations issued under this subsection shall lapse on the earlier of:

i. A date subsequent to the reservation established by the Authority or applicable Executive Order as the date on which reservations lapse; or

ii. December 24 of each calendar year.

**7. Notice of Issue and Allocation**

A. Within 5 business days after the date of closing of any issue of private activity bonds, the issuer shall cause the Authority to receive the following:

i. A copy of Form 8038 completed and signed on behalf of the issuer,

ii. Certification of bond counsel to the issuer of the date on which the bonds were closed, issued and delivered and bond proceeds were paid over by the bond purchasers, and

iii. Certification of bond counsel to the issuer that the bonds are exempt from Federal income tax conditioned upon receipt of an allocation of the State ceiling.

B. With respect to any small issue project for which the Authority has issued a reservation pursuant to section 6-A which is in effect on the date of receipt by the Authority of documents required pursuant to subsection A, or with respect to any small issue project regardless of whether it has a reservation if the Authority has elected to proceed under subsection H of section 6-A, the Authority will, by written notice, allocate to the issuer an amount of the State ceiling equal to the lesser of

(i) the amount of such bond issue or

(ii) the amount set forth in such reservation or, if no reservation, the remaining amount of the available State ceiling unallocated and unreserved for other projects or categories of projects.

C. With respect to any solid waste energy project for which the Authority has issued a reservation pursuant to section 6 which is in effect on the date of the request for allocation, the Authority will, upon receipt of the items specified in subsection A, award by written notice an allocation equal to the lesser of (i) the amount of the reservation, or (ii) the amount of the bond issue. With respect to solid waste energy projects for which a reservation is not in effect, the Authority shall award an allocation equal to the lesser of the amount requested or the amount of the State ceiling, remaining unallocated and unreserved; provided that in the event the Authority determines that the sum of the allocations expected to be requested for solid waste energy projects in any calendar year exceeds the allocation of State ceiling anticipated to be available for such projects in that calendar year, the Authority may, in the exercise of its discretion, award one or more partial allocations which shall be initially awarded based on the minimum amount necessary for the project or projects receiving partial allocations to commence implementation without substantial financial prejudice, as reasonably determined by the Authority or on such other equitable basis as the Authority may deem necessary or desirable. Supplemental allocations may be awarded upon receipt of evidence demonstrating compelling need for the allocation to the Authority's satisfaction, or on such other equitable basis as the Authority may deem necessary or desirable. Such supplemental allocations shall have priority over initial allocations where the Authority is satisfied that the need is compelling.

D. [Deleted].

**8. Carryforward Projects**

A. To the extent that the available State ceiling is not fully used in any one calendar year, allocation of the State ceiling amounts to carryforward projects will be made first to solid waste energy projects which have reservations pursuant to section 6, second to other waste energy projects, and third to other projects or uses eligible for the carryforward.

B. Solid waste energy projects will be ranked for allocation purposes based on the following considerations:

i. DEP or State priorities for landfill improvement or elimination;

ii. Existence of an inducement resolution or other official action by the issuer for the project;

iii. Power contract specifying the power price, completion deadline and any output limit;

iv. Put or pay contracts for waste or waste handling agreements with municipalities and other users, taking into consideration the number of municipalities or users which have executed such agreements, the population of the area to be served, and the likely cost to each user;

v. A certification by DEP that all licenses and permits required by DEP with respect to the project have been issued or that none are required;

vi. A firm, valid and binding bond purchase agreement wherein the purchaser agrees to purchase a stated principal amount of bonds for the project;

vii. A letter supporting the project from the chief municipal official of the municipality in which the project will be located;

viii. A certification of bond counsel to the issuer that the bonds will be exempt from Federal income tax, conditioned upon receipt of an allocation of the State ceiling;

ix. Contracts for design, construction, operation and maintenance of the project,; and

x. Other materials demonstrating that a bond issue will close, as determined by the Authority, within a stated time and that installation, construction and operation of a project will be expeditiously commenced.

C. Other projects or uses eligible for a carryforward allocation will be ranked based on the following considerations:

i. Existence of an inducement resolution or other official action of the issuer;

ii. A certification by DEP that all licenses and permits required by DEP with respect to the project have been issued or that none are required (not applicable for student loans);

iii. A letter supporting the project from the chief municipal official of the municipality in which the project will be located (not applicable for student loans);

iv. A firm, valid and binding bond purchase agreement wherein the purchaser agrees to purchase a stated principal amount of bonds for the project;

v. A certification of bond counsel to the issuer that the bonds will be exempt from Federal income tax, conditioned upon receipt of an allocation of the State ceiling; and

vi. Other materials demonstrating that a bond issue will close, as determined by the Authority, within a stated time and that installation, construction and operation of a project will be expeditiously commended or that any program will be expeditiously commenced.

D. Applications for carryforward elections must at least contain an inducement resolution or other official action and the certification of bond counsel referred to in this section and must be provided to the Authority on or before December 15 of each year unless otherwise agreed by the Authority.

E. Notwithstanding anything in this section to the contrary, the Authority may, in its discretion, award carryforward allocations to eligible projects on a pro rata or other equitable basis if the Authority determines that ranking such projects would not be equitable under the circumstances, provided that the priority for solid waste energy projects shall remain unless otherwise directed by applicable law or Executive Order.

**9. 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 for making, or for rejecting any application for, any allocation, carryforward designation or reservation of the State ceiling and for making effective and efficient use of the State ceiling in accordance with this rule.

**10. Appeal to the Members**

In the event that an application for an allocation, reservation for an allocation or a carry forward designation is rejected by the chief executive officer, the applicant 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 fourteen days after the date on which the chief executive officer mailed the notice of decision to the applicant. The appeal shall be heard at a meeting of the members, and the applicant 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 the 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. No decision of the members to overturn or modify any decision of the chief executive officer shall result in the rescission, cancellation or other disturbance of any allocation, reservation or allocation or carryforward designation awarded by the chief executive officer. Notwithstanding the pendency of any appeal, the Authority may, in its sole and uncontrolled discretion, unless and until stayed by valid order of a Court, continue to award allocations, reservations of allocations and carryforward designations to other applicants pursuant to this rule.

**11. Transition Rules**

A. Section 4 of this rule applies where an inducement resolution was adopted or other official action was taken June 12, 1985 or later unless otherwise provided.

B. The provisions of subsection 4.C pertaining to term does not apply where an inducement resolution was adopted or other official action was taken on or before December 31, 1985, provided that an allocation is made for the bond issue on or before December 31, 1986.

C. [Deleted].

D. [Deleted).

E. Reservations or allocations issued for bond issues which do not require an allocation of the State ceiling shall lapse and be of no further force or effect upon enactment of Federal legislation exempting such issues from the State ceiling, and may be reallocated in accordance with this rule.

**12. Waiver of Rule**

The Authority may waive any requirement or extend any time limit of this rule, except to the extent that the requirement or time limit is mandated by applicable law or Executive Order, in cases where deviation from the rule is insubstantial.

STATUTORY AUTHORITY: 10 M.R.S.A. §§ 969-A(14), 980-A

EFFECTIVE DATE:

December 28, 1985, original rule

December 28, 1985, emergency rule adding section 8.E

AMENDED:

December 28, 1985, emergency rule adding section 8.E

March 9, 1986, amended sections 7.C and 8.E

April 5, 1986, amended section 4 regarding 50 year buildings

April 19, 1986, various amendments

October 16, 1986, emergency rule made various amendments

January 7, 1987, various amendments superseding emergency rulemaking

November 4 1987, amended section 1, 2, 3 and 4(E)

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 4, 1996

NON-SUBSTANTIVE CORRECTIONS:

October 6, 1996 - minor spelling

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