

**CHAPTER 63. PRIVATE ACTIVITY BONDS—ALLOCATIONS**

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**Authority**

The provisions of this Chapter 63 issued under section 6(a) of the Tax-Exempt Bond Allocation Act (73 P. S. § 397.6(a)), unless otherwise noted.

**Source**

The provisions of this Chapter 63 adopted January 16, 1987, effective retroactively to January 1, 1987, 17 Pa.B. 247; renumbered from 13 Pa. Code Chapter 57, May 16, 1997, effective May 17, 1997, 27 Pa.B. 2415. Immediately preceding text appears at serial pages (227823) to (227827).

**Cross References**

This chapter cited in 4 Pa. Code § 7.331 (relating to allocations); and 12 Pa. Code § 61.2 (relating to initial allocations for Commonwealth agencies).

**§ 63.1. Allocations.**

(a) *Authority for allocations.* The State unified volume cap for the issuance of qualified private activity bonds provided by section 146(d) of the Internal Revenue Code (26 U.S.C.A. § 146(d)) for calendar year 1998 will be allocated utilizing the authority provided by section 146(e) of the Internal Revenue Code and section 7(4) of the Tax-Exempt Bond Allocation Act (73 P. S. § 397.7(4)) in the manner provided by this chapter.

(b) *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 Pennsylvania Housing Finance Agency. Applications for housing related bond allocations shall be made to the Executive Director of the Housing Finance Agency.

(c) *Qualified student loan bonds.* An amount equal to \$50 million will be allocated to the 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)).

(d) *Qualified small issue bonds.*

(1) An amount equal to \$175 million will be allocated for qualified small issue bonds under section 144(a) of the Internal Revenue Code. Of this amount,

\$26,800,000 will be used to allocate \$400,000 to each county. The remaining \$148,200,000 will be allocated among the counties in accordance with the following formula:

(i) The Secretary will determine the ratio of the county's total 1996 and 1997 allocation usage to the sum of every county's 1996 and 1997 allocation usage.

(ii) The Secretary will multiply the ratio determined in subparagraph (i) by \$148,200,000.

(2) 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. The Secretary will provide allocations for qualified small issue bonds utilizing the procedures and subject to the requirements imposed by § 61.6 (relating to allocation procedures).

(e) *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 § 142(d)) of the Internal Revenue Code, and enterprise zone bonds as defined by section 1394 of the Internal Revenue Code, all of which are subject to the unified volume cap provided by section 146 of the Internal Revenue Code. 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. The Secretary will provide allocations for qualified private activity bonds utilizing the procedures and subject to the requirements imposed by § 63.3 (relating to procedures). An allotment of at least 25% of the total amount for other qualified private activity bonds is reserved for solid waste disposal projects.

(f) *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 currently has 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 Tax-Exempt Bond Allocation Act (73 P. S. §§ 397.1—397.8). 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:

- (1) The amount of the allocation available.
- (2) The size of the project.

- (3) The level of economic distress.
- (4) The number of net new jobs to be created.
- (5) The ability to undertake the project without approval.
- (6) The amount of private funds leveraged.
- (7) The project's consistency with the economic development plans of the Commonwealth and of municipalities and regions.
- (8) The date the bonds are to be issued.

#### Authority

The provisions of this § 63.1 amended under section 7(4) of the Tax-Exempt Bond Allocation Act (73 P. S. § 397.7(4)).

#### Source

The provisions of this § 63.1 adopted January 16, 1987, effective retroactively to January 1, 1987, 17 Pa.B. 247; amended January 22, 1988, effective retroactively to January 1, 1988, 18 Pa.B. 333; amended April 1, 1988, effective retroactively to January 1, 1988, 18 Pa.B. 1486; amended June 16, 1989, effective June 17, 1989, 19 Pa.B. 2541; amended April 20, 1990, effective April 21, 1990, 20 Pa.B. 2154; amended August 23, 1991, effective August 24, 1991, 21 Pa.B. 3812; amended April 24, 1992, effective April 25, 1992, 22 Pa.B. 2240; amended July 30, 1993, effective July 31, 1993, 23 Pa.B. 3578; amended May 27, 1994, effective May 28, 1994, 24 Pa.B. 2697; amended May 5, 1995, effective May 6, 1995, 25 Pa.B. 1770; amended June 21, 1996, effective June 22, 1996, 26 Pa.B. 2905; amended April 4, 1997, effective April 5, 1997, 27 Pa.B. 1646; amended September 11, 1998, effective September 12, 1998, 28 Pa.B. 4629. Immediately preceding text appears at serial pages (230861) to (230863).

#### Cross References

This section cited in 12 Pa. Code § 61.5 (relating to allocations of tax-exempt bond authority); and 12 Pa. Code § 63.4 (relating to reallocations).

### § 63.2. Provisions of the Tax-Exempt Bond Allocation Act suspended.

Provisions of the Tax-Exempt Bond Allocation Act (73 P. S. §§ 397.1—397.8) inconsistent with this chapter and 4 Pa. Code §§ 7.331—7.338 (relating to 1987 allocations of the unified volume cap under the Tax Reform Act of 1986) are suspended as provided by section 6(a) of the Tax-Exempt Bond Allocation Act (73 P. S. § 397.5(a)). The suspended portions of the Tax-Exempt Bond Allocation Act include the following provisions:

- (1) Section 5(a) of the Tax-Exempt Bond Allocation Act (73 P. S. § 397.5(a)) insofar as the subsection does not provide allocations for housing related bonds.
- (2) Section 5(a)(1) insofar as paragraph (1) required 2/3 of the State ceiling to be allocated under a formula.
- (3) Section 5(a)(2) insofar as paragraph (2) allocated only 1/3 of the State ceiling for projects not funded using the formula contained in section 5(a)(1).

(4) Section 5(a)(2)(iv) insofar as subparagraph (iv) establishes a procedure for making allocations to the Higher Education Assistance Agency and provides allocations to the agency using the 1/3 allocation provided by section 5(a)(2).

(5) Section 5(b) and (c) insofar as the subsections do not provide reallocations for housing related bonds.

(6) The definition of “exempt facilities” in section 3 of the Tax-Exempt Bond Allocation Act (73 P. S. § 397.3) insofar as an example of an exempt facility project is a pollution control facility. The other portions of the “exempt facilities” definition remain in force and effect.

(7) Section 5(a) insofar as that section requires the Secretary to allocate, by December 1 of the following calendar year rather than by February 1 of the same calendar year, the tax-exempt bond authority.

#### Authority

The provisions of this § 63.2 amended under sections 6 and 7(4) of the Tax-Exempt Bond Allocation Act (73 P. S. §§ 397.6 and 397.7(4)).

#### Source

The provisions of this § 63.1 adopted January 16, 1987, effective retroactively to January 1, 1987, 17 Pa.B. 247; amended January 22, 1988, effective retroactively to January 1, 1988, 18 Pa.B. 333; amended June 16, 1989, effective June 17, 1989, 19 Pa.B. 2541; amended September 21, 1990, effective September 22, 1990, 20 Pa.B. 4861; amended April 24, 1992, effective April 25, 1992, 22 Pa.B. 2240. Immediately preceding text appears at serial pages (161473) to (161474).

**(Editor’s Note:** This regulation was promulgated under section 6(b) of the Regulatory Review Act (71 P. S. § 745.6(b)) which provides that it takes effect for 120 days.)

### § 63.3. Procedures.

(a) Procedures for the administration of private activity bond allocations shall be as provided by Chapter 61 (relating to private activity bonds—statement of policy), except to the extent the procedures are inconsistent with the requirements of this chapter.

(b) The Secretary may establish additional policies, guidelines, forms and reporting requirements necessary to carry out the purposes of the Tax-Exempt Bond Allocation Act (73 P. S. §§ 397.1—397.8) and this chapter.

(c) State agencies and other entities involved with the issuance or approval of qualified private activity bonds related to this chapter will cooperate with the Department in implementing this allocation system.

(d) Issuers failing to comply with requirements of this chapter will be denied allocation approvals until compliance is achieved.

#### Authority

The provisions of this § 63.3 amended under section 7(4) of the Tax-Exempt Bond Allocation Act (73 P. S. § 397.7(4)).

**Source**

The provisions of this § 63.3 adopted January 16, 1987, effective retroactively to January 1, 1987, 17 Pa.B. 247; amended January 22, 1988, effective retroactively to January 1, 1988, 18 Pa.B. 333; amended June 16, 1989, effective June 17, 1989, 19 Pa.B. 2542. Immediately preceding text appears at serial page (125632).

**Cross References**

This section cited in 4 Pa. Code § 7.334 (relating to qualified small issue bonds); 12 Pa. Code § 61.5 (relating to allocations of tax-exempt bond authority); and 12 Pa. Code § 63.1 (relating to allocations).

**§ 63.4. Reallocations.**

The unused portion of an allocation provided under § 63.1(b)—(e) (relating to allocations) will be reallocated by the Secretary in cooperation with the Executive Director of the Higher Education Assistance Agency in the manner provided by section 5(b) and (c) of the Tax-Exempt Bond Allocation Act (73 P. S. § 397.5(b) and (c)). Reallocations under section 5(b)(1)(ii) of the Tax-Exempt Bond Allocation Act may be made to an eligible project or use provided by § 63.1(b)—(e).

**Authority**

The provisions of this § 63.4 issued under sections 6 and 7(4) of the Tax-Exempt Bond Allocation Act (73 P. S. § 397.7(4)).

**Source**

The provisions of this § 63.4 adopted January 22, 1988, effective retroactively to January 1, 1988, 18 Pa.B. 333; amended June 16, 1989, effective June 17, 1989, 19 Pa.B. 2541; amended September 21, 1990, effective September 22, 1990, 20 Pa.B. 4861; amended April 24, 1992, effective April 25, 1992, 22 Pa.B. 2240. Immediately preceding text appears at serial page (161475).

**(Editor's Note:** This regulation was promulgated under section 6(b) of the Regulatory Review Act (71 P. S. § 745.6(b)).

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