

**CHAPTER 12** Residential Property Municipal Securities Approval Rule

Summary: This rule sets forth standards pursuant to which the Authority may issue certificates of approval under the Municipal Securities Approval Program for issuances of revenue obligation securities to provide financing for projects consisting of multi-family or single family residential property.

1. Definitions

- A. "Authority" means the Maine State Housing Authority.
- B. "Eligible project" means a project which meets the definition of 10 MRSA §963-A(10) and which requires an allocation of the state ceiling on tax-exempt bonds pursuant to Chapter 13 of the Authority's rules.
- C. "Municipal Securities Approval Program" means the program established in 10 MRSA §1061 et. seq.
- D. "Revenue obligation security" shall have the definition set forth in 10 MRSA §963-A(49).
- E. "User" shall have the definition set forth in 10 MRSA§ 963-A(50).

- 2. Scope and Applicability. 10 MRSA §1061-A(4) provides that in the case of projects consisting of multi-family or single family residential property the Authority shall have the responsibility to approve or disapprove such projects under the Municipal Securities Approval Program. At the time of issuance of the certificate of approval, the Authority will determine whether a proposed project is an eligible project. The Authority'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 Authority. A certificate of approval issued pursuant to this rule shall be conclusive proof that the determinations required by the Municipal Securities Approval Program have been made. Issuance of a certificate of approval may not be relied upon as a determination that interest on the securities is exempt from federal and state income taxation or as an allocation or reservation under any applicable state ceiling on tax-exempt bonds. Allocation of the state ceiling on housing-related bonds is governed by Chapter 13 of the Authority's rules.

3. Application. Each application for certificate of approval shall include the following:
- A. A description of the proposed project sufficient to enable the Authority to determine that it is an eligible project.
  - B. Any reports available from nationally recognized rating agencies with respect to the user, the issuer or any guarantor.
  - C. The names of all participants in the financing including the user, any guarantor, the municipality, the municipality's bond counsel and the underwriter.
  - D. Resolution of municipality authorizing the application.
  - E. 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.
  - F. Application to Maine Department of Environmental Protection requesting that department to issue its certificate that all licenses required by that department with respect to the project have been issued or that none are required.
  - G. A commitment from one or more purchasers or a letter of intent from one or more underwriters for the total amount of securities to be issued.
  - H. An opinion of bond counsel addressed to the Authority stating that the project constitutes an eligible project.
  - I. A statement by the user explaining how the project will make a contribution to the economic growth of, or the betterment of the health, welfare or safety of the inhabitants of the State.
  - J. A statement by the user explaining why the project will not result in a substantial detriment to existing housing in the State. The statement must set forth a name and address for any other housing in the State known by applicant to serve the same market. If there is an effect on existing housing the statement must state why any arguably adverse economic effect of the project is outweighed by the contribution which the project will make to the economic growth of, 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. An application fee computed as follows:

<u>Amount of Securities</u>	<u>Fees</u>
0 - \$500,000	\$1,000
\$500,001 - \$1,000,000	\$1,000 + 00.2% of amount over \$500,000
\$1,000,001 - over	\$2,000 + 00.1% of amount over \$1,000,000

The application fee is non-refundable except as provided in section 8.

M. Applications received prior to July 15, 1986, shall also include the following:

i. Financial statements of the project user and any guarantor for at least the last three fiscal years. Audited statements are preferred.

ii. Pro forma projections of operating expenses and revenues during the construction period and for the first year of operation after completion of the project.

iii. An opinion of bond counsel that certain documents will, when executed assure that the municipality will be entitled to receive revenues sufficient to pay the principal and interest of the securities, when they become due and to pay for maintaining and repairing the project or that provision has been made for maintenance and repair.

4. Consideration of the Application. Prior to issuing a certificate of approval, the Authority shall publish, once in the state newspaper and in a newspaper of general circulation in the municipality in which the project is to be located, if other than the state newspaper, notice of the date on which the Authority will consider the application. The notice shall be published at least 7 days prior to the date of such consideration, shall set forth the name of the municipality and the proposed user of the project, describe generally the project and set forth the time and place at which the application will be considered. In addition, the applicant shall give timely notice to any and all known competitors, as set forth in the

application in response to section 3, subsection N, of the time and place of which the application will be considered and shall provide the Authority with a copy of each notice. The Authority may prescribe the form of the notice. Where the Authority determines that individual notice is not practical, other or additional forms of notice may be specified.

5. Criteria for Issuance of Certificate of Approval. In determining whether or not to issue a certificate of approval for any project, the Authority shall determine that:

A. The project will make a contribution to economic growth of, or the betterment of the health, welfare, or safety of the inhabitants of the State.

B. The project will not result in a substantial detriment to existing housing in the State. In order to make this determination, the Authority shall consider such factors as it deems necessary to measure and evaluate the effect of the project on existing housing including:

i. Whether, as a result of the project, there will not be sufficient housing demand within the market area of the State to be served by the project to satisfy the existing housing stock; and

ii. Whether any adverse economic effect of the project on existing housing is outweighed by the contribution which the project will make to the economic growth of, or the betterment of the health, welfare, or safety of the inhabitants of the State.

Interested parties shall be given an opportunity to present their objections to the project on grounds that the project will result in a substantial detriment to existing housing. If any such party presents specific objections the Authority may divulge whatever information concerning the project which is permitted by statute and it deems reasonably necessary for a fair presentation by the objecting party and evaluation of such objections. The applicant shall then have the burden of demonstrating that the project will not result in a substantial detriment to existing housing. A reasonably current market analysis may be required by the Authority in order to meet this burden. In cases where no interested parties object to the project this requirement shall be deemed satisfied. If the Authority finds that the applicant has failed to meet its burden, the application shall be denied.

C. Adequate provision is being made to meet any increased demand upon public facilities that might result from the project.

D. The Department of Environmental Protection has certified to the Authority that all licenses required by the department with respect to the project have been

issued or that none are required. Any subsequent enlargement or addition to the project for which approval is sought from the Authority shall also require certification by the department.

E. For certificates of approval issued in response to applications received prior to July 15, 1986, the revenue obligation securities shall bear interest at a rate or rates approved by the Authority. In giving approval for an interest rate, the Authority shall specify a rate which shall be the maximum rate for the particular revenue obligation security issue related to a single project, which rate may be a variable rate measured as a percentage of, or otherwise in relation to a prime rate or other measuring standard. In granting approval of interest rates, the Authority shall consider:

- i. Interest rates in the current money market.
- ii. The credit worthiness of the proposed owner, lessee or other user.
  - iii. Whether it is reasonable to expect, on the basis of available information that the user or any guarantor will be able to pay debt service upon the securities and to provide for the maintenance, operation and repair of the project.

In making its determination as to rates of interest allowable, the Authority shall give such weight to the factors in this section as it deems adequate and the findings of the Authority shall be final.

6. Approvals. The determination required to be made by this rule and the issuance of certificates of approval in the name of the Authority shall be done by the Director or designee of the Director pursuant to a delegation of authority. Such determination or issuance by the Director or designee shall constitute final agency action.
7. Expenses. The Authority 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.
8. Application Fee Rebate. The Authority will rebate part of an application fee if (i) the user requests that the application be withdrawn, all existing certificates be cancelled and rebate be made; and (ii) the Authority determines that there is insufficient unreserved and unallocated state ceiling, as defined in Chapter 13 of the Authority's rules, to allow the user to commence or continue implementation of the project. The amount of any rebate will be the application fee less the Authority's out-of-pocket expenses and costs of personnel allocable to the application, as determined by the Authority.

9. Location of Collateral. Real estate and fixtures constituting a significant portion of the collateral for repayment of revenue obligation securities shall be located within the State. Other types of collateral constituting a significant portion of the 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.
10. 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 the 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 unless such issue would require an allocation of the state ceiling on tax-exempt bonds pursuant to chapter 13 of the Authority's rules.

BASIS STATEMENT: This rule implements the Authority's participation in the Municipal Securities Approval Program which the Authority is authorized and directed to undertake by 10 MRSA §1061-A(4) and 30 MRSA§ 4601-A(1)(T). Since proposed Federal legislation and recently enacted State legislation has resulted in no system being in place for municipalities wishing to issue housing related bonds to comply with the Municipal Securities Approval Program, the Authority has adopted this rule by emergency enactment.

In response to the rulemaking proceedings to permanently adopt the rule one comment suggested that the authority to require reimbursement for out-of-pocket expenses should be limited to extraordinary expenses or eliminated since the application fee should cover these expenses. The fee is designed primarily to cover personnel costs, not out-of-pocket expenses. The Authority wishes to maintain flexibility in responding to expenses generated by particular applications and has decided to retain the present language.

AUTHORITY: 30 M.R.S.A. §4651(1); 30 M.R.S.A. §4601-A(1)(T)

EFFECTIVE DATE: April 30, 1986 (EMERGENCY)

EFFECTIVE DATE OF PERMANENT RULE: June 17, 1986

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 8, 1996

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