
State of Rhode Island and Providence Plantations

Office of the General Treasurer
Public Finance Management Board

Public Notice of Proposed Rule-Making

Pursuant to the provisions of § 42-10.1-6(d) of the General Laws of Rhode Island, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Public Finance Management Board hereby gives notice of its intent to amend its Rules and Regulations.

The purpose of this amendment is to comport with recent changes in pertinent State and Federal laws.

The proposed Rules and Regulations and its new or amended sections that comport with the 2004 Separation of Powers amendment to the Rhode Island constitution, that are responsive to the bond programs created by the American Recovery and Reinvestment Act of 2009, that provide for annual comprehensive review of the financing of capital improvements, as well as for the production of PFMB Board reports based on findings from the annual review, are available for public inspection in person at the Office of the General Treasurer, State House, Room 102, Providence RI 02903, or requested by email from mshigar@treasury.ri.gov, or by calling Mike Sligar at (401) 222-2397.

In the development of the proposed amendments to the Public Finance Management Board's Rules and Regulations, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by Friday, August 20, 2010 to Mike Sligar, Office of the General Treasurer, State House, Room 102, Providence, RI 02903, telephone number (401) 222-2397, email address mshigar@treasury.ri.gov.

In accordance with RIGL 42-35-3, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC FINANCE MANAGEMENT BOARD

Rules and Regulations

1. CREATION.

The Public Finance Management Board (the “Board”) is established under the provisions of Section 42-10.1-1 of the Rhode Island General Laws, as enacted by Chapter 477 of the Public Laws of 1986, effective June 25, 1986, as amended (the “Act”).

2. PURPOSE.

The purpose and responsibilities of the Board are:

- (a) To allocate tax-exempt and taxable bond issuance capacity and/or federal tax credits among all bond issuers in the State of Rhode Island.
- (b) To advise and assist all state departments, authorities, agencies, boards, commissions, and public and quasi-public corporations having authority to issue revenue or general obligation bonds or notes with respect to issuance of and financial planning related to all such bonds and notes.
- (c) Upon request, to advise and/or assist any city or town and any municipal or regional agency, authority, board, commission, or public or quasi-public corporation having authority to issue revenue or general obligation bonds or notes with respect to the issuance and financial planning related to such bonds and notes.
- (d) To collect, maintain, and provide information on state, municipal and public or quasi-public corporation debt authorization, sold and outstanding, and serve as a statistical center for all state and municipal debt issues.
- (e) To maintain contact with state, municipal and public or quasi-public corporation bond issuers, underwriters, credit rating agencies, investors, and others to improve the market for state and local government debt issues.
- (f) To undertake or commission studies on methods to reduce the costs and improve credit ratings of state and local debt issues.
- (g) To recommend changes in state laws and local practices to improve the sale and servicing of state and local debts.

3. MEMBERSHIP.

The Board shall consist of nine (9) Members, comprised as follows:

- (a) The General Treasurer, ~~;~~ or his or her designee~~;~~

- ~~(b) One (1) representative of the Department of Administration who shall be appointed by the Governor; The Director of the Department of Administration or his or her designee.~~
- ~~(c) Two (2) representatives of cities and towns who shall be appointed by the General Treasurer from a list of five candidates submitted by the League of Cities and Towns; Three (3) Members of the general public to be appointed by the Governor, with the advice and consent of the Senate.~~
- ~~(d) One (1) member of the General public who is experienced in the issuance and sale of bonds by public agencies and who shall be appointed by the Governor; Two (2) representatives of the general public to be appointed by the General Treasurer, with the advice and consent of the Senate, from a list of five candidates submitted by the Rhode Island League of Cities and Towns.~~
- ~~(e) Two (2) members of the House of Representatives, one of whom shall be from the minority party, who shall be appointed by the Speaker; and Two (2) Members of the general public to be appointed by the General Treasurer, with the advice and consent of the Senate.~~
- ~~(f) Two (2) members of the Senate, one of whom shall be from the minority party, who shall be appointed by the Majority Leader of the Senate.~~

4. **OFFICERS.**

- (a) The General Treasurer, or his or her designee, shall serve as Chairperson and shall preside at meetings of the Board.
- (b) The Board shall annually elect, by majority vote, one of its Members as Vice-Chairperson and one of its Members as Secretary.
- ~~(c) The Board may elect such additional officers or assistant officers as it shall, from time to time, deem appropriate.~~
- ~~(d) The Chairperson of the Board shall designate the chair of any committee which may be created by the Board.~~

5. **MEETINGS.**

- (a) The Board shall meet on the call of the Chairperson, at the request of the Governor, at the request of a majority of the Members of the Board, and/or upon a regular schedule established by the Board.
- (b) The Chairperson or other person(s) requesting a meeting shall give reasonable notice thereof to all Members of the Board.
- (c) A record of all business transacted at each meeting shall be kept and shall be certified by the Secretary or the Chairperson.

- (d) All meetings shall be conducted pursuant to the provisions of Chapter 46 of Title 42 the Rhode Island General Laws, as the same may be amended from time to time.

6. QUORUM/MAJORITY.

- (a) ~~A majority of all non-legislative members of the Board shall constitute a quorum for the transaction of business.~~ Four Members of the Board shall constitute a quorum for the transaction of business.
- (b) At any meeting, a majority vote of all Members of the Board shall be required for the election of officers and the enactment, material modification or repeal of any allocation or rule.
- (c) At any meeting, a majority of those Members present shall be sufficient to enact any other business.

7. DEBT CEILINGS.

The Board shall, as soon as it is practicable after the effective date of these rules and thereafter in January of each calendar year, determine and announce the State tax-exempt and taxable bond issuance capacity for that calendar year as provided under the provisions of the Internal Revenue Code.

8. ALLOCATION.

- (a) Purpose. One of the principal functions of the Board is to allocate private activity tax-exempt, taxable and/or federal tax-credit bond issuance capacity (“Cap”) among all bond issuers in the State.

Under the provisions of the Act and pursuant to Section 7 of these Rules and Regulations, the Board announces the Cap of the State in January of each year, pursuant to the provisions of the Internal Revenue Code. The Board has the authority to pass a resolution to establish the allocation of the Cap among bond issuers in the State of Rhode Island (the “Allocation Resolution”). Any Allocation Resolution may contain such conditions as the Board deems appropriate and any general allocation may provide for a reserve allocation to the Board of amounts within the aggregate State Cap limit not otherwise allocated to bond issuers. The Board may subsequently, after hearing and at its discretion, allocate part or all of such reserve amounts upon application of bond issuers. Any allocation made by the Board is irrevocable upon the issuance of bonds, except that any time prior to bond issuance, the Board may, after notice and hearing, alter, modify, amend or repeal any allocation.

- (b) Priorities. The Board determines the allocation of the Cap under the following priorities:

1. To coordinate, assist with and supplement state and local programs, projects, priorities and activities.
2. To consider issuers' use and completion of past allocation awards, the impact of allocation on existing programs, and the availability of alternative sources of financing.
3. To give preference to issuers who can demonstrate the ability to issue private activity bonds for proposed projects by calendar year end.
4. View favorably other financing for all or part of a project from sources other than tax-exempt or taxable bonds.
5. Retain a 10% PFMB reserve allocation for contingencies.

(c) Objectives.

The objectives of the Bond's Cap allocation process are many. A few of the major objectives are identified below:

1. To establish an orderly and equitable process of allocating tax-exempt, taxable and/or federal tax credit private bond issuance capacity.
2. To encourage private investment in creating and sustaining jobs, economic development, housing, solid and hazardous waste management, water and sewer facilities, and higher education.
3. To encourage development in areas of the State where jobs, economic development, housing, certain infrastructure improvements and higher education are most needed.
4. To encourage the increase or maintenance of the tax base in the State.
5. To maximize the efficient use of the State's Cap over time through issuance of recycled or carryforward Cap, before issuance of new Cap.

(d) Allocation Review Factors.

The following guidelines are used by staff in evaluating and recommending Cap allocation proposals, factors that should be addressed in any Cap request submitted to the PFMB:

1. Project Impact and Feasibility
 - (i) If an issuer requests allocation for more than one financing, what is the order of priority for each?
 - (ii) What is the availability of additional or alternative funding sources?

- (iii) What type of arrangements have been made for credit enhancement for the financing? Will some form of State credit enhancement be included in the financing?
- (iv) What analysis has been performed to determine the feasibility of the project?
- (v) What is the firm schedule for debt financing sale and closing?
- (vi) Are there statutory or other legal considerations which may impact the viability of the project/program?

2. Housing Projects/Programs

- (i) What other financing programs in the community, in addition to private activity bonds, are available for use by the project?
- (ii) Will the project/program be utilizing Low Income Housing Tax Credits or financing other than bonds?
- (iii) What financial commitments are involved in the project/program (i.e. local, developer, HUD, credit enhancement)?
- (iv) Will this project/program improve or preserve the housing availability?
- (v) Is the project located in an area which has been unserved by various governmental housing programs or by the private sector in the past?
- (vi) Will existing, vacant housing be acquired or renovated in this project (i.e. RTC-owned properties)?
- (vii) Can prior Cap allocation be recycled or carryforward Cap allocation be used instead of new Cap allocation?

3. Economic Development Projects

- (i) Is the project part of an overall plan for economic development in the community or the region?
- (ii) What is the background and experience of the individuals and companies involved in the project, including the developer?
- (iii) What other financial commitments/agreements are involved with or necessary for the project?
- (iv) What temporary and permanent jobs will be created or retained by this project?

4. Recovery Zone Facility Bond

In addition to the criteria and guidelines set forth in subsection 8(d)3 above pertaining to Economic Development Projects, for Recovery Zone Facility Bonds, the Board will also consider:

- (i) Has the Rhode Island Economic Development Corporation and/or the Rhode Island Industrial Facilities Corporation recommended the project?
- (ii) What are the types of employment, the amounts of new employment and the wages in connection with the employment created by the project?
- (iii) What is the impact on the State's collection of income and payroll taxes?
- (iv) What is the impact on the property tax base of the municipality in which the proposed project will be located?
- (v) What is the status of governmental approvals and permitting for the project?
- (vi) What is the status of the infrastructure requirements for the project?

5. Student Loan Programs

- (i) What other programs in the community, in addition to private activity bonds, are available for use by the Student Loan Program?
- (ii) Can prior Cap allocation be recycled or carryforward Cap allocation be used instead of new Cap allocation?
- (iii) Can the economic benefits of tax-exempt financing be quantified relative to alternative financing methods?

6. Solid Waste Treatment, Waste Disposal, Water and Sewer Projects

- (i) Are all required permits in place?
- (ii) Can this project be financed privately or with governmental purpose bonds?
- (iii) Can the economic benefits of tax-exempt financing be qualified relative to alternative financing methods?

7. Qualified Energy Conservation Bonds

- (i) What is the percentage of the project will be financed with private activity bonds?
- (ii) How will the project reduce energy consumption?
- (iii) Are all required permits in place?

8. Other Projects

In addition to the factors set forth above Applications will be considered in terms of the presentations offered to each of these review guideline factors.

- (i) ~~For the calendar year 1986, the Board shall have, prior to or coincident with the enactment of these rules, enacted a 1986 Allocation Resolution, establishing the general allocation of tax exempt bond issuance capacity.~~
- (ii) For each subsequent calendar year, the Board shall enact, after notice and opportunity for hearing thereon, an Allocation Resolution establishing a general allocation of tax-exempt bond issuance capacity among bond issuers in the State ~~of Rhode Island.~~
- (iii) Any allocation enacted by the Board may contain such conditions, as the Board may deem appropriate.
- (iv) Any general allocation may provide for a reserve allocation to the Board of amounts within the State tax-exempt debt issuance capacity not otherwise allocated to bond issuers.
- (v) The Board may subsequently, after hearing and at its discretion, allocate part or all of such reserve amounts upon application(s) of bond issuer(s).
- (vi) Any allocation made by the Board shall be irrevocable upon issuance of bonds pursuant thereto at least to the extent of the principal amount of such bonds so issued.
- (vii) Except as provided in ~~(v)~~ (vi), above, upon request by any bond issuer, or upon its own initiative, the Board may at any time, after hearing, modify, amend or repeal any allocation.

9. **REPORTING REQUIREMENTS.**

- (a) Each state, municipal and regional department, authority, agency, board, commission, and public or quasi-public corporation having authority to issue revenue or general obligation bonds or notes shall, no later than thirty (30) days prior to the sale of any such debt issue at public or private sale, give written notice of the proposed sale to the Board. Said notice shall be made on a form approved by the Board and shall contain all of the information requested on said form.
- (b) Each such issuer shall, within thirty (30) days after such sale, submit to the Board a report of sale on a form approved by the Board and the report shall contain all of the information requested on said form.
- (c) Failure of delivery of the above notice or of the time or efficiency thereof shall not affect the validity of the issuance of any debt, bond or note.

- (d) The Board shall submit a report annually on or before March 31st of each year to the Director of Administration, the Speaker of the House, the Chairman of the House Finance Committee, the President of the Senate, the Chairman of the Senate Finance Committee, and the Auditor General on debt issues by cities and towns and other authorities subject to the provision of Chapter 12 of Title 45 of the Rhode Island General Laws, which report shall include the information set forth in subsection (b) of the above and shall be for the notices of debt issues received in the prior calendar year.

10. FEES.

- (a) The lead underwriter or purchaser of any tax exempt debt issue of the state, all state departments, authorities, agencies, boards, commissions and public or quasi-public commissions, shall pay to the Public Finance Management Board an amount equal to one-fortieth of one percent (1/40%) of the issued principal amount of the issue; *provided, however*, that any tax exempt debt issue that would be classified as a refinancing of a note by the issuance of additional note(s) or bonds, or current or advance refunding of bonds shall receive a credit against the above assessment in an amount equal to the fee assessed to, and paid in connection with, the issuance of the initial underlying debt obligation that is being refinanced or refunded up to, but not exceeding, the fee assessed.
- (b) The lead underwriter or purchaser of any taxable or tax exempt debt issue of the state, any city or town and any state, municipal or regional agency, authority, board, commission or public or quasi-public corporation, which has requested the advice and/or assistance of the Board with respect to such issue, shall pay to the Public Financial Management Board an amount equal to one-fortieth of one percent (1/40%) of the issued principal amount of the issue.
- (c) Amounts received under this Section shall be deposited in the Public Finance Management Board Fund (the "Fund") in the State Treasury.
- (d) The General Treasurer is authorized to draw upon the Fund, in accordance with applicable rules and procedures, to pay for the expenses incurred by the Board and by the General Treasurer's Office in carrying out the purposes of Chapter 10.1 of title 42 of the Rhode Island General Laws.

11. SUPPORT SERVICES.

The Board may employ such staff, contract for such services and incur such expenses, as it may deem necessary and appropriate to carry out the purposes of Chapter 10.1 of Title 42 of the Rhode Island General Laws.

12. OPEN RECORDS.

All records of the Board shall be subject to public access pursuant to the provisions of Chapter 2 of Title 38 of the Rhode Island General Laws.

13. COMPREHENSIVE REVIEW/BOARD REPORTS

- (a) The Board shall comprehensively review the financing of capital improvements by all state, municipal, and regional departments, authorities, agencies, boards, commissions, and public and quasi-public corporations and study the comparative debt of all state and local government unites for capital improvements and the use of bond financing as a source of the indebtedness. The review shall include an analysis of all outstanding general obligation and revenue bonds.
- (b) Annually, on the thirty-first (31st) day of March, the Board shall submit to the Governor, the Speaker of the House of Representatives, the President of the Senate and the Secretary of State a report based upon information from the previous fiscal year of its findings and recommendations, if any, for revising the laws governing such financing devices. The report shall also set forth a complete operating and financial statement covering its operations during the year, a summary of meetings or hearings held, meeting minutes if requested, subjects addressed, decisions rendered, rules or regulations promulgated, studies conducted, policies and plans developed, approved, or modified, and programs administered or initiated; a summary of performance during the previous fiscal year including accomplishments, shortcomings and remedies; a synopsis of hearings, complaints, suspensions, or other legal matters related to the authority of the board; a summary of any training courses held pursuant to section 41-10.1-1 of the Rhode Island General Laws; a briefing on anticipated activities in the upcoming fiscal year; and findings and recommendations for improvements. The report shall be posted electronically on the general assembly and the secretary of state's website as prescribed in section 42-20-8.2 of the Rhode Island General Laws. The Director of the Department of Administration shall be responsible for the enforcement of this provision.
- (c) Neither the Board nor its individual members shall have any liability as a result of the performance of the responsibilities or the exercise of the powers described herein. They shall not be deemed to have expressed an opinion regarding or deemed to have approved any aspect of any bonds or notes, including but not limited to, the proper authorization of any bonds or notes, the availability of funds for the repayment of any bonds or notes, the tax exempt status of any bonds or notes, or compliance by the issuer of any bonds or notes with any federal or state tax or securities law.
- (d) In the event that any liability shall accrue to the Board or its Members because of the performance of the responsibilities or exercise of the powers described herein, the issuer who issued the bonds or notes which cause the liability shall fully indemnify the Board and the Members.

14. AMENDMENTS.

- (a) Any interested person may petition the Board requesting the enactment, amendment or repeal of any rule.

- (b) Whether the petition requests the enactment of a rule, the proposed rule must be set out in full. The petition must also include all the reasons for the proposed rule together with briefs of any applicable law. Where no petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as suggested amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule.
- (c) All petitions shall be considered by the Board and the Board may, at its discretion, order a hearing for the further consideration and discussion of the requested enactment, amendment or repeal of any rule.

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