OFFICE OF THE SECRETARY OF STATE
LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

FILED
07/26/2024 11:24 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

OST 4-2024
CHAPTER 170
OREGON STATE TREASURY

FILING CAPTION: Expands state agencies ability to suballocate private activity bond volume cap

EFFECTIVE DATE: 07/29/2024

AGENCY APPROVED DATE: 07/17/2024

CONTACT: Sarah Bagdriwicz
503-373-0071
sarah.bagdriwicz@ost.state.or.us

867 Hawthorne Ave SE
Salem,OR 97301

Filed By:
Kevin Willingham
Rules Coordinator

AMEND: 170-071-0005

REPEAL: Temporary 170-071-0005 from OST 2-2024

RULE TITLE: Allocation of Private Activity Bond Limit

NOTICE FILED DATE: 05/28/2024

RULE SUMMARY: Adds requirements for suballocation of current CAP

RULE TEXT:
(1) Definitions.
(a) “CAP” means the state’s private activity bond volume limit.
(b) "Committee" means the Private Activity Bond Committee established pursuant to ORS 286a.615.
(c) "Issuer" has that meaning given to it by ORS 286A.605.
(d) “OST” means the Office of the State Treasurer.
(e) "Private Activity Bonds" has the meaning given in Section 141 of the Internal Revenue Code of 1986.“OST” means the Office of the State Treasurer.
(2) Meetings of the Committee. Committee meetings will be held as necessary, and on dates determined by the Committee to be consistent with the efficient allocation of the CAP, with public notice given as required by law. Committee meetings are open to the general public and may be held in any location permitted under the public meetings law, ORS 192.610 to 192.690, where the Committee deems appropriate. The Committee reserves the right to change its meeting schedule as allowed by the Oregon Public Meetings Law.
(3) Allocation Requests. Applications for current year CAP must be submitted no earlier than 30 days prior to the year for which the allocation is requested. Requests must be received no later than 10 business days before the scheduled meeting of the Committee at which the request is to be considered. Private activity bond issuers not specifically granted CAP by the legislature must submit requests for CAP to the Committee. Issuers who have been granted a CAP allocation by the legislature may also apply to the Committee for additional CAP. Each applicant for CAP must submit with its application a fee in the amount set forth in OAR 170-061-0015. CAP requests may be made for a specific project or for an amount to be further allocated by the requestor among a class of projects or activities that meet the allocation criteria. CAP requests and all communications must be sent to the Committee through the OST as provided in

OAR 170-055-0001(4) and include:
(a) The name of the governmental bond issuer,
(b) The title of the obligation to be issued,
(c) The principal amount of the obligation,
(d) The amount of the allocation request,
(e) The date of any purchase commitment if such commitment has been made,
(f) The name and address of the original purchaser(s) of the obligation if such purchase has been made;
(g) The name, address and telephone number of the principal user(s) of the proceeds from the issue;
(h) The anticipated sale date of the issue;
(i) The anticipated closing date of the issue;
(j) The name, address and phone number of bond counsel;
(k) The section and paragraph of the Internal Revenue Code, as identified by bond counsel, under which the bonds are deemed private activity bonds;
(l) How the project or activity for which an allocation is requested meets statutory standards;
(m) The expected number of jobs created or saved as a result of the allocation;
(n) The expected number of housing units to be constructed or renovated as a result of the allocation, (describe how the affordability requirements of the Internal Revenue Code and your local requirements, if applicable, are to be met); and
(o) Any additional material, as required by the Committee, in support of the requested allocation.
(4) Suballocation. State agencies with current CAP allocations may choose to suballocate any amount of the agency's allocation to another issuer provided that the allocation is used for the same class of projects or activities for which the allocation was made to the agency. An issuer receiving a suballocation must comply with the requirements set forth in section (9) of this rule by providing a report to the Committee each quarter by April 1, July 1, and October 1, through the OST as provided in OAR 170-055-0001(4). An issuer receiving CAP pursuant to a suballocation pursuant to this section (4) shall be subject to all limitations, conditions, and requirements of this rule and for the use of such CAP imposed on the agency making the suballocation.
(5) Allocation Standards. The purpose of private activity bonding in this state is to maximize the economic benefits of such bonding to the citizens of this state. To this end, the Committee shall make allocations that are expected to further economic development, housing, education, redevelopment, public works, energy, waste management, transportation and other activities that the Committee determines will benefit the citizens of the state. The Committee, in determining whether an allocation is made to a project or class of projects or activities, will consider criteria including but not limited to the following:
(a) Support projects that increase the number of family wage jobs in Oregon,
(b) Promote economic recovery in small cities heavily dependent on a single industry,
(c) Emphasize development in underdeveloped rural areas of this state,
(d) Utilize educational resources available at institutions of higher education,
(e) Support development of the state's small businesses, especially businesses owned by women and members of minority groups,
(f) Encourage use of Oregon's human and natural resources in endeavors, which harness Oregon's economic comparative advantages.
(6) Decision Factors. The Committee shall consider the following factors in reaching its allocation decision:
(a) The amount of CAP remaining within the Committee's allocation discretion and the total amount of unused CAP remaining at the time the request is received;
(b) The amount of allocation requested;
(c) Whether the project(s) or activities promote one of the standards listed in section (5) of this rule; and
(d) The type of bond issuer making the request.
(7) Allocation Methods.
(a) The Committee may grant more or less than the originally requested amount of CAP. Issuers must submit requests in

the form and manner described in section (3) of this rule.
(b) At the Committee's discretion, a portion of their CAP may be reserved for the last six months of the calendar year.
(8) Committee Decision Final. Issuers have the right to submit additional information, germane to their request, to the Committee at its meeting described in section (6) of this rule. Action of the Committee is final, however, if a CAP request is denied, a new application may be re-submitted through the procedures outlined in this rule.
(9) Bond Closing Fee and Post-Allocation Report. Issuers to whom current CAP allocations have been made under this rule must submit to the Committee, within 150 days after receiving such allocation or by December 15 of the current calendar year, whichever is earliest, a confirmation of bond closing. The Issuer shall pay the respective fees set forth in ORS 170-061-0015 to OST. In the event an issuer fails to file written confirmation of bond closing as required by this section, the CAP allocation shall automatically lapse. Bond closing confirmations must be delivered to the Committee as provided in OAR 170-055-0001(3) and includes:
(a) The name of the governmental bond issuer,
(b) The title of the obligation issued,
(c) The principal amount of the obligation issued and allocation used;
(d) The date of closing;
(e) The date of the bond allocation;
(f) The name and address of the individual submitting the bond closing confirmation; and
(g) Any additional material, which may be required by the Committee in support of the closing confirmation.
(10) Lapse or Extension of Allocation. Lapse of an allocation does not preclude the issuer from applying for a subsequent allocation for the same project. Subsequent allocation requests require a subsequent application fee as required by 170-061-0015(4). Issuers may, under compelling circumstances, request an extension of time to their initial 150-day period. Such requests must be filed with the Committee for approval or denial of the extension. Extension requests do not require subsequent application fees. All current year CAP allocations automatically lapse on December 15 of the calendar year for which the allocation is made, unless the issuer who has received the allocation files with the Committee a binding commitment to purchase and close the bond issue on or before December 31.
(11) Carry Forward Allocations.
(a) The Committee, on behalf of the state's agencies, commissions, and governmental units, may elect to carry forward all unused CAP. To receive a carry forward CAP allocation, an issuer must file a carry forward request with the Committee not later than December 15 or earlier than September 30 of the current calendar year. The Committee will require information necessary for it to determine whether such carry forward request qualifies under the Internal Revenue Code and associated regulations. The Committee, not later than January 31 of the following year, shall make carry forward allocations to eligible issuers for specified purposes. Carry forward requests must include the information required in section (3) of this rule and be submitted with the application fee set forth in OAR 170-061-0015.
(b) An issuer receiving a carry forward allocation must forward to the Internal Revenue Service a document indicating the carry forward election made to that issuer by the Committee, in such manner and format proscribed by the Internal Revenue Service and any relevant state or federal regulations.
(c) It is the responsibility of the issuers to whom carry forward CAP is granted to file Form 8328 "Carry Forward Election of Unused Private Activity Bond Volume Cap" with the Internal Revenue Service Center, Ogden, UT 84201 on or before February 15 of the year in which the carry forward is granted, in order to validate the carry forward with the federal government. A signed copy of the issuer's filing with the Internal Revenue Service must also be sent to the Committee on or before February 15 of the year in which the carry forward CAP is granted.
(d) Use Report. Issuers to whom carry forward CAP is granted must submit to the Committee, within 30 days of closing, a confirmation of CAP use and bond closing information including:
(A) The name of the governmental bond issuer;
(B) The title of the obligation issued;
(C) The principal amount of the obligation issued and allocation used;
(D) The date of closing;

(E) The date of the carry forward bond allocation;
(F) The name and address of the individual submitting the bond closing confirmation; and
(G) Any additional material, which may be required by the Committee in support of the closing confirmation.
(e) Carry Forward Allocation Fees. The issuer shall pay the respective fees set forth in OAR 170-061-0015 to OST.
(12) Annual Needs Survey. The Committee during the final quarter of each calendar year will inquire of the private activity bond issuers of the state as to their anticipated private activity bond issuance and the need for private activity bond allocation in the ensuing year. To be taken into consideration by the Committee for future allocation, issuers should provide their information to the Committee on or before December 15 of the calendar year prior to the year for which private activity bond projections are made.
(13) Additional Allocation. The Committee may allocate amounts, subject to the standards set forth in subsection (5) of this rule, among issuers without a request for allocation from the issuer in the event additional bond limit becomes available, because of changes in federal law or otherwise, that has not been specifically allocated to an issuer by the Legislative Assembly.
(14) Exceptions. The Committee, at its discretion, may waive any or all provisions of this rule.

STATUTORY/OTHER AUTHORITY: ORS 286A.005, 286A.615

STATUTES/OTHER IMPLEMENTED: ORS 286A.015, 286A.615