

Effective 7/1/2018

**Part 21
Private Activity Bonds**

35A-8-2101 Title -- Purpose.

- (1) This part is known as "Private Activity Bonds."
- (2) This part establishes procedures to effectively and equitably allocate this state's private activity bond volume cap authorized by the Internal Revenue Code of 1986 in order to maximize the social and economic benefits to this state.

Renumbered and Amended by Chapter 182, 2018 General Session

35A-8-2102 Definitions.

As used in this part:

- (1) "Allocated volume cap" means a volume cap for which:
 - (a) a certificate of allocation is in effect; or
 - (b) bonds have been issued.
- (2) "Allotment accounts" means the various accounts created in Section 35A-8-2106.
- (3) "Board of review" means the Private Activity Bond Review Board created in Section 35A-8-2103.
- (4) "Bond" means any obligation for which an allocation of volume cap is required by the code.
- (5) "Code" means the Internal Revenue Code of 1986, as amended, and any related Internal Revenue Service regulations.
- (6) "Form 8038" means the Department of the Treasury tax form 8038 (OMB No. 1545-0720) or any other federal tax form or other method of reporting required by the Department of the Treasury under Section 149(e) of the code.
- (7) "Issuing authority" means:
 - (a) any county, city, or town in the state;
 - (b) any not-for-profit corporation or joint agency, or other entity acting on behalf of one or more counties, cities, towns, or any combination of these;
 - (c) the state; or
 - (d) any other entity authorized to issue bonds under state law.
- (8) "State" means the state of Utah and any of its agencies, institutions, and divisions authorized to issue bonds or certificates under state law.
- (9) "Volume cap" means the private activity bond volume cap for the state as computed under Section 146 of the code.
- (10) "Year" means each calendar year.

Renumbered and Amended by Chapter 182, 2018 General Session

35A-8-2103 Private Activity Bond Review Board.

- (1) There is created within the department the Private Activity Bond Review Board, composed of the following 11 members:
 - (a)
 - (i) the executive director of the department or the executive director's designee;
 - (ii) the executive director of the Governor's Office of Economic Opportunity or the executive director's designee;

- (iii) the state treasurer or the state treasurer's designee;
 - (iv) the chair of the Utah Board of Higher Education or the chair's designee; and
 - (v) the chair of the Utah Housing Corporation or the chair's designee; and
- (b) six local government members who are:
- (i) three elected or appointed county officials, nominated by the Utah Association of Counties and appointed by the governor with the advice and consent of the Senate and in accordance with Title 63G, Chapter 24, Part 2, Vacancies; and
 - (ii) three elected or appointed municipal officials, nominated by the Utah League of Cities and Towns and appointed by the governor with the advice and consent of the Senate and in accordance with Title 63G, Chapter 24, Part 2, Vacancies.
- (2)
- (a) Except as required by Subsection (2)(b), the terms of office for the local government members of the board of review shall be four-year terms.
 - (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board of review members are staggered so that approximately half of the board of review is appointed every two years.
 - (c) Members may be reappointed only once.
- (3)
- (a) If a local government member ceases to be an elected or appointed official of the city or county the member is appointed to represent, that membership on the board of review terminates immediately and there shall be a vacancy in the membership.
 - (b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed within 30 days in the manner of the regular appointment for the unexpired term.
- (4)
- (a) The chair of the board of review is the executive director of the department or the executive director's designee.
 - (b) The chair is nonvoting except in the case of a tie vote.
- (5) Six members of the board of review constitute a quorum.
- (6) Formal action by the board of review requires a majority vote of a quorum.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (8) The chair of the board of review serves as the state official designated under state law to make certifications required to be made under Section 146 of the code including the certification required by Section 149(e)(2)(F) of the code.
- (9) A member appointed to fill a position described in Subsection (1)(b) shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

Amended by Chapter 352, 2020 General Session

Amended by Chapter 365, 2020 General Session

Amended by Chapter 373, 2020 General Session

35A-8-2104 Powers, functions, and duties of the board of review.

The board of review shall:

- (1) make, subject to the limitations of the code, allocations of volume cap to issuing authorities;

- (2) determine the amount of volume cap to be allocated with respect to approved applications;
- (3) maintain a record of all applications filed by issuing authorities under Section 35A-8-2105 and all certificates of allocation issued under Section 35A-8-2107;
- (4) maintain a record of all bonds issued by issuing authorities during each year;
- (5) determine the amount of volume cap to be treated as a carryforward under Section 146(f) of the code and allocate this carryforward to one or more qualified carryforward purposes;
- (6) make available upon reasonable request a certified copy of all or any part of the records maintained by the board of review under this part or a summary of them, including information relating to the volume cap for each year and any amounts available for allocation under this part;
- (7) make rules for the allocation of volume cap under this part; and
- (8) charge reasonable fees for the performance of duties prescribed by this part, including application, filing, and processing fees.

Renumbered and Amended by Chapter 182, 2018 General Session

35A-8-2105 Allocation of volume cap.

- (1)
 - (a) Subject to Subsection (1)(b), the volume cap for each year shall be distributed by the board of review to the allotment accounts as described in Section 35A-8-2106.
 - (b) The board of review may distribute up to 50% of each increase in the volume cap for use in development that occurs in quality growth areas, depending upon the board's analysis of the relative need for additional volume cap between development in quality growth areas and the allotment accounts under Section 35A-8-2106.
- (2) To obtain an allocation of the volume cap, issuing authorities shall submit to the board of review an application containing information required by the procedures and processes of the board of review.
- (3)
 - (a) The board of review shall establish criteria for making allocations of volume cap that are consistent with the purposes of the code and this part.
 - (b) In making an allocation of volume cap the board of review shall consider the following:
 - (i) the principal amount of the bonds proposed to be issued;
 - (ii) the nature and the location of the project or the type of program;
 - (iii) the likelihood that the bonds will be sold and the timeframe of bond issuance;
 - (iv) whether the project or program could obtain adequate financing without an allocation of volume cap;
 - (v) the degree to which an allocation of volume cap is required for the project or program to proceed or continue;
 - (vi) the social, health, economic, and educational effects of the project or program on the local community and state as a whole;
 - (vii) the anticipated economic development created or retained within the local community and the state as a whole;
 - (viii) the anticipated number of jobs, both temporary and permanent, created or retained within the local community and the state as a whole; and
 - (ix) if the project is a residential rental project, the degree to which the residential rental project:
 - (A) targets lower income populations; and
 - (B) is accessible housing.

- (4) The board of review shall provide evidence of an allocation of volume cap by issuing a certificate in accordance with Section 35A-8-2107.
- (5)
 - (a) Subject to Subsection (5)(c), from January 1 to June 30 of each year, the board of review shall set aside at least 50% of the Small Issue Bond Account that may only be allocated to manufacturing projects.
 - (b) Subject to Subsection (5)(c), from July 1 to August 15 of each year, the board of review shall set aside at least 50% of the Pool Account that may only be allocated to manufacturing projects.
 - (c) The board of review is not required to set aside any unused volume cap under Subsection 35A-8-2106(2)(c) to satisfy the requirements of Subsection (5)(a) or (b).

Amended by Chapter 68, 2022 General Session

Amended by Chapter 406, 2022 General Session

35A-8-2106 Allotment accounts.

- (1) There are created the following allotment accounts:
 - (a) the Single Family Housing Account, for which eligible issuing authorities are those authorized under the code and state statute to issue qualified mortgage bonds under Section 143 of the code;
 - (b) the Student Loan Account, for which eligible issuing authorities are those authorized under the code and state statute to issue qualified student loan bonds under Section 144(b) of the code;
 - (c) the Small Issue Bond Account, for which eligible issuing authorities are those authorized under the code and state statute to issue:
 - (i) qualified small issue bonds under Section 144(a) of the code;
 - (ii) qualified exempt facility bonds for qualified residential rental projects under Section 142(d) of the code; or
 - (iii) qualified redevelopment bonds under Section 144(c) of the code;
 - (d) the Exempt Facilities Account, for which eligible issuing authorities are those authorized under the code and state statute to issue any bonds requiring an allocation of volume cap other than for purposes described in Subsection (1)(a), (b), or (c);
 - (e) the Pool Account, for which eligible issuing authorities are those authorized under the code and state statute to issue any bonds requiring an allocation of volume cap; and
 - (f) the Carryforward Account, for which eligible issuing authorities are those with projects or programs qualifying under Section 146(f) of the code.
- (2)
 - (a) The volume cap shall be distributed to the allotment accounts on January 1 of each year on the following basis:
 - (i) 42% to the Single Family Housing Account;
 - (ii) 33% to the Student Loan Account;
 - (iii) 1% to the Exempt Facilities Account; and
 - (iv) 24% to the Small Issue Bond Account.
 - (b) From July 1 to September 30 of each year, the board of review may transfer any unallocated volume cap from the Exempt Facilities Account or the Small Issue Bond Account to the Pool Account.
 - (c) Upon written notification by the issuing authorities eligible for volume cap allocation from the Single Family Housing Account or the Student Loan Account that all or a portion of volume

cap distributed into that allotment account will not be used, the board of review may transfer the unused volume cap to any other allotment account.

- (d) From October 1 to the third Friday of December of each year, the board of review shall transfer all unallocated volume cap into the Pool Account.
- (e) On the third Saturday of December of each year, the board of review shall transfer uncollected volume cap, or allocated volume cap for which bonds have not been issued prior to the third Saturday of December, into the Carryforward Account.
- (f) If the authority to issue bonds designated in any allotment account is rescinded by amendment to the code, the board of review may transfer any unallocated volume cap from that allotment account to any other allotment account.

Amended by Chapter 406, 2022 General Session

35A-8-2107 Certificates of allocation.

- (1)
 - (a) After an allocation of volume cap for a project or program is approved by the board of review, the board of review shall issue a numbered certificate of allocation stating the amount of the allocation, the allotment account for which the allocation is being made, and the expiration date of the allocation.
 - (b) The certificates of allocation shall be mailed to the issuing authority within 10 working days of the date of approval.
 - (c) Bonds are not entitled to any allocation of the volume cap unless the issuing authority received a certificate of allocation with respect to the bonds.
 - (d)
 - (i) Certificates of allocation shall remain in effect for a period of 90 days from the date of approval.
 - (ii) If bonds for which a certificate has been approved are not issued within the 90-day period, the certificate of allocation is void and volume cap shall be returned to the applicable allotment account for reallocation by the board of review.

- (2)
 - (a) An issuing authority receiving an allocation of volume cap from the Carryforward Account shall receive a certificate of allocation similar to the certificates of allocation described in Subsection (1) from the board of review stating the amount of allocation from the Carryforward Account that has been allocated to the issuing authority and the expiration of the allocation.
 - (b)
 - (i) If in the judgment of the board of review an issuing authority or a person or entity responsible for a project or program receiving an allocation from the Carryforward Account does not proceed with diligence in providing for the issuance of the bonds with respect to the project or program, and because of the lack of diligence the volume cap cannot be used, the board of review may exclude from the board of review's consideration for a given period of time, determined by the board of review, an application of the issuing authority, person, or entity.
 - (ii) The board of review may, at any time, review and modify the board of review's decisions relating to the exclusion described in this Subsection (2)(b).

Renumbered and Amended by Chapter 182, 2018 General Session

35A-8-2108 Issuing authorities -- Limitations -- Duties.

- (1)
 - (a) Notwithstanding any law to the contrary, an issuing authority issuing bonds without a certificate of allocation issued under Section 35A-8-2107, or an issuing authority issuing bonds after the expiration of a certificate of allocation, is not entitled to an allocation of the volume cap for those bonds.
 - (b) An issuing authority issuing bonds in excess of the amount set forth in the related certificate of allocation is not entitled to an allocation of the volume cap for the excess.
- (2) Each issuing authority shall:
 - (a) advise the board of review, within 15 days after the issuance of bonds, of the principal amount of bonds issued under each certificate of allocation by delivering to the board of review a copy of the Form 8038 that was delivered or shall be delivered to the Internal Revenue Service in connection with the bonds, or, if no Form 8038 is required to be delivered to the Internal Revenue Service, a completed copy of a Form 8038 prepared for the board of review with respect to the bonds; and
 - (b) if all or a stated portion of the bonds for which a certificate of allocation was received will not be issued, advise the board of review in writing, within 15 days of the earlier of:
 - (i) the final decision not to issue all or a stated portion of the bonds; or
 - (ii) the expiration of the certificate of allocation.
- (3) Failure by an issuing authority to notify the board of review under Subsection (2), including failure to timely deliver a Form 8038, may, in the sole discretion of the board of review, result in the board of review denying further consideration of applications from the issuing authority.

Renumbered and Amended by Chapter 182, 2018 General Session

35A-8-2109 Procedures -- Adjudicative proceedings.

The board of review shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in the board of review's adjudicative proceedings.

Renumbered and Amended by Chapter 182, 2018 General Session

35A-8-2110 Duties of the department.

- (1) The department is recognized as an issuing authority as defined in Section 35A-8-2102, entitled to issue bonds from the Small Issue Bond Account created in Subsection 35A-8-2106(1)(c) as a part of the state's private activity bond volume cap authorized by the Internal Revenue Code and computed under Section 146, Internal Revenue Code.
- (2) To promote and encourage the issuance of bonds from the Small Issue Bond Account for manufacturing projects, the department may:
 - (a) develop campaigns and materials that inform qualified small manufacturing businesses about the existence of the program and the application process;
 - (b) assist small businesses in applying for and qualifying for these bonds; and
 - (c) develop strategies to lower the cost to small businesses of applying for and qualifying for these bonds, including making arrangements with financial advisors, underwriters, bond counsel, and other professionals involved in the issuance process to provide services at a reduced rate when the department can provide such service providers with a high volume of applicants or issues.

Renumbered and Amended by Chapter 182, 2018 General Session

