

No. 1985-113

AN ACT

SB 1204

Providing for tax-exempt bonds; and imposing powers and duties on the Secretary of Commerce.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Tax-Exempt Bond Allocation Act.

Section 2. Purpose.

A tax-exempt bond allocation formula is established in response to restrictions imposed by amendments to the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 1 et seq.). Because of the limits on the amounts of tax-exempt bond funding available, this act is intended to use the restricted funding available in order to:

(1) Create career-oriented net new jobs or preserve jobs at an income level high enough to support an individual and the individual's dependents.

(2) Increase and diversify the manufacturing base of this Commonwealth.

(3) Aid in the expansion of existing private companies, particularly those which sell their products outside this Commonwealth.

(4) Attract new industries with new products into distressed areas within this Commonwealth.

(5) Prepare the necessary personnel, through a program of educational financial assistance to postsecondary students, their families and others providing educational opportunities to students and their families, to assume the manpower and administrative leadership roles required to carry out the objectives of paragraphs (1) through (4).

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Exempt facilities." Projects which are determined by the Federal Government not to be subject to small-issue project limitations. Examples may be pollution-control facilities, airports and waste-disposal sites.

"Net new job." A full-time job, or its equivalent, which increases the number of jobs at the project site above the number of jobs present before the project is started. The term does not include a job which:

- (1) Is being relocated from within this Commonwealth.
- (2) Is created by the construction of the project.

(3) Is not designed to be permanent.

“Project.” An activity for which tax-exempt bonds may be used.

“Secretary.” The Secretary of Commerce of the Commonwealth.

“Tax-exempt bonds.” Private activity and other bonds and financings which count against the State ceiling defined in the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 1 et seq.).

Section 4. Selection of projects.

(a) Projects using county allocations.—

(1) Except under paragraph (2), the secretary shall not approve bond projects under the act of August 23, 1967 (P.L.251, No.102), known as the Industrial and Commercial Development Authority Law, for:

(i) Projects related to the retail sale of consumer goods, except that no more than 5% of the allocation of each county, as provided by section 5(a)(1), may be utilized for such projects, and the amount financed in any such project may not exceed \$1,000,000.

(ii) Office buildings in which 50% or less of the square footage has guaranteed occupancy. Office buildings which receive financing shall be limited to \$2,000,000 in financing. This subparagraph does not apply to office buildings used to house regional or national corporate headquarters.

(iii) Office buildings with more than 20% of the square footage occupied by doctors, lawyers, accountants, dentists or other professionals.

(iv) Projects which will not generate at least one net new job or preserve one full-time job for every \$50,000 of bond authority.

(v) Projects whose beneficiary has outstanding tax-exempt bond indebtedness for a project which was initiated after January 1, 1984, and which does not meet job projections within three years following its completion.

(2) The secretary may waive, on a project-by-project basis, the exclusions in paragraph (1)(i) through (v) for reasons specified by the secretary in the semiannual report under section 7(3). The secretary shall make the waiver under this paragraph for projects located within enterprise development areas, as certified by the Secretary of Community Affairs under 16 Pa. Code Ch.23 (relating to enterprise development area initiative), or within communities which have been designated as Federal disaster relief areas, for the entire period of such Federal designation, provided that such projects are reasonably related to the replacement, reconstruction or rehabilitation of facilities or equipment destroyed or damaged by natural disaster. The secretary shall consider the economic distress of the area when deciding on a waiver.

(b) Projects set aside by secretary.—To fund projects that do not use county allocations and to fund projects under section 5(a)(2)(ii) and (iii), (b)(1)(ii), and (c), the secretary shall use the following criteria:

(1) Size of the project, particularly as it compares to the individual county's allocation.

- (2) Number of net new jobs created.
- (3) Economic distress of the area, determined by its unemployment rate and its median income.
- (4) Amount of private funds leveraged by the tax-exempt bond funding.
- (5) Coordination with economic development plans of the Commonwealth and of municipalities and regions.

Section 5. Allocation.

(a) Initial allocation.—By December 1 of each year, the secretary shall allocate the tax-exempt bond authority for the following calendar year according to the following:

(1) Two-thirds shall be allocated for use inside the borders of each county in this Commonwealth. If the local authority resides outside of the county which contains the project site, no project shall be approved without written approval of the highest elected officials in that county. The following is the allocation formula:

(i) The secretary shall determine the ratio of the county's 1985 allocation to the sum of every county's 1985 allocation, as contained in the Proclamation Establishing a Formula for the Allocation of Private Activity Bonds Subject to the State Ceiling in Accordance with the Deficit Reduction Act of 1984, as signed by the Governor on January 4, 1985.

(ii) The secretary shall multiply the ratio determined in subparagraph (i) by the total amount available to be allocated under this paragraph.

(2) One-third shall be set aside by the secretary for the following purposes:

(i) Use by Commonwealth agencies, except for the Pennsylvania Higher Education Assistance Agency, which require the use of tax-exempt bonds.

(ii) Projects which require more bond authority than the county has currently available to it and which are determined by the secretary to be exceptional in furthering the purposes of this act.

(iii) Exempt facilities projects.

(iv) Use by the Pennsylvania Higher Education Assistance Agency. The agency shall, on or before February 1 of each year, provide the secretary with a report justifying requests for bond authority in that year. Notwithstanding section 4(3) of the act of August 7, 1963 (P.L.549, No.290), referred to as the Pennsylvania Higher Education Assistance Agency Act, the secretary has the sole authority to determine the amount of the request which may actually be used by the agency. An allotment of at least 25% of the allocation stated in this subsection shall be reserved for solid waste disposal projects.

(b) Reallocation.—

(1) On August 1 of each year, the secretary shall allocate unused tax-exempt bond authority as follows:

(i) Fifty percent shall be allocated for use by the counties. The secretary shall give allocations to those local projects which best further the purposes of this act.

(ii) Fifty percent shall be retained by the secretary for a contingency reserve, which the secretary may use for projects under subsection (a)(2). Requests submitted under subsection (a)(2)(iv) after February 1 of each year and unfunded requests under subsection (a)(2)(iv) may be funded through the contingency reserve, in addition to being funded under subsection (c).

(2) As used in this subsection the term "unused tax-exempt bond authority" means the total tax-exempt bond allocation for the Commonwealth, minus the amount allocated to approved projects under subsection (a).

(c) Final allocation.—On November 1 of each year, the secretary shall allocate unused bond authority at the discretion of the secretary. Projects shall be evaluated according to the purposes set forth in section 2, and the failure to comply with deadlines established in this section shall not render an applicant ineligible for funds in the final allocation process. Requests submitted under subsection (a)(2)(iv) after February 1 of each year and unfunded requests under subsection (a)(2)(iv) may be funded under this subsection, in addition to being funded under subsection (b)(1)(ii).

Section 6. Federal law change.

In the event that Federal law regulating tax-exempt bonds is changed and that such change would, in the opinion of the secretary, conflict with this act in such a way as to impair the ability of the Commonwealth to use tax-exempt bonds to their maximum benefit, the secretary shall have the power to promulgate regulations which become effective when the Federal law takes effect and which shall enable the Commonwealth to utilize tax-exempt bonds to their maximum benefit and which shall, to the largest extent possible, carry out the purposes set forth in this act.

Section 7. Powers and duties of secretary.

The secretary has the following powers and duties:

(1) Distribute to local authorities model guidelines for the local authorities to use in carrying out the priorities and other provisions of this act.

(2) Notify affected Commonwealth agencies and authorities of their bond allocations within 15 days of deadlines under section 5. The notice under this paragraph shall include a justification of the allocation and the numbers used in the formula applicable to the allocation of the agency or authority.

(3) Submit reports to the Chief Clerk of the House of Representatives and the Secretary of the Senate within 45 days of January 1 and within 45 days of July 1 of each year. Reports shall include:

(i) A list of projects approved, disapproved and pending. The list shall contain, for each request:

(A) Amount.

- (B) Location.
- (C) Estimated jobs.
- (D) Issuing authority or Commonwealth agency.
- (E) Section of this act under which bond authority was given.

(ii) The most recent report submitted to the secretary by the Pennsylvania Higher Education Assistance Agency under section 5(a)(2)(iv), the reasons for approval or disapproval of the request and a cash flow projection of all bonds issued by the agency.

(iii) The model guidelines under paragraph (1).

(iv) Other information which the secretary deems pertinent, including suggested changes to the program.

(4) Promulgate any regulations as may be necessary to carry out the purposes set forth in this act and publish as statements of policy the county-by-county allocations provided by section 5(a)(1) and publish all other general procedures, requirements, interpretations and guidelines and changes thereto utilized in the implementation of this act.

Section 8. Prior project approvals.

All projects approved in 1985, but for which preliminary allocation requests were not granted, may file their preliminary allocation request in 1986 subject to the Proclamation Establishing a Formula for the Allocation of Private Activity Bonds Subject to the State Ceiling in Accordance with the Deficit Reduction Act of 1984, as signed by the Governor on January 4, 1985, and the county's 1986 allocation limits.

Section 9. Effective date.

(a) Initial allocation.—Section 5(a) shall take effect November 30, 1985, or immediately, whichever is later.

(b) Notice.—Section 7(2) shall take effect December 1, 1985, or immediately, whichever is later.

(c) Remainder.—The remainder of this act shall take effect January 1, 1986, or immediately, whichever is later.

APPROVED—The 20th day of December, A. D. 1985.

DICK THORNBURGH