

WSR 22-14-004

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed June 22, 2022, 2:28 p.m., effective July 23, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule change adjusts the date when an exempt facility applicant can be awarded more than 30 percent of the initial set-aside for exempt facility projects from July 1 to May 1. This will allow exempt facility applicants to receive allocations exceeding the current 30 percent limitation earlier and would facilitate exempt facility projects' ability to fully access exempt facility initial set-aside cap. This will assist with maximizing the ability of exempt facility projects to fully utilize the exempt facility initial allocation and could allow for larger exempt facility projects to advance.

The change to WAC 365-135-070 (1)(a) amends the date (from July 1 to May 1) when an exempt facility applicant may be awarded more than 30 percent of the initial set-aside for exempt facility projects.

The change to WAC 365-135-070(6) amends language referring to percentages from written form to numbers. Citations for "one hundred," "ninety," "eighty," and "seventy" percent are respectively changed to "100," "90," "80," and "70" percent.

Citation of Rules Affected by this Order: Amending 2.

Statutory Authority for Adoption: RCW 34.05.353 (1)(c) and (e).

Adopted under notice filed as WSR 22-09-057 on April 18, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 21, 2022.

David Pringle
Rules Coordinator

OTS-3731.1

AMENDATORY SECTION (Amending WSR 21-15-104, filed 7/20/21, effective 8/20/21)

WAC 365-135-070 Criteria for exempt facility bonds. (1) In addition to the state statute, the following guidelines will be used as criteria for evaluating exempt facility requests:

(a) Until ((July)) May 1st of each year, any one exempt facility project may not receive more than ((thirty)) 30 percent of the initial allocation amount available in the exempt facility category.

- (b) The level of unemployment in a particular community within a county, to the extent that figures are available from the Washington state employment security department.
 - (c) The number of direct jobs and secondary or spin-off jobs expected to be generated by the project.
 - (d) The degree to which the project proposes to provide jobs for lower-income persons from the community.
 - (e) The number of jobs created in proportion to the amount of the bond cap allocation.
 - (f) The proportionate number of persons in relationship to the size of the community who will benefit from the project.
 - (g) The degree to which the project provides an economic boost to an economically distressed community (based on the three-year unemployment figures from employment security).
 - (h) The degree to which the project retains or expands the local tax base.
 - (i) The degree to which the project reduces environmental pollution.
 - (j) The degree to which the project diverts solid waste from disposal and manufactures it into value-added products.
 - (k) The degree to which the project produces energy at a lower cost than alternative or existing energy sources.
 - (l) The environmental benefit of the project to the particular community, the county or the state.
 - (m) The availability of bond cap from the exempt facility category.
 - (n) Recognize and accommodate the unique timing, and issuance needs of large scale projects that may require allocations in more than one year.
 - (o) Projects that result in publicly owned facilities over privately owned facilities.
- (2) Exempt facility applications will not be considered for allocation until:
- (a) The department receives:
 - (i) A list of all permits required to complete the project and the date each permit application was submitted to and/or granted by the appropriate authority;
 - (ii) A copy of any environmental impact statements; and
 - (b) Significant progress is demonstrated in securing project financing.
- (3) The criteria in this section and other applicable criteria otherwise established in rule and statute shall not be considered as ranked in any particular order but shall be weighed and balanced for each application and among applications in making allocation decisions.
- (4) After July 1st of each year, the department may approve an allocation amount prior to the issuer completing all of the criteria listed above.
- (5) Exempt facility projects may receive an allocation in order to convert taxable financing to tax-exempt financing, but only in January or July of any year. The request for conversion will be compared against other requests for conversion and current exempt facility applications. Projects that use the Washington economic development finance authority to complete their financing will have priority over projects in obtaining future allocations to convert to tax-exempt financing. Conversion is only allowed within the federal guidelines of one year after the project comes online or two calendar years after

the Washington economic development finance authority financing is approved, whichever comes first.

(6) Exempt facility projects up to \$50,000,000 may receive an allocation for up to (~~one hundred~~) 100 percent of the total project cost. Projects from \$50,000,001 to \$75,000,000 may receive an allocation for up to (~~ninety~~) 90 percent of the total project cost. Projects from \$75,000,001 to \$100,000,000 may receive an allocation for up to (~~eighty~~) 80 percent of the total project cost. Projects over \$100,000,000 may receive an allocation for up to (~~seventy~~) 70 percent of the total project cost. A project may obtain additional allocation above these percentages after July 1st of the last year of eligibility only if the total demand for cap is lower than the amount available.

[Statutory Authority: RCW 34.05.353 (1)(b) and (d). WSR 21-15-104, § 365-135-070, filed 7/20/21, effective 8/20/21. Statutory Authority: Chapter 39.86 RCW and RCW 43.330.040 (2)(g). WSR 97-02-093, § 365-135-070, filed 1/2/97, effective 2/2/97. Statutory Authority: Chapter 39.86 RCW. WSR 93-13-012 (Order 93-05), § 365-135-070, filed 6/7/93, effective 1/1/94.]