

WSR 22-09-057

EXPEDITED RULES

DEPARTMENT OF COMMERCE

[Filed April 18, 2022, 1:27 p.m.]

Title of Rule and Other Identifying Information: Chapter 365-135 WAC, Bond cap allocation; amendments to WAC 365-135-070 (1)(a).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule change will adjust 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 funding beyond the current 30 percent limitation earlier and without concern about ability and position to access the reallocation of unused cap. This will assist with maximizing the utilization of bond cap for exempt facility projects and 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.

Reasons Supporting Proposal: By changing the date from July 1 - concurrent with the general release date for all set-asides - to May 1, this will provide exempt facility applicants the opportunity to request resources beyond the initial 30 percent allocation and enable exempt facility applications the opportunity to utilize the full exempt facility set-aside. This change would allow larger exempt facility projects the opportunity to access these funds before the July 1 reallocation period. This change will increase local economic vitality, including creating or retaining jobs, growing state and local tax bases, reducing environmental pollution, and producing lower-cost energy.

Without the change to WAC 365-135-070 (1)(a), an exempt facility applicant that requests more than 30 percent of the exempt facility set-aside is inhibited from consideration for these resources before the reallocation period. As a result, large exempt facility projects are at a disadvantage in competing for reallocated volume cap on July 1. Amending the date from July 1 to May 1 will allow large exempt facility projects to advance without the current disadvantage.

Statutory Authority for Adoption: RCW 34.05.353 (1)(b) and (d).

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Allan Johnson, 1011 Plum Street S.E., Olympia, WA 98504, 360-725-5033.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This will affect timing of release/reallocation dates but will not change the overall amount of private activity volume cap. It may assist in maximizing use of volume cap within a specific calendar year.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of

statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed WAC amendments are stakeholder request[s] and have been negotiated with all affected stakeholders. The change will increase equity and use of the exempt facility set-aside for large projects that cannot currently receive an allocation beyond the current 30 percent allocation limit.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Dave Pringle, Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98504-2525, phone 360-725-2986, email dave.pringle@commerce.wa.gov, rules@commerce.wa.gov, AND RECEIVED BY June 20, 2022.

April 18, 2022
Dave 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.]