

Virginia Private Activity Bond Allocation Guidelines

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FORM IDB APPLICATION

FORM HB APPLICATION

VIRGINIA PRIVATE ACTIVITY BOND ALLOCATION GUIDELINES

PART I. DEFINITIONS.

§ 1.1. Definitions.

The following words and terms, when used in these guidelines, shall have the following meaning, unless the context clearly indicates otherwise.

“Allocation” or “award” means the notice given by the Commonwealth to provide a project with a specified amount from the state ceiling for a specific issue of bonds.

“Carryforward purpose” means certain projects that are eligible to receive an allocation during a calendar year and issue the bonds from the allocation in a later year pursuant to § 146 of the Code.

“Chief appointed official” means the chief administrator of the locality and includes the city manager, the town manager, the county administrator, the county executive, and others.

“Code” means the Internal Revenue Code of 1986, as amended, together with the regulations and rulings issued pursuant thereto.

“Exempt facility” means a project requiring allocation from the state ceiling for financing of any of the following:

1. Sewage, solid waste, and qualified hazardous waste disposal facilities;
2. Facilities for the local furnishing of electric energy or gas;
3. Facilities for the furnishing of water (including irrigation systems);
4. Mass commuting facilities; and
5. Local district heating and cooling facilities.

“Governing body” means the board of supervisors of each county and the council of each city and of each town.

“Housing bonds” means multifamily housing bonds and single family housing bonds requiring allocation from the state ceiling.

“Industrial development bond” means any obligation requiring allocation from the state ceiling for financing any of the following:

1. Manufacturing facility;
2. Exempt facility.

“Issued” means that the private activity bonds have been issued within the meaning of § 103 of the Code.

“Issuing authority” means any political subdivision, governmental unit, authority, or other entity of the Commonwealth which is empowered to issue private activity bonds.

“Local housing authority” means any issuer of multifamily housing bonds or single family housing bonds, created and existing under the laws of the Commonwealth, excluding the Virginia Housing Development Authority.

“Locality” or “localities” means the individual and collective cities, towns and counties of the Commonwealth.

“Manufacturing facility” means any facility which is used in the manufacturing or production of tangible personal property, including the processing resulting in a change of condition of such property.

“Multifamily housing bond” means any obligation which constitutes an exempt facility bond under federal law for the financing of a qualified residential rental project within the meaning of § 142 of the Code.

“Population” means the most recent estimate of resident population for Virginia and the counties, cities, and towns published by the United States Bureau of the Census or the Center for Public Service of the University of Virginia before January 1 of each calendar year.

“Private activity bond” means a part or all of any bond (or other instrument) required to obtain an allocation from the Commonwealth's volume cap pursuant to § 146 of the Code in order to be tax exempt, including but not limited to the following:

1. Exempt facility bonds;
2. Manufacturing facility bonds;
3. Industrial development bonds;
4. Multifamily housing bonds;
5. Single family housing bonds;

6. Any other bond eligible for a tax exemption as a private activity bond pursuant to § 141 of the Code.

“Project” means the facility (as described in the application) proposed to be financed, in whole or in part, by an issue of bonds.

“Single family housing bond” means any obligation described as a qualified mortgage bond under § 143 of the Code.

“State Allocation” means the portion of the state ceiling set aside for projects of state issuing authorities and for projects of state or regional interest as determined by the Governor.

“State ceiling” means the amount of private activity bonds that the Commonwealth may issue in any calendar year under the provisions of the Code.

“VSBFA” means the Virginia Small Business Financing Authority.

PART II. ADMINISTRATION.

§ 2.1. Virginia Small Business Financing Authority.

VSBFA shall administer the private activity bond program in the Commonwealth. In administering the program, VSBFA's activities shall include, but are not limited to, the following:

- A. To determine the state ceiling on private activity bonds each year based on the federal per capita limitation on private activity bonds and the population.
- B. To set aside the proper amount of the state ceiling on private activity bonds for each project type as specified in state legislation, Chapter 50 (§§ 15.2-5000 through 15.2-5005) of Title 15.2 of the Code of Virginia.
- C. To receive and review project applications for private activity bond authority to be awarded from the portion of the state ceiling not distributed to the State Allocation or the Virginia Housing Development Authority.
- D. To allocate private activity bond authority to projects requesting bond authority from the portion of the state ceiling not distributed to the State Allocation or the Virginia Housing Development Authority.

§ 2.2. State Allocation.

A portion of the annual state ceiling on private activity bonds will be reserved for allocations to projects of state issuing authorities and projects of state or regional interest as determined by the Governor. The Governor may transfer any portion of the State Allocation to VSBFA for allocation to specific projects or for allocation to specific project types in accordance with the provisions of these guidelines.

§ 2.3. Virginia Housing Development Authority.

A portion of the annual state ceiling on private activity bonds shall be allocated to the Virginia Housing Development Authority to be used to finance multifamily or single family residential projects, or both, pursuant to the restrictions provided by federal law. The Virginia Housing Development Authority shall develop project allocation criteria and housing bond authority carryforward procedures that will assure compliance with federal regulations.

§ 2.4. Program Dates.

The following is a listing of important application and allocation dates and deadlines concerning the portion of the state ceiling administered by VSBFA. VSBFA will accept applications at any time during the year and they will be ordered as described below. Projects that do not receive an allocation during the current calendar year will remain on file with VSBFA and do not need to resubmit an application for the following calendar year(s), except as is necessary to update the documentation accompanying the application.

January 1 - December 15

Specified amounts of the state ceiling are reserved for different project types in the Commonwealth by either state law or Governor's Executive Order in each calendar year. Allocations of private activity bond authority will be awarded by VSBFA to projects in accordance with state law or Governor's Executive Order and these guidelines. The set-aside for specified project types ends on December 15 of each calendar year.

July 31 (or the previous state working day) at 5:00 p.m.

Deadline for receipt of applications for exempt facility projects to be included in the August 1 lottery.

December 1

Last day applications will be accepted for year-end carryforward purposes.

December 15

Last day for the issuance of private activity bonds for projects that received allocations from the state ceiling prior to this date.

December 20 - 31

Allocations will be made to year-end carryforward purposes in accordance with the priority system established by these guidelines.

§ 2.5. Weekend and Holiday Dates.

For all references to July 31 in these guidelines, if July 31 falls on a weekend or a state holiday, the applicable date shall be the previous date to July 31 that falls on a regular state working day.

Except as otherwise specified in this section and except where federal law precludes an extension to a later date, if any date specified in these guidelines falls on a weekend or a state holiday, the date shall be moved to the next following regular state working day.

§ 2.6. State Guidelines to Change as Federal Law Determines Eligibility.

If federal law terminates the eligibility or terminates and reauthorizes the eligibility for private activity bond financing for any "private activity bond" as defined in § 1.1 of these guidelines, the effect shall be to exclude or include, as the case may be, that portion of the "private activity bond" from these guidelines.

PART III.
ALLOCATIONS TO INDIVIDUAL PROJECTS BY VSBFA.

§ 3.1. State Private Activity Bond Legislation.

Chapter 50 (§§ 15.2-5000 through 15.2-5005) of Title 15.2 of the Code of Virginia sets aside specified amounts of the Commonwealth's limited private activity bond issuing authority for different types of projects. VSBFA will allocate private activity bond authority to projects requesting bond authority for the portion of the state ceiling not distributed directly to the State Allocation or the Virginia Housing Development Authority.

§ 3.2. Order in which the bond authority reserved for industrial development bonds shall be allocated.

The bond authority reserved for industrial development bonds will be allocated only to manufacturing facility projects from January 1 - July 31 of each calendar year. On August 1, allocations will be opened to exempt facility projects, and exempt facility projects will have priority over manufacturing facility projects for the remainder of the calendar year.

Allocations shall be made by VSBFA to manufacturing facility projects from January 1 - July 31 of each year in chronological order of the receipt of complete applications (including all documentation specified in § 5.3 of these guidelines) that are received by VSBFA by 5:00 p.m. on July 31. Any industrial development bond authority that is unallocated, that is returned to VSBFA, or that otherwise becomes available to VSBFA by 5:00 p.m. on July 31 of each calendar year will be available for awards to manufacturing facility projects with applications on file with VSBFA by 5:00 p.m. on July 31.

On August 1 of each year, allocations will be opened to exempt facility projects. If there is insufficient unallocated industrial development bond authority on August 1 to award to the exempt facility projects with applications on file, VSBFA will hold a lottery to determine the order in which allocations will be awarded to exempt facility projects with complete applications (including all documentation specified in § 5.3 of these guidelines) on file with VSBFA by 5:00 p.m. on July 31 of each year.

Any industrial development bond authority that is unallocated, that is returned to VSBFA, or that otherwise becomes available to VSBFA after 5:00 p.m. on July 31 and for the remainder of the calendar year shall be awarded to applications on file with VSBFA in the following priority order:

1. Exempt facility projects in the order as determined by the August 1 lottery, above.
2. Exempt facility projects in chronological order of the receipt of complete applications that are received by VSBFA after 5:00 p.m. on July 31.
3. Manufacturing facility projects in chronological order of the receipt of complete applications.

§ 3.3 Order in which the bond authority reserved for local housing authority projects shall be awarded.

Any bond authority reserved for local housing authority projects that is unallocated, that is returned to VSBFA, or that otherwise becomes available to VSBFA during each calendar year shall be awarded to local housing authority projects in chronological order of the receipt by VSBFA of complete applications (including all documentation specified in § 5.3 of these guidelines).

§ 3.4. Limitation on size of allocations.

All allocations awarded by VSBFA from the portion of the state ceiling reserved for industrial development bonds shall be limited to \$10 million per project in any calendar year, except for those allocations awarded for carryforward purposes.

From January 1 to September 30, all allocations awarded by VSBFA from the portion of the state ceiling reserved for local housing authority projects shall be limited to \$10 million per project. On October 1 of each year, allocations will be opened for larger housing projects and allocation limits will be increased to \$25 million per project. Any project receiving up to \$10 million in allocation is eligible to come back after October 1 and request additional allocation. At no time may a project receive more than \$25 million in local housing allocation in a calendar year.

§ 3.5 Effective period of allocations.

An allocation of private activity bond authority awarded by VSBFA from the portion of the state ceiling reserved for industrial development bonds and from the portion of the state ceiling reserved for local housing authority projects shall be effective for ninety (90) days after the allocation award date or until December 15, whichever is earlier.

§ 3.6. Reapplying for a second allocation for the same project.

A project that receives an allocation and is unable to issue bonds within the effective period of the award may reapply for another allocation upon the expiration or return of the original allocation. The reapplication will be dated by VSBFA as received on the date the reapplication request is submitted and no portion of the original allocation is outstanding. Each project shall be limited to two allocations during any calendar year.

PART IV.
YEAR-END ALLOCATIONS TO CARRYFORWARD PURPOSES.

§ 4.1. Local Housing Authorities.

Any bond issuing authority remaining in the portion of the state ceiling reserved for local housing authorities after December 15 shall be transferred to the Virginia Housing Development Authority upon their written request, after notification by VSBFA of the amount of bond authority available. Any bond authority that remains with VSBFA and is not requested by the Virginia Housing Development Authority shall be allocated to other carryforward purposes.

§ 4.2. Virginia Housing Development Authority.

Any portion of the state ceiling reserved for the Virginia Housing Development Authority that has not been issued by December 15 shall be retained by the Virginia Housing Development Authority to carry forward pursuant to the Code, or shall be transferred by the Virginia Housing Development Authority on December 15 to VSBFA to be allocated to other carryforward purposes.

§ 4.3. VSBFA.

Any bond issuing authority that remains with VSBFA after December 15 will be awarded for carryforward purposes beginning December 20 to complete applications on file with VSBFA by December 1 in the following priority order:

1. Exempt facility projects in the order as determined by the August 1 lottery described in § 3.2, above.
2. Exempt facility projects in chronological order of the receipt of complete applications that were received by VSBFA after 5:00 p.m. on July 31 of the calendar year.
3. Virginia Housing Development Authority bonds.

PART V.
APPLICATION PROCEDURE.

§ 5.1. Project Approval.

Projects of local issuing authorities must be approved by the governing body having jurisdiction over the authority as well as by the governing body having jurisdiction over the locality in which the project is located. This is often the same governing body. Projects of state issuing authorities must be approved by the Governor.

§ 5.2. Where to Apply.

Housing projects to be financed by the Virginia Housing Development Authority shall request private activity bond authority from the state ceiling through direct correspondence with the Virginia Housing Development Authority. All other project applications shall be submitted to VSBFA. Requests for private activity bond authority from the State Allocation will be submitted by VSBFA to the Governor's Office.

§ 5.3. Application Forms.

All projects seeking an allocation of private activity bond authority from VSBFA or the State Allocation must file an application. Application forms are available from VSBFA.

The application forms to be used are as follows:

1. Authorities seeking an allocation of bond authority for manufacturing and exempt facility projects, or for any project other than a housing project, shall file Form IDB.
2. Local housing authorities seeking an allocation of bond authority for housing projects shall file Form HB.

All applications and requests for private activity bond authority from VSBFA shall be accompanied by the following documentation for each project:

1. Inducement resolution or other documentation of the preliminary approval of the project by the issuing authority, in conformity with applicable federal and state law;
2. Documentation of the appropriate governing body's or bodies' (see § 5.1 of these guidelines) or elected official's approval of the project, in conformity with applicable federal and state law;
3. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Code and that an allocation of bond issuing authority from the state ceiling is required;
4. A definite and binding financing commitment from the buyer or underwriter of the bonds for the project.

In addition, all applications from local housing authorities requesting an allocation of bond authority for housing projects shall be accompanied by a letter from the chief appointed official of the locality in which the project is located, endorsing the project and stating that the project is in conformity with the Consolidated Plan covering the locality.

§ 5.4. When to Apply.

Project applications for current-year allocation may be submitted to VSBFA at any time prior to December 15 of each year. Applications for year-end allocations to carryforward purposes will be accepted by VSBFA through December 1 of each calendar year.

PART VI. REPORTING REQUIREMENTS FOR ALLOCATIONS.

§ 6.1. Reporting Bond Issuance.

For all private activity bonds issued in the Commonwealth from the portion of the state ceiling not allocated to the State Allocation or the Virginia Housing Development Authority during any calendar year, a copy of the federal Internal Revenue Service (IRS) Form 8038 must be

received by VSBFA by 5:00 p.m. on the expiration date of the allocation award. Bond authority that has not been documented as having been issued by the filing of IRS Form 8038 with VSBFA by this deadline will revert to VSBFA for reallocation to other projects.

For all private activity bonds issued in the Commonwealth from the portion of the state ceiling allocated to the State Allocation or the Virginia Housing Development Authority during any calendar year, a copy of IRS Form 8038 must be received by VSBFA within ten (10) days following issuance of the bonds.

For all allocations to carryforward purposes, a copy of IRS Form 8328 must be filed with VSBFA by February 15 following the calendar year in which the carryforward award was received. In order to document the amount of bonds issued, a copy of IRS Form 8038 must be sent to VSBFA when the bond(s) are issued.

**APPLICATION
INDUSTRIAL DEVELOPMENT BOND ALLOCATION**

1. GENERAL INFORMATION

A. Issuing Entity _____

B. Name of Project _____

C. Use of Bond Proceeds

Manufacturing

Exempt facility

Other

D. Bond allocation requested \$ _____

2. PROJECT INFORMATION

A. General Description of the Project.

B. Number of jobs to be created (net) within two years of project completion. _____

C. Location of Project (City, County, or Town) _____

D. Name, address, phone number, and tax ID number of each proposed borrower and developer.

E. Name, address, and phone number of bond counsel.

3. ATTACHMENTS - ALL FOUR ATTACHMENTS MUST BE SUBMITTED WITH THIS FORM. ALLOCATIONS CANNOT BE AWARDED UNTIL ALL ATTACHMENTS HAVE BEEN RECEIVED. ALL DOCUMENTATION MUST BE CURRENT.

A. Copy of inducement resolution or other documentation of the preliminary approval of the project by the issuing authority, in conformity with applicable federal and state law.

B. Copy of appropriate elected official's or governing body's (or bodies') formal approval of the project, in conformity with applicable federal and state law.

C. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Internal Revenue Code of 1986, as amended, and that an allocation of bond issuing authority from the state ceiling on private activity bonds is required.

D. A definite and binding financing commitment from the buyer or underwriter of the bonds for the project.

4. CERTIFICATION

I hereby certify that the information filed herewith is accurate to the best of my knowledge.

Name of Issuing Entity

By: _____
Signature of Authorized Representative

Name (please print) _____

Title _____

Full Address _____

Date _____

Submit completed applications to:

Virginia Small Business Financing Authority
707 E. Main Street
Suite 300
Richmond, VA 23219
Attn: Allocation Administrator

APPLICATION HOUSING BOND ALLOCATION

1. GENERAL INFORMATION

A. Issuing Entity _____

B. Name of Project _____

C. Type of Project

Single Family

Multifamily

_____ Number of Units

_____ Number of Units

D. Bond allocation requested \$ _____

2. PROJECT INFORMATION

A. General Description of the Project

B. Please check the appropriate response for the low income set-aside requirement if the project is a multifamily rental project.

40% of the units will be occupied by persons having incomes of 60% of area median income or less.

20% of the units will be occupied by persons having incomes of 50% of area median income or less.

C. Location of Project (City, County, or Town) _____

D. Name, address, phone number, and tax ID number of each proposed borrower and developer.

E. Name, address, and phone number of bond counsel.

3. **ATTACHMENTS - ALL FIVE ATTACHMENTS MUST BE SUBMITTED WITH THIS FORM. ALLOCATIONS CANNOT BE AWARDED UNTIL ALL ATTACHMENTS HAVE BEEN RECEIVED. ALL DOCUMENTATION MUST BE CURRENT.**

A. Copy of inducement resolution or other documentation of the preliminary approval of the project by the issuing authority, in conformity with applicable federal and state law.

B. Copy of appropriate elected official's or governing body's (or bodies') formal approval of the project, in conformity with applicable federal and state law.

C. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Internal Revenue Code of 1986, as amended, and that an allocation of bond issuing authority from the state ceiling on private activity bonds is required.

D. A definite and binding financing commitment from the buyer or underwriter of the bonds for the project.

E. A letter from the chief appointed official of the locality in which the project is located, endorsing the project and stating that the project is in conformity with the Consolidated Plan covering the locality.

4. **CERTIFICATION**

I hereby certify that the information filed herewith is accurate to the best of my knowledge.

Name of Issuing Entity

By: _____
Signature of Authorized Representative

Name (please print) _____

Title _____

Full Address _____

Date _____

Submit completed applications to:

Virginia Small Business Financing Authority
707 E. Main Street
Suite 300
Richmond, VA 23219
Attn: Allocation Administrator