

§1063. Certificates of approval

1. Issue. The authority may approve or disapprove projects and issue certificates of approval upon application by municipalities proposing to issue revenue obligation securities under this subchapter. The authority shall publish, once in the state newspaper and in a newspaper of general circulation in the municipality in which the project is to be located, notice of the date on which the authority will consider the application. The notice shall be published at least 7 days prior to the date scheduled for such consideration, shall set forth the name of the municipality and the proposed user of the project, describe generally the project and set forth the time and place at which the application will be considered. In addition to the notice required to be published by the authority, the applicant shall make all reasonable efforts to give timely notice to any and all known competitors of the time and place at which the application will be considered. Where individual written notice is not practical, as determined by the authority, the authority may specify other or additional forms of notice, including display newspaper advertisements and written notice to any trade, industry, professional or interest group. The certificate of approval shall identify and describe each project as to location, purpose and amount of revenue obligation securities to be issued.

[PL 1985, c. 344, §81 (AMD).]

2. Criteria. Before issuing a certificate of approval for any project, the authority shall determine that:

A. The project will make a contribution to the economic growth of, the control of pollution in or the betterment of the health, welfare or safety of the inhabitants of the State; [PL 1985, c. 344, §82 (AMD).]

B. The project will not result in a substantial detriment to existing business in the State. In order to make this determination, the authority shall consider, pursuant to rules adopted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, such factors as it deems necessary to measure and evaluate the effect of the project on existing business, including considering:

(1) Whether a project should be approved if, as a result of the project, there will not be sufficient demand within the market area of the State to be served by the project to employ the efficient capacity of existing business; and

(2) Whether any adverse economic effect of the project on existing business is outweighed by the contribution which the project will make to the economic growth of, the control of pollution in or the betterment of the health, welfare or safety of the inhabitants of the State.

The applicant shall have the burden of demonstrating that the project will not result in a substantial detriment to existing business in accordance with the requirements of this paragraph, including rules adopted in accordance therewith, except in cases where no interested parties object to the project, in which event the requirements of this paragraph shall be deemed satisfied. Interested parties shall be given an opportunity, with or without a hearing at the discretion of the authority, to present their objections to the project on grounds that the project will result in a substantial detriment to existing business. If any such party presents such objections with reasonable specificity and persuasiveness, the authority may divulge whatever information concerning the project which it deems necessary for a fair presentation by the objecting party and evaluation of such objections. If the authority finds that the applicant has failed to meet its burden as specified in this paragraph, the application shall be denied; [PL 1985, c. 714, §34 (AMD).]

C. Adequate provision is being made to meet any increased demand upon public facilities that might result from the project; [PL 1981, c. 476, §2 (NEW).]

- D. In cases where it is proposed to relocate an energy generating system, energy distribution system, industrial-commercial project, water supply system or recreational facility existing in the State, there is a clear economic justification for the relocation; [PL 1981, c. 476, §2 (NEW).]
- E. For all revenue obligation securities in excess of \$1,000,000 and in other instances when the authority determines it is appropriate, the Department of Environmental Protection has provided a written assessment to the authority of the environmental conditions known by the department to exist at a project location so that the authority fully considers environmental risks when making its decisions. Environmental conditions posing risks that must be considered include, but are not limited to, licensing obligations, existing or historic regulatory noncompliance and site clean-up responsibilities. [PL 2003, c. 537, §52 (RPR); PL 2003, c. 537, §53 (AFF).]
- F. In the case of projects including pollution-control facilities:
- (1) The proposed users of the facilities make a significant contribution to the economy of the State;
 - (2) A substantial public benefit will result from including the facilities in the project; and
 - (3) It is unlikely that public facilities meeting the needs of the users and securing comparable public benefit will become available in the reasonable foreseeable future; [PL 1981, c. 476, §2 (NEW).]
- G. [PL 1985, c. 344, §84 (RP).]
- H. In the case of water supply system projects:
- (1) That the project will result in substantial public benefits;
 - (2) That the issuance of securities for the project has been reviewed and approved by the Public Utilities Commission in accordance with Title 35-A, chapter 9, sections 901 to 910 and 6508; and
 - (3) The Public Utilities Commission and the Department of Health and Human Services have certified that all permits, licenses and approvals required from those departments have been issued or granted or that none are required, and until a location permit from the applicable licensing authority has been issued or it is determined that none is required. Any subsequent enlargement of or addition to the project, for which approval is sought from the authority, shall also require certification by the Public Utilities Commission and the Department of Health and Human Services; [PL 1987, c. 141, Pt. B, §8 (AMD); PL 2003, c. 689, Pt. B, §6 (REV).]
- I. In the case of an energy generating system project or energy distribution project which is intended to produce or distribute energy for sale to any person, municipality, firm, corporation or the State that the issuance of securities for the project has been reviewed and approved by the Public Utilities Commission in accordance with Title 35-A, chapter 9, sections 901 to 910 and 6508; [PL 1987, c. 141, Pt. B, §8 (AMD).]
- I-1. In the case of recycling and waste reduction projects, the proposed facility is consistent with and will contribute to the management goals and objectives outlined in the state waste management and recycling plan under Title 38, chapter 24 and will reduce the amount of solid or hazardous waste requiring disposal. The Department of Environmental Protection shall provide assistance to the authority in determining consistency, technical eligibility and merit of applications for assistance under this subchapter; and [PL 2021, c. 676, Pt. D, §1 (AMD).]
- J. In the case of an energy generating system, an energy distribution system or an industrial-commercial project, any of which includes hydroelectric facilities deemed necessary for the production of electricity:

(1) The Public Utilities Commission has certified that all required licenses have been issued or that none are required; and

(2) The Director of the Office of Policy Innovation and the Future has reviewed and commented upon the project proposal. The Director of the Office of Policy Innovation and the Future shall make comments within 30 days after receipt of a notification and copy of the project proposal from the authority. The authority shall take the comments into consideration in its consideration of the project. [PL 2021, c. 676, Pt. D, §2 (AMD).]

K. [PL 2021, c. 676, Pt. D, §3 (RP).]
[PL 2021, c. 676, Pt. D, §§1-3 (AMD).]

3. Effect of certificate. A certificate of approval issued under this subchapter shall be conclusive proof that the authority has made the determinations required by this section.
[PL 1981, c. 476, §2 (NEW).]

SECTION HISTORY

PL 1981, c. 476, §2 (NEW). PL 1981, c. 698, §67 (AMD). PL 1985, c. 344, §§81-84 (AMD). PL 1985, c. 714, §§34,35 (AMD). PL 1987, c. 141, §B8 (AMD). PL 1989, c. 501, §DD20 (AMD). PL 1989, c. 546, §1 (AMD). PL 1989, c. 585, §§C13,C14 (AMD). PL 1989, c. 878, §A28 (AMD). PL 1995, c. 656, §A4 (AMD). PL 2003, c. 537, §52 (AMD). PL 2003, c. 537, §53 (AFF). PL 2003, c. 689, §B6 (REV). PL 2011, c. 655, Pt. EE, §15 (AMD). PL 2011, c. 655, Pt. EE, §30 (AFF). PL 2011, c. 655, Pt. GG, §6 (AMD). PL 2011, c. 655, Pt. GG, §70 (AFF). PL 2021, c. 293, Pt. A, §52 (REV). PL 2021, c. 676, Pt. D, §§1-3 (AMD).

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