



L. JOYCE HAMPERS
COMMISSIONER

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THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES

EDWARD J. COLLINS, JR.
DEPUTY COMMISSIONER

BUREAU OF ACCOUNTS
INFORMATIONAL GUIDELINE

RELEASE No. 82-02

SUBJECT:

Qualified Bonds and Loan
Default Avoidance
Provisions
Chapter 44, Section 19A &
Chapter 44A, M.G.L.

Background

During the past two legislative sessions, the general court passed two significant laws that relate to municipal indebtedness.

The first enactment was adopted as part of the state budget in 1980. It was contained in the so-called "outside language" section of Chapter 329 of the Acts of 1980 and was signed into law on June 25, 1980. The enactment created a new chapter entitled "Chapter 44A, Qualified Bond Act" and is now a part of the general laws of the Commonwealth.

The second enactment was adopted as part of the Proposition 2½ change law. This was contained in section 8 of Chapter 782 of the Acts of 1981 and was signed into law on October 8, 1981. This enactment created a new section within Chapter 44 entitled "Section 19A." It provides a mechanism to assist a city, town, regional school district or any other special purpose district to avoid defaulting on any debt service obligation. This has been discussed in a previous information guideline release rendered by the Department of Revenue's Property Tax Bureau-- see I.G.R. 82-201.

Purpose

This publication will briefly analyze the two aforementioned enactments. The analysis will discuss the procedures as well as the attributes of each. In reviewing the following, it is hoped that we will clarify a number of recent inquiries and assist any entity in their decision regarding the possible use of either authorization.

We have also attached a recommended form for application for consideration regarding issuance of a "Qualified Bond" along with a suggested checklist of supplemental information that would assist the Emergency Finance Board in fulfilling its investigating responsibilities.



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Chapter 44A--"Qualified Bonds"

Qualified Bonds are available to any city, town or regional school district. They may be issued for any legal borrowing purpose or purposes as authorized by a vote of the entity's appropriation authority.

The procedure for issuing a qualified bond, as prescribed by this statute, is as follows:

1. The treasurer of the city, town or regional school district files an application with the Emergency Finance Board. A suggested application format is attached to this publication. The application is accompanied by a certified copy of the original vote authorizing the incurrance of the indebtedness and a certified copy of the vote of the appropriate executive board or office granting the treasurer authority to file the application.
2. The Emergency Finance Board, immediately upon receipt of the application, will undertake the prescribed investigation, either directly or through their own agent.
3. If the findings of the investigation satisfactorily demonstrate the entity's entitlement for a qualified bond issue, the Board will then adopt a resolution authorizing issuance thereon. This must be done within sixty (60) days after submission of the application.
4. The Board, prior to adopting an affirmative resolution, may require, in writing, certain future debt restrictions or other limitations that it deems necessary as a result of the findings of the investigation. Such restrictions or limitations are binding upon the political entity. The Board may not adopt a positive resolution until such limitation or restrictions are voted by the appropriate officials.

These restrictions or limitations may, in the future, be released by vote of the Board upon the request of the bond issuer, if, upon further investigation, the Board determines such release is in the best interests of the issuer and will not impair the security of the bond holder.



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5. Upon approval by the Board, the city, town or regional school district may proceed with the issuance of the instruments. Such debt securities must contain language, on their face, that indicates they are issued pursuant under the provisions of Chapter 44A, Massachusetts General Laws, the Qualified Bond Act.

6. Notwithstanding any other provisions of the general laws, the qualified bonds may be issued for a period of not less than ten (10) years nor more than thirty (30) years from the date of issuance.

7. Temporary borrowings in anticipation of the issuance of such qualified bonds are permitted as provided under Chapter 44, Sections 17 and 17A, as amended; provided, however, that such notes are subject to such additional terms or conditions as may be fixed by the Emergency Finance Board.

8. Within ten (10) days after the date of issue of the qualified bonds, the local unit treasurer must certify to the state treasurer the following:

- a. The maturity schedules of the debt issue
- b. The interest rate or rates
- c. The debt service payment schedule.

9. From that point forward the state treasurer or his appointed agent shall become the paying agent for the full debt service on the qualified bonds. All such payments will automatically be withheld by the state treasurer from the local unit's distributable state aid and if required due to inefficiency any other amounts payable by the State to said local governmental unit (as authorized by Chapter 58, Section 20 A of the Massachusetts General Laws.)

Note--the act provides that all costs accruing to the Commonwealth as the result of such qualified bond issues, including administrative costs as well as loss of interest income shall be the liability of the city, town or regional school district and shall be assessed in accordance with Chapter 59, Section 20, M.G.L.



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Potential issuers and holders of qualified bonds should be aware of several other important features contained within Chapter 44A.

1. The Commonwealth does not guarantee that there will be a continuation of distributable aid or other payments to the local governmental units.
2. The Commonwealth does, however, agree that as long as the distributable aid is continued, it shall continue to be used as provided for within the Act and that qualified bond holders will continue to have first priority to these funds.
3. The Commonwealth does not purport to guarantee the payment of qualified bond nor does it pledge any of its credit or assets as security thereof.
4. The city or town must continue to appropriate and include in the tax levy amounts necessary to pay the debt service related to the bonds. Distributable aid withheld or to be withheld and forwarded or to be forwarded to a paying agent will be certified by the state treasurer to the city auditor, town accountant, regional school district treasurer or other officers having similar duties. These amount are to be credited against the appropriations.

In effect this calls for an adjusting entry to be made and posted by the local accounting officer, as follows:

Dr. Debt Service Appropriation	\$xxxx	
Cr. Estimated Receipts		\$xxxx

Distributable aid in the sum
of \$xxxx withheld by State Treasurer
for payment of Qualified Bond.

Appropriations which are not fully offset by such credits must be used to pay the related maturing debt service.

Chapter 44, Section 19A--Use of State Aid for Debt Service By Communities Unable to Meet Their Obligations.



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4. Upon receipt of the Commissioner of Revenue's certification, payment will be made by the state treasurer, after approval by the Governor and Council as authorized by Article XI of the Constitution of Massachusetts. This payment will be made either one business day prior to the due date of the debt service or within three days after the receipt of the certification, whichever is later.

Political units using Section 19A should be aware of certain other features such as:

1. The Commonwealth may charge them for any administrative costs and any losses of interest income as a result of any related actions therefore.
2. Any payments of debt service, as well as any other charges made by the Commonwealth, are to be charged against the amounts otherwise payable or becoming payable from the state treasury to the city, town or district.

When the local accounting officer receives notification of such aid withheld, he should make and post an entry, as follows:

Dr. Debt Service Appropriation	\$xxxx	
Cr. Estimated Receipts		\$xxxx

Amounts withheld by the
State Treasurer to cover
payments from State
Treasury under Chapter 44,
Section 19A.

Summary

The general court has recently adopted several enactments that enable a city, town, regional school district and any other district to utilize, under certain specific conditions, their state aid to meet debt obligations.



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The provisions of this section are available to a city, town, regional school district or any other district that is unable to meet their debt obligations upon maturity. Political subdivisions that qualify, as explained within the section of procedures below, will have their debt service paid by the state treasurer from monies payable or due to be payable from the state treasury to the subdivision for the remainder of the fiscal year. Furthermore, in the case of insufficient availability, the state treasurer will continue to pay the amount remaining in default, as soon as practical in the next fiscal year, to the extent that there are monies payable or estimated to be payable for that year.

The procedures for application of the provisions of section 19A are as follows:

1. A city, town or district (including a regional school district) treasurer may initiate the process if he/she thinks that they cannot or are likely not to be able to, in whole or in part, meet a required maturing debt service obligation.

The treasurer must notify one of the following:

<u>Type of Government</u>	<u>Political Office or Board to be Notified</u>
City with a city manager.....	city manager
City without a city manager.....	mayor
Town with a town council.....	town manager or town council
Town without a town council.....	board of selectmen
Regional school district.....	regional district school committee
Other type district.....	prudential committee or commissioners

2. If upon investigation, whether initiated by the treasurer or not, the office or board listed in 1 above determines that a payment of debt will not or is likely not to be made, such official or board shall certify the default or potential default to the Commissioner of Revenue.

3. The Commissioner of Revenue, upon receipt of certification noted in step 2, shall immediately investigate the circumstances. If this investigation supports the local unit's contention, the Commissioner of Revenue will certify the inability, the amount of the due or overdue payment and the name of the paying agent to the state treasurer.



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Chapter 44A creates a new debt instrument entitled a "qualified bond." This method is available to any unit that chooses to pursue this type of financing as long as they fulfill the requirements specified in Chapter 44A as well as the one determined by the Emergency Finance Board. Unlike the provisions of Chapter 44, Section 19A, the political unit does not have to be in financial difficulty in order to utilize the bonds permitted under this "Qualified Bond Act." Furthermore, this act does not pledge the full faith and credit of the Commonwealth as security nor does it guarantee that there will continue to be local aid distributions.

Chapter 44, Section 19A, on the other hand, is strictly meant to help a fiscally troubled local governmental unit from going into default on a debt service obligation.

COMMONWEALTH OF MASSACHUSETTS
EMERGENCY FINANCE BOARD
STATE HOUSE--ROOM 126A
BOSTON, MA.

--PRELIMINARY APPLICATION--

_____ , 19__
The _____ hereby requests the
city, town or regional school district
Emergency Finance Board's authorization, as provided under
Chapter 44A, M.G.L., to issue bond(s) pursuant to the Qualified
Bond Act. Such action has been approved by _____
council and city manager,
_____ at
mayor, selectmen or regional school district school committee
their _____, 19__ meeting.
date

We authorize the Board to commence with the prescribed investigation
or take any other appropriate action as required by the Act. The
cost of such investigation or other related action will be paid
by us. We understand that the minimum cost of this investigation
will be \$250.00.

We acknowledge that we are familiar with all of the provisions of
the Qualified Bond Act and will adhere to all of its provisions.

Amount of Proposed Bond(s) _____

Term Requested _____

Purpose or Purposes of Bond Issue _____

Respectfully submitted

name

Dated _____ Treasurer of _____
city, town or Regional School
district

Note: In addition to the information requested within this preliminary application, the Board would appreciate the following:

- A. A certified copy of the vote authorizing the incurrence of this debt issue, including the vote count.
- B. A certified copy of the vote authorizing the treasurer's filing of this application.
- C. A full description of the purpose and need for the improvements to be financed from the proceeds of the proposed qualified bond(s).
- D. A projected cash flow statement that demonstrates your entity's ability to continue to provide other essential public improvements and services and to pay other debt service obligations when due for the anticipated period of this indebtedness.
- E. A copy of your most recent financial statement (s).
- F. A debt maturity schedule.
- G. A capital improvement budget or statement of estimated requirements for the next five (5) years.

Submission of the information suggested above will assist the Board in carrying out its required investigation on a timely basis.

The Board must act within sixty (60) days after the date of your submission or your application will be automatically deemed as disapproved. Therefore, it is important that you present as much information as possible to support your request with this preliminary application.

3.

S-424

Comm. from Paul E. Healy, City Clerk, transmitting comm. from L. Joyce Hampers, Comm., Dept. of Revenue, relative to two laws that relate to municipal indebtedness.

In City Council,

May 17, 1982

5/17/82

- Placed on File -