

SECTION .0500 - QUALIFIED ENERGY CONSERVATION BONDS

04 NCAC 01H .0501 PROCEDURES AND CRITERIA FOR ALLOCATION OF QUALIFIED ENERGY CONSERVATION BONDS

(a) The North Carolina Tax Reform Allocation Committee (the "Committee") shall allocate Qualified Energy Conservation Bond ("QECB") capacity to entities eligible to issue the bonds under 26 U.S.C.S. 54D as follows:

- (1) To "large local governments," as the term is used in 26 U.S.C.S. 54D(e)(2) in the amounts and manner as directed by the United States Internal Revenue Service ("IRS") in 26 U.S.C.S. 54D and all relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as modified, amended or supplemented (as listed at <http://www.irs.gov/irb/2009-16irb/ar10.html#d0e3578>). For purposes of calculating the populations of local governments to determine which constitutes a "large local government," the Committee shall use population estimates as of July 1, 2007, as directed by the IRS (as listed at <http://www.census.gov/popest/data/counties/totals/2009/CO-EST2009-01.html> and <http://www.census.gov/popest/data/cities/totals/2009/SUB-EST2009-4.html>).
- (2) To "Indian tribal governments," as the term is used in 26 U.S.C.S. 54D(h) in the amounts as directed by the IRS in 26 U.S.C.S. 54D and relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as modified, amended or supplemented (as listed at <http://www.irs.gov/irb/2009-16irb/ar10.html#d0e3578>).

(b) Following the allocations described in Paragraph (a) of this Rule, the Committee shall allocate the remaining QECB capacity to other issuers. The allocation shall be made by the Committee upon completed application by an issuer, and after consideration of the following factors:

- (1) The ability of the State to ensure that at least 70 percent of the State's allocation is used for government projects, and no more than 30 percent for projects considered QECB private activity bonds under IRS rules, regulations and guidelines;
- (2) The extent to which the project constitutes an eligible conservation purpose under 26 U.S.C.S. 54D and all implementing notices provided by the IRS (including IRS Notice 2009-29), as may be modified, amended or supplemented;
- (3) The extent to which the project demonstrates the potential to conserve energy;
- (4) The extent to which the project supports the development or implementation of energy conservation technology;
- (5) The extent to which the project uses renewable resources to produce energy;
- (6) The number of citizens benefiting from the project;
- (7) The estimated number of jobs to be produced by the projects (for private activity allocations) and the amount of QECB authority per job produced;
- (8) The readiness of the project to proceed;
- (9) The certainty of the issuer using the allocation within the estimated timelines;
- (10) The amount of other public and private funding leveraged by the QECB allocation;
- (11) The amount of local community support for the project;
- (12) Whether the unit of local government is in competition with another state for project benefits such as jobs and tax base;
- (13) Whether the availability of the allocation is a crucial part of attracting a new company or keeping an existing company in place;
- (14) Whether the requested allocation will benefit a project for which an eligible issuer is already issuing QECBs;
- (15) The ability of the unit of local government or company benefiting from the QECB to obtain financing and close the issue in a timely manner, including demonstration of a commitment from a bank or other financial institution to purchase or underwrite the QECBs;
- (16) The total amount of capacity available to the Committee for allocation in relation to the total number of pending requests for allocation;
- (17) The tier status of the county in which the project is to be located, as defined in G.S. 143B-437.08; and
- (18) The geographic location of the project in light of the location of other projects benefitting from QECB capacity.

(c) If so required by G.S. Chapter 159 or G.S. 160A-20, local governments shall coordinate issuance of QECBs with and through the North Carolina Local Government Commission (the "LGC") in the Office of the North Carolina State Treasurer and shall obtain approval from the LGC for QECB issuance.

(d) Entities allocated QECB capacity by the Committee and entities who issue QECBs shall ensure compliance with all federal and state laws, rules, regulations and requirements applicable to the allocation or issue.

(e) Entities receiving an allocation under Paragraph (a) of this Rule ("large local governments" and "Indian tribal governments") may waive or reallocate to the State of North Carolina all or a portion of their allocation. Upon the State's receipt of any additional QECB capacity through any waiver or reallocation, the Committee shall allocate the capacity to eligible issuers in the manner described in Paragraph (b) of this Rule.

(f) To ensure timely use of any QECB allocation, the Committee shall attach to an allocation of capacity made under Paragraph (b) of this Rule contingencies relating to a time deadline for issuance of the QECBs pursuant to the allocated capacity and contingencies limiting the use of the allocated QECB capacity for public or private activity bonds.

History Note: Authority G.S. 143-433.6(d); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475;

Emergency Adoption Eff. July 15, 2011;

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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.