

SECTION .0500 - QUALIFIED ENERGY CONSERVATION BONDS

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

The North Carolina Tax Reform Allocation Committee (the "Committee") is directed to allocate Qualified Energy Conservation Bond ("QECCB") capacity to eligible issuers of such bonds as follows:

- (1) To "large local governments," as such term is used in 26 U.S.C.S. 54D(e)(2) in such amounts and manner as specifically 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 may be modified, amended or supplemented. 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.
- (2) To "Indian tribal governments," as such term is used in 26 U.S.C.S. 54D(h) in such amounts as may be specifically 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 may be modified, amended or supplemented.
- (3) Following the allocations described in Items (1) and (2) of this Rule, the Committee shall allocate the remaining QECCB capacity to eligible issuers. Such allocation shall be made by the Committee in its sole discretion, upon completed application by an eligible issuer, and after consideration of any factor the Committee deems relevant in its good faith and discretion, including (without limitation) some or all of the following factors:
 - (a) 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 QECCB private activity bonds under IRS rules, regulations and guidelines;
 - (b) The extent to which the project constitutes an eligible conservation purpose under 26 U.S.C.S. 54D and all relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as may be modified, amended or supplemented;
 - (c) The extent to which the project demonstrates the potential to directly conserve energy;
 - (d) The extent to which the project supports the development or implementation of innovative energy conservation technology;
 - (e) The extent to which the project uses renewable resources to produce energy;
 - (f) The number of citizens benefiting from the project;
 - (g) The estimated number of jobs to be produced by the projects (for private activity allocations) and the amount of QECCB authority per job produced;
 - (h) The readiness of the project to proceed;
 - (i) The certainty of the issuer using the allocation within the estimated timelines;
 - (j) The amount of other public and private funding leveraged by the QECCB allocation;
 - (k) The amount of local community support for the project;
 - (l) The best interests of the State of North Carolina with regard to economic development, energy conservation, green initiatives and the general prosperity of the State;
 - (m) Whether the unit of local government is in competition with another state for project benefits such as jobs and tax base;
 - (n) Whether the availability of the allocation is a crucial part of attracting a new company or keeping an existing company in place;
 - (o) Whether the requested allocation will benefit a project for which an eligible issuer is already issuing QECCBs;
 - (p) The ability of the unit of local government or company benefiting from the QECCB 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 QECCBs;
 - (q) The total amount of capacity available to the Committee for allocation.
- (4) Where required by law, local governments shall coordinate issuance of QECCBs 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 QECCB issuance.
- (5) Entities allocated QECCB capacity by the Committee and/or entities who issue QECCBs shall ensure compliance with all federal and state laws, rules, regulations and requirements applicable to such allocation or issue.

- (6) Entities receiving an allocation under Items (1) and (2) of this Rule ("large local governments" and "Indian tribal governments") have the right to waive and/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 such waiver or reallocation, the Committee shall allocate such capacity to eligible issuers in the manner described in Item (3) of this Rule.
- (7) The Committee shall attach such contingencies upon any allocation of QECB capacity made under Item (3) of this Rule as the Committee may deem appropriate, including (without limitation) 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.