

## **SUBCHAPTER 01H - PRIVATE ACTIVITY BOND VOLUME CAPACITY PROGRAM**

### **SECTION .0100 - GENERAL DESCRIPTION**

#### **04 NCAC 01H .0101 BACKGROUND**

The rules of this Subchapter apply to the administration of the Private Activity Bond Volume Capacity Program. Made necessary by Federal legislation, this program will relate to a type of financing now defined and controlled as "private activity" bonds. Executive Order No. 37, issued by Governor James G. Martin on March 17, 1987 is a response to federal mandates. It is hereby referenced and incorporated herein as if fully set out in this Paragraph.

*History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law);  
Eff. December 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

#### **04 NCAC 01H .0102 OBJECTIVES**

The purpose of this Subchapter is to set out the procedures and criteria by and under which the North Carolina Federal Tax Reform Allocation Committee will carry out the duties set out in Executive Order No. 37 and Chapter 588 of the 1987 General Assembly Session of North Carolina.

*History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law);  
Eff. December 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

#### **04 NCAC 01H .0103 DEFINITIONS**

- (a) Act - shall mean the Tax Reform Act of 1986, as amended.
- (b) Committee - shall mean the North Carolina Federal Tax Reform Allocation Committee created by Executive Order No. 37.
- (c) Department - shall mean the North Carolina Department of Commerce.
- (d) Issuer - shall mean the entity authorized to issue Private Activity Bonds, except that in the case of Private Activity Bonds issued pursuant to Article 22 of Chapter 160A of the General Statutes of North Carolina, or issued solely pursuant to regulations, rules, procedures or rulings of the Internal Revenue Service of the United States, "Issuer" shall mean the municipal corporation which created the issuing commission or the municipal corporation which approved the issuance of the bonds pursuant to such regulations, rules, procedures or rulings.
- (e) "Private Activity Bond" - will mean any instrument of debt defined by federal law and regulation as a Private Activity Bond, thusly requiring an allocation of Private Activity Bond Volume capacity.
- (f) "Private Activity Bond Volume Capacity" - will constitute a statewide resource which is measured by a formula contained in the Federal Tax Reform Act of 1986, as amended. The resource will constitute a total volume limitation of such bonds that can be issued by North Carolina issuers.
- (g) "Uniform Volume Limitations" - shall mean the total volume capacity for North Carolina allowed by the formula contained in federal legislation pertaining to private activity bonds.
- (h) "Election as Carryforward Purpose" - shall mean a designation made by the committee under the definitions continued in federal legislation. Generally, it allows an allocation made from the present year volume capacity to be used in a named subsequent year.

*History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law);  
Eff. December 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

### **SECTION .0200 - APPLICATIONS AND PROCEDURES**

#### **04 NCAC 01H .0201 GENERAL**

This Section provides the application procedures which shall be followed, including data and information submissions, before the committee will make the final decision relating to allocations of capacity for private activity bonds.

*History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

#### **04 NCAC 01H .0202 INFORMATION AND APPLICATIONS**

- (a) Issuers and interested parties may obtain general information pertinent to this program at:
- (1) The North Carolina Department of Commerce, Commerce Finance Center, 4318 Mail Service Center, Raleigh, NC 27699, (919) 814-4613.
  - (2) Department of State Treasurer, 3200 Atlantic Avenue, Raleigh, NC 27604, (919) 814-4300.
- (b) Applications may be filed at either of the above addresses, but for the most part, should be directed to the Director of the Commerce Finance Center in care of the Industrial Financing Group in the Department of Commerce, 4318 Mail Service Center, Raleigh, NC 27699, (919) 814-4613.
- (c) Applications will include the following as a minimum:
- (1) Pertinent facts as to the project being financed;
  - (2) Details of sale and market distribution;
  - (3) Details as to the economic benefit to the area impacted by the project;
- (d) Applications will be processed by the Director or staff available to the Director.

*History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016; Amended Eff. December 1, 2019.*

#### **04 NCAC 01H .0203 FORMAL PROCEDURES: APPROVAL**

When the committee can approve the Allocation of Capacity, the chairman, or his designee, will indicate in writing and describe any terms or conditions of the allocation, including the expiration date of the allocation. Any unused portion of the allocation will revert back to the statewide pool of volume resource. The use of any allocation is predicated on the Issuer of the bonds, within ten business days after such issue, advising in writing, that the allocation has been used, and stating the amount of unused allocation. All allocations will be issued with a stated time of expiration. If the Issuer becomes aware that the bond closing cannot be effected within the time scheduled, he may apply for an extension. In the case of a time extension, the Issuer will provide written confirmation from all parties to the transaction that they have seen and agreed to all terms and conditions for the financing.

*History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

#### **04 NCAC 01H .0204 FORMAL PROCEDURES: DENIAL**

When the committee is unable to approve the application, the chairman, or his designee, will so indicate in writing, including with specificity, the reasons for such denial.

*History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

### **SECTION .0300 - REVIEW CRITERIA**

#### **04 NCAC 01H .0301 GENERAL**

It is the purpose of this Section to specify the standards and the criteria the committee will use in making decisions.

*History Note:* Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law);  
Eff. December 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

**04 NCAC 01H .0302 ESTABLISHMENT OF AVAILABILITY CAPACITY**

The committee will determine the amount of the Uniform Bond Limitations for Private Activity Bonds available in North Carolina for the pertinent years. These formulas are contained in federal legislation.

*History Note:* Authority G.S. 143B-429; 143B-320; Ch. 588 (1987 Session Law);  
Eff. December 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

**04 NCAC 01H .0303 CONSIDERATIONS OF THE CAPACITY RESOURCE USAGE AND DEMAND**

The committee will consult with informed authorities, with Issuers, and with legislative lenders. When it appears that the demand for the resource will be so large that the needs of all issuers might not be met, the committee will make allocations on a first-come, first-serve basis. When demand, or potential demand, becomes so large that the resource will prove to be inadequate, the committee would consider, but not limit their consideration of approvals to the following:

- (1) the overall good of the state and the people of North Carolina;
- (2) relative economic need and benefit to the Issuer and the area to be impacted by the following:
  - (a) whether or not alternative structure or mechanisms for the project agreements and the financing documents might resolve or reduce the need for a "private activity bond" capacity allocation;
  - (b) whether or not the Issuer is in competition with another out of state Issuer for the project benefits such as jobs and tax base;
  - (c) whether or not the availability of the allocation is a crucial part of keeping an existing industrial plant open, whereas the alternatives would be for that plant to close.

*History Note:* Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law);  
Eff. December 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

**SECTION .0400 – RECOVERY ZONE BONDS**

**04 NCAC 01H .0401 BACKGROUND**

**04 NCAC 01H .0402 DEFINITIONS**

**04 NCAC 01H .0403 PROCEDURES**

**04 NCAC 01H .0404 REALLOCATION**

*History Note:* Authority G.S. 143-433.6(c); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475;  
Emergency Adoption Eff. October 30, 2009;  
Temporary Adoption Eff. December 23, 2009;  
Temporary Rule Expired June 30, 2012.

**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 ("QECCB") 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;  
Temporary Adoption Eff. September 8, 2011;  
Eff. July 1, 2012;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*