

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

November 18, 2009

DETERMINATION AND DISTRIBUTION OF THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) QUALIFIED ENERGY CONSERVATION BOND ALLOCATION AND CONSIDERATION OF AND APPROVAL TO DISSEMINATE RELATED PROPOSED REVISIONS TO CDLAC PROCEDURES FOR A 30-DAY PUBLIC COMMENT PERIOD

(Agenda Item No. 7)

ACTION:

Approve the distribution of proposed Qualified Energy Conservation Bond Procedures for a 30-day public comment period.

BACKGROUND:

IRS Notice 2009-29 of the American Recovery and Reinvestment Act of 2009 provided that the State of California would receive \$381,329,000 in Qualified Energy Conservation Bond (“QECCB”) allocation. On July 22, 2009, this allocation was distributed directly by the U.S. Department of Treasury to large local governments. For purposes of the QECCB program, large local government means any county or any municipality that has a population of 100,000 or more. It is important to note that Indian Tribal Governments “shall be treated as a large local government, except that (1) an Indian tribal government shall be treated as located within a State to the extent of so much of the population of such government as resides within the State, and (2) any bond issued by an Indian tribal government shall be treated as a qualified energy conservation bond only if issued as part of an issue the available project proceeds of which are used for purposes for which such Indian tribal government could issue bonds to which Section §103(a) applies of the Internal Revenue Code”. The distributions to large local governments were as follows: the State received **\$12,746,103**; counties collectively received **\$197,669,919**; municipalities collectively received **\$170,173,417**; and Indian tribal governments collectively received **\$739,561**.

DISCUSSION:

IRS Notice 2009-29 requires that the calculation of the QECCB Allocation for counties, large municipalities and tribal governments be based on information released by the United States Census Bureau for the period that is closest in time to that used for the State and consists of information as of July 1, 2007. This resulted in an allocation for the counties and large municipalities of **\$367,843,336**, which is 96% of the total allocation of the State’s QECCB Allocation. The remaining 4% of the State’s allocation was reserved for State Entities and Indian Tribal Governments. Specifically, 3% of the State’s allocation (**\$12,746,103**) was reserved for State Entities and 1% of the State’s allocation was reserved for Indian Tribal Governments (**\$739,561**). The Notice further requires that “allocation to a State or large local government shall be allocated in turn by the State or large local government to issuers within the State in a manner that results in the use of not less than 70 percent of the allocation to such State or large local government to designate bonds that are not private activity bonds.” Conversely, the Notice mandates that no more than 30 percent of the allocation to such State or large local government be used to designate bonds that are private activity bonds. The proceeds of the Qualified Energy Conservation Bonds can be used for one or more of the following “qualified conservation purposes”:

- a) Capital expenditures incurred for purposes of (i) reducing energy consumption in publicly-owned buildings by at least 20 percent, (ii) implementing green community programs (including the use of loans, grants, or other repayment mechanisms to implement such programs), (iii) rural development involving the production of electricity from renewable energy resources, or (iv) any qualified facility eligible for the production tax credit under Section 45 of the IRS Code.

- b) Expenditures with respect to research facilities, and research grants, to support research in (i) development of cellulosic ethanol or other non-fossil fuels, (ii) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels, (iii) increasing the efficiency of existing technologies for producing non-fossil fuels, (iv) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation, or (v) technologies to reduce energy use in buildings.
- c) Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles uses for mass commuting.
- d) Demonstration projects designed to promote the commercialization of (i) green building technology, (ii) conversion of agricultural waste for use in the production of fuel or otherwise, (iii) advanced battery manufacturing technologies, (iv) technologies to reduce peak use of electricity, or (v) technologies for the capture and sequestration of carbon dioxide emitted from combining fossil fuels in order to produce electricity.
- e) Public education campaigns to promote energy efficiency.

However, if the bond issue is a private activity bond, the term “qualified conservation purposes” shall not include any expenditure that is not a capital expenditure. However, bonds issued for the purposes of providing loans, grants, or other repayment mechanisms for capital expenditures to implement green community programs are not treated as private activity bonds for purposes of Section 54D(e)(3) of the IRS Code.

RE-ALLOCATION OF QECS

- A. CDLAC will administer both the allocation of the State’s allotment of QECB authority and the re-allocation of the QECB allocation waived by the counties, large municipalities and tribal governments. As such, CDLAC has developed proposed Procedures (See Attachment A).
- B. Specifically, CDLAC will both allocate the State’s allotment of QECB authority and re-allocate allocation that has been waived by a county, large municipality, or tribal government in the following manner:
 - 1. As CDLAC’s first priority, the counties, large municipalities and tribal governments that waived their designated allocation may request up to their waived allocation amount by providing the following documentation: a) a letter requesting the amount of allocation and a description of the proposed project; b) a resolution that the issuer has approved the project; c) documentation of the appropriate governing body’s or bodies or elected official’s approval of the Project (private activity bonds only); d) written opinion from bond counsel which states that the project being funded with QECS qualifies under the federal guidelines; e) a commitment letter from the purchaser or underwriter for the amount of the allocation requested.
 - 2. City, County and Tribal Applicants that are seeking an allocation amount above their initial allocation award and State Entity Applicants will have their applications evaluated, ranked and awarded Allocations from the Qualified Energy Conservation Bond Reallocation Pool within their particular Project and/or Program pool. As such, CDLAC has established various project and/or program categories based on the various “qualified conservation purposes” established for the QECB allocation in IRS Notice 2009-29.

RECOMMENDATION:

Approve the allocation of ARRA Qualified Energy Conservation Bond Allocation and approve the distribution of proposed Qualified Energy Conservation Bond Procedures for a 30-day public comment period.

Prepared by Brady Hill.