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Qualified Energy Conservation Bond Allocation Procedures

Introduction

Qualified Energy Conservation Bonds (QECBs) were first authorized by Congress in October 2008. At that time Congress allowed a maximum of \$800 million in QECB volume cap nationwide. In the February 2009 American Recovery and Reinvestment Act (ARRA), Congress increased the QECB volume cap to \$3.2 billion.

On September 8, 2009, Governor Gregoire signed Executive Order 09-06, giving the Department of Commerce the authority to administer the QECB volume cap and to adopt rules by which to do so. Commerce's goal in administering QECB allocations is to make the process as accessible and transparent as possible, and as consistent as possible with the allocation procedures for the annual tax-exempt private activity bond cap, within the direction provided by the ARRA and by guidance issued by the U.S. Treasury Department.

The total allocation for the state of Washington is \$67,944,000 in QECB issuing authority. QECB provisions instruct the states to distribute separate allocations to each large city or county (greater than 100,000 in population) and the tribes based on a ratio of the jurisdiction's population to the state population as a whole. The state will directly allocate the remaining authority to projects on a competitive basis. The rules Commerce has adopted to administer the allocations refer to the large cities, counties, and tribes that received allocations by formula as "Originally Awarded Localities" and refers to the formula allocations as "Original Allocations."

For each large jurisdiction's and the state's allocation as a whole, at least 70 percent of QECB authority must be used for government projects. No more than 30 percent may be used for private activities. Private activity QECB proceeds may only be used for capital expenditures for qualified business purposes.

Eligible Project Types

From the original federal legislation, qualified projects include:

- 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,
 - iii. rural development involving the production of electricity from renewable energy resources, or
 - iv. any qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and without regard to any placed in service date).
- B. Expenditures with respect to research facilities, and research grants, to support research in –
 - i. development of cellulosic ethanol or other non-fossil fuels,



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- 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 used 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 combusting fossil fuels in order to produce electricity.
- E. Public education campaigns to promote energy efficiency.

Original Allocations

Note: Under QECB regulations, at least 70 percent of each jurisdiction’s allocation must be used for government projects, and no greater than 30 percent may be used for private activities.

Table is organized by county population.

Jurisdiction	Population*	Total Allocation	70%	30%
King County	1,875,519			
Seattle	594,210	\$6,164,529	\$4,315,170	\$1,849,359
Bellevue	121,347	\$1,258,893	\$881,225	\$377,668
Balance of County	1,159,962	\$12,033,825	\$8,423,678	\$3,610,148
Pierce County	785,639			
Tacoma	196,520	\$2,038,763	\$1,427,134	\$611,629
Balance of County	589,119	\$6,111,713	\$4,278,199	\$1,833,514
Snohomish County	683,655	\$7,092,461	\$4,964,722	\$2,127,738
Spokane County	462,677			
Spokane City	200,975	\$2,084,980	\$1,459,486	\$625,494
Balance of County	261,702	\$2,714,982	\$1,900,488	\$814,495
Clark County	424,733			
Vancouver	161,436	\$1,674,790	\$1,172,353	\$502,437
Balance of County	263,297	\$2,731,529	\$1,912,070	\$819,459
Thurston County	245,181	\$2,543,588	\$1,780,512	\$763,076
Kitsap County	239,769	\$2,487,442	\$1,741,209	\$746,233
Yakima County	234,564	\$2,433,444	\$1,703,411	\$730,033
Whatcom County	196,529	\$2,038,856	\$1,427,199	\$611,657



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Jurisdiction	Population*	Total Allocation	70%	30%
Benton County	163,058	\$1,691,617	\$1,184,132	\$507,485
Skagit County	118,000	\$1,224,171	\$856,919	\$367,251
Cowlitz County	101,254	\$1,050,442	\$735,309	\$315,133
Tribes**	68,446	\$710,081	\$497,057	\$213,024
Balance of State	950,164	\$9,857,893	\$6,900,525	\$2,957,368
Totals	6,549,244	\$67,944,000	\$47,560,800	\$20,383,200

*City and County population figures are from the official U.S. Census Bureau 2008 estimates.

**Tribal population is calculated from U.S. Census Bureau 2000 census figures plus a 1.5% growth rate per year since then (overall 13.5% growth between 2000 and 2008), and counts self-identified members of all Washington-based tribes, whether federally recognized or not, regardless of place of residence.

Allocations and Reallocations

Under ARRA provisions, Originally Awarded Localities may issue QECBs themselves or may designate another unit of government, either state or local, to issue bonds from their Original Allocation, providing the project financed is fully within the jurisdiction of the Originally Awarded Locality. For example, a county may request a state issuer, such as the Washington Economic Development Finance Authority, or an Economic Development Corporation as a conduit issuer to issue a QECB on behalf of the county. The county may also choose to support a city's project by allowing the city to issue from the county's allocation, assuming the city's project falls completely within the county's jurisdiction. In these and similar situations, the Originally Awarded Locality (e.g. the county in the above examples) will be responsible for providing Commerce with documentation of how they intend to use their Original Allocation or allow a another issuer within their jurisdiction to use it.

If an Originally Awarded Locality is not able to or chooses not to use its Original Allocation or to offer it to another issuer within its jurisdiction, the authority may be reallocated to the state. Such authority may then be reallocated by Commerce to other issuers. Commerce has established a procedure by which an Originally Awarded Locality may affirm its intention to either use its Original Allocation or to reallocate its Original Allocation to the state. In addition, Commerce has established milestones by which an Originally Awarded Locality must provide information to the department demonstrating progress toward issuing a bond in a timely fashion. If an Originally Awarded Locality does not provide the requested information, Commerce may deem the Original Allocation to have been reallocated.

Commerce will conduct a competitive round beginning January 1, 2010 to allocate its initial \$9.8 million state allocation, and will announce a competitive process to award reallocations if and when any reallocated authority becomes available.

Allocation/Reallocation Timelines



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Milestone	Large Cities and Counties (formula allocations)	State Allocation and Reallocation Applicants (competitive)	Tribes (formula allocation)
November 23, 2009	Original Allocations announced	Competitive application round for state's allocation opened	Original Allocations announced
January 1, 2010	<i>Notice of Intent</i> form due to Commerce*		<i>Notice of Intent</i> form due to Commerce*
February 1, 2010	<i>Project Information Form</i> and supporting documentation due to Commerce	Applications due for state allocations	<i>Project Information Form</i> and supporting documentation due to Commerce
March 1, 2010		State allocation awards announced by Commerce	
As needed	Commerce will announce additional competitive reallocation rounds if and when reallocations become available		
January 1, 2011	State bond issuance milestone. Commerce will extend on a case-by-case basis with receipt of compelling evidence of progress toward issuance.		
As needed	Within 3 days of closing on the bond, a <i>Notification of Issuance</i> form must be filed with Commerce.		
*Note: To express an intention to issue QECBs on its Original Allocation, an Originally Awarded Locality only needs to have an official sign the <i>Notice of Intent</i> form and return the form to Commerce; if using the form to reallocate the Original Allocation to the state, a resolution of the governing bond must accompany the form, as described in #1 below.			

Reallocation Procedures

An Originally Awarded Locality is free to designate other issuers within its jurisdiction to use all or a portion of its Original Allocation by whatever procedure is mutually acceptable to both parties, on condition that the Originally Awarded Locality provides documentation of the designation to Commerce and ensures that all other Commerce requests for documentation are met.

However, there may be reasons why an Originally Awarded Locality would not be able to issue QECBs or to designate another issuer within the jurisdiction to issue from the Original Allocation. Some possible reasons include:

- Original Allocation too small for a cost effective issuance.
- Difficulty of finding a tax credit investor.
- Insufficient debt capacity to issue bonds.



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- Lack of qualified projects within the jurisdiction.

In such cases, ARRA provisions and Treasury guidance in Notice 2009-50 allow Original Allocations to be reallocated to the state, then passed on by the state to other issuers. The following procedures will apply to any reallocated QECB authority:

1. An Originally Awarded Locality that knows in advance it will not be using its Original Allocation may affirmatively reallocate the Original Allocation to the state by adopting a resolution of the governing body, marking the appropriate box on the *Notice of Intent* form, having the form signed by the appropriate official, and returning the form along with a copy of the resolution to Commerce by January 1, 2010.
2. If an Originally Awarded Locality needs more time to make a decision or to identify possible projects, they may use the Notice of Intent form to express an intention to use their Original Allocation, and may amend the *Notice of Intent* later if they determine they are unable to use the allocation and have decided to reallocate it to the state.
3. An Originally Awarded Locality intending to use their Original Allocation must provide Commerce with project information and supporting documents, or must request an extension of time to do so, by February 1, 2010. Supporting documents include *Bond Counsel* and *Underwriter Statement of Intent* forms or equivalent and a certified copy of an inducement resolution by the governing board.
4. If an Originally Awarded Locality has not provided Commerce with the requested documents by the due dates, and has not requested an extension, Commerce may issue a *Notice of Intent to Reallocate*, informing the Originally Awarded Locality that the state intends to reallocate the Original Allocation to another issuer.
5. The Originally Awarded Locality will have 15 days from receipt of a *Notice of Intent to Reallocate* in which to respond to Commerce with the requested documentation and to request Commerce reconsider the reallocation determination.
6. Commerce will respond to a request to reconsider a reallocation determination within 10 business days with a decision by the Assistant Director of the Local Government Division either to go forward with the reallocation or to grant an extension of the time in which the Originally Awarded Locality must demonstrate progress toward a QECB issuance.

Applying for an Allocation/Reallocation

To be considered on a competitive basis for an allocation of the state's \$9.8 million in QECB authority, a state or local issuer must provide the following items to Commerce by January 1, 2010:

- Completed QECB application form.
- Completed and signed *Bond Counsel Statement of Intent* form.
- Completed and signed *Underwriter Statement of Intent* form.
- Certified copy of an inducement resolution from the issuer's governing body.
- Completed and signed *Employment Security Agreement* form (for private activity projects).



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- Evidence of community support for the project (e.g. letters of support from the local jurisdiction, grant or loan funding available to the project from other sources, etc.).
- Allocation fee of 0.000277 times the amount of the allocation being requested, or \$500, whichever is greater.

To be considered for a reallocation award, an issuer must provide to Commerce all of the above by a date established and published by Commerce for that purpose. Should reallocated authority become available, Commerce will announce a competitive application round no less than 20 calendar days prior to the application due date.

State Allocation and Reallocation Criteria

In accordance with the intent of the QECB legislation, the Recovery Act, and state law, Commerce intends to use the following criteria to prioritize competitive allocation requests (not all criteria need to be demonstrated in a single project):

- At least 70 percent of the state's allocation must be used for government projects, and no more than 30 percent for private activities.
- The extent to which the project demonstrates the potential to directly conserve energy.
- The extent to which the project supports the development or implementation of innovative energy conservation technology.
- The extent to which the project uses renewable resources to produce energy.
- The number of citizens benefiting from the project.
- The number of jobs produced by the projects (for private activity allocations) and the amount of QECB authority per job produced.
- The readiness of the project to proceed.
- The certainty of the issuer using the allocation within the timelines.
- The amount of other public and private funding leveraged by the QECB allocation.
- The amount of local community support for the project.

Comments or Questions?

Commerce feels it is in the interest of the citizens of the state of Washington and is consistent with the intent of Congress in adopting the QECB provisions to ensure the bond issuing authority is used in a timely fashion for the purpose of providing both energy conservation and economic stimulus. The department has established these procedures and timelines, and has adopted them by emergency rule, in order to facilitate the public interest. Permanent rules will be adopted according to the procedures required in state law, including holding a public hearing, which will be conducted on January 6, 2010 at 2:00 in the Commerce first floor conference room in the Davis-Williams Building at 906 Columbia Street, Olympia.

For questions or more information about QECBs and other bond financing opportunities, visit the Bond Cap Allocation Program website at www.commerce.wa.gov/bondcap, or contact Liz Green-Taylor at 360-725-5021 or liz.green-taylor@commerce.wa.gov. The Commerce mailing address is PO Box 42525, Olympia, WA 98504-2525.