WEST VIRGINIA CODE CHAPTER 5B ARTICLE 7

WV Legislature

§5B-7-1. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(1) "Economic Development Authority" or "authority" means the West Virginia Economic Development Authority as continued in section five, article fifteen, chapter thirty-one of this code.

(2) "Recovery zone bonds" means recovery zone economic development bonds and recovery zone facility bonds, authorized under Section 1401 of Title I of Subtitle B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), that may be issued by states, counties, certain municipalities and other qualified issuers within each state before January 1, 2011.

(3) "Recovery zone economic development bond" means the term as defined in 26 U.S.C. §1400U-2.

(4) "Recovery zone facility bond" means the term as defined in 26 U.S.C. §1400U-3.

(5) "Volume cap" means the recovery zone bond volume limitation allocated to each state and to counties and municipalities within each state in accordance with 26 U.S.C. §1400U-1.

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§5B-7-2. Allocation of volume cap for recovery zone bonds; obligations not debt of state.

Pursuant to 26 U.S.C. §1400U-1(a)(3)(A), the State of West Virginia shall allocate the volume cap among the counties of the state in the same manner as described in Section 6.04 of Internal Revenue Service Notice 2009-50. Bonds, notes and other obligations issued pursuant to this article shall not constitute a debt or a pledge of the faith and credit or taxing power of this state and the holders and owners thereof shall have no right to have taxes levied by the Legislature for the payment of the principal thereof or interest thereon, but such bonds, notes and other obligations shall be payable solely from revenues and funds pledged for their payment as established in the authorizing orders, ordinances and resolutions of such issuers. All such bonds and notes, and all documents evidencing any other obligation, shall contain on the face thereof a statement to the effect that the bonds, notes or such other obligation as to both principal and interest, are not debts of the state but are payable solely from revenues and funds pledged for their payment.

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§5B-7-3. Certification and waiver of volume cap allocation.

(a) Preliminary certification. --

(1) Each county allocated volume cap in accordance with this article shall submit a preliminary certification to the Governor that includes:

(A) The amount of volume cap the county intends to use;

(B) The entity issuing each series of recovery zone bonds. If the county has suballocated volume cap to an entity, the certification shall include a copy of an order, ordinance or resolution of the county commission authorizing the suballocation;

(C) The projects, including, but not limited to, road transportation projects, to be financed by the issuance of each series of recovery zone bonds; and

(D) The financing plan for each series of recovery zone bonds, including the source of payment of the debt service of each series of recovery zone bonds.

(2) Preliminary certifications for recovery zone economic development bonds shall be submitted to the Governor on or before January 31, 2010.

(3) Preliminary certifications for recovery zone facility bonds shall be submitted to the Governor on or before February 28, 2010.

(4) Any portion of volume cap allocated to a county that is not certified for use by the county in accordance with this subsection is considered waived.

(5) A county may waive its allocation of volume cap by providing written notice of such waiver to the Governor on or before January 31, 2010, in the case of volume cap for recovery zone economic development bonds, or on or before February 28, 2010, in the case of volume cap for recovery zone facility bonds.

(b) Final certification. --

(1) Each county that has submitted a preliminary certification to the Governor shall submit a final certification to the Governor on or before July 31, 2010. The final certification shall establish: (i) That the county or other entity receiving a suballocation from the county has closed on each series of recovery zone bonds or has entered into a bond purchase agreement that requires closing on each series of recovery zone bonds prior to August 31, 2010; and (ii) the amount of volume cap used by the county.

(2) Any portion of volume cap allocated to a county that is not certified as used in accordance with this subsection is considered waived. However, if an entity receiving a suballocation from a county submits a timely certification pursuant to section five of this article, that suballocated portion of the county's volume cap is not considered waived.

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(3) If, after submitting a preliminary certification to the Governor, a county determines to waive any portion of its allocation of volume cap, it may waive its allocation of such portion by notifying the Governor in writing on or before July 31, 2010.

(c) Notice of waiver. -- The Governor shall provide timely written notice to the Economic Development Authority of any written volume cap waiver submitted by a county.

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§5B-7-4. Reallocation of volume cap.

(a) The Economic Development Authority shall reallocate volume cap that has been waived pursuant to this article. The authority may reallocate the volume cap to the state, state agencies, counties, municipalities or any other political subdivisions or any other eligible issuer authorized to issue recovery zone bonds pursuant to Section 5.04 of Internal Revenue Service Notice 2009-50.

(b) As soon as reasonably possible after the effective date of this section the authority shall adopt a procedure for the solicitation and receipt of applications, on a form and in a manner prescribed by the authority, for eligible issuers seeking reallocated volume cap.

(c) Within ninety days of receipt of written notice from the Governor the authority shall reallocate any amount of volume cap waived by a county pursuant to this article. The authority shall provide written notice of any reallocation to the entity receiving the reallocation.

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§5B-7-5. Suballocation of volume cap by counties; counties authorized to take action to issue recovery zone bonds.

Counties allocated volume cap pursuant to this article may, by order, ordinance or resolution of the county commission, suballocate such allocation to municipalities or any other eligible issuers authorized to issue recovery zone bonds pursuant to Section 5.04 of Internal Revenue Service Notice 2009-50. Each county that suballocates volume cap shall attach a copy of the order, ordinance or resolution authorizing the suballocation to the preliminary certification required in section three of this article. Entities receiving a suballocation pursuant to this section shall certify to the county and to the Governor no later than July 31, 2010, that the entity has closed on the recovery zone bonds using the volume cap suballocation or has entered into a bond purchase agreement that requires a closing on the recovery zone bonds prior to August 31, 2010. Counties shall be authorized to take any other action required by Internal Revenue Service Notice 2009-50 to issue recovery zone bonds.

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