

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-140
SENATE BILL 754**

AN ACT TO AMEND THE NORTH CAROLINA GENERAL STATUTES TO ALLOW THE STATE TO TAKE FULL ADVANTAGE OF THE EXPANSION OF EXISTING BOND PROGRAMS AND THE CREATION OF NEW BOND PROGRAMS UNDER THE AMERICAN RECOVERY AND REINVESTMENT TAX ACT OF 2009 (ARRTA).

The General Assembly of North Carolina enacts:

SECTION 1. Article 34B of Chapter 115C of the General Statutes reads as rewritten:

"Article 34B.

"Qualified Zone Academy Bonds, Bonds and Qualified School Construction Bonds.

"§ 115C-489.5. Qualified zone academy bonds; bonds and qualified school construction bonds; findings.

The General Assembly finds:

- (1) Section 226 of the Taxpayer Relief Act of 1997, as codified at ~~26 U.S.C. § 1397E~~, 26 U.S.C. § 54E, provides funds for school improvements through taxable qualified zone academy bonds. Ninety-five percent (95%) or more of the proceeds of a qualified zone academy bond issue must be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency.
- (2) Partnerships between private entities and local schools are promoted through the use of qualified zone academy bonds. Issuers must certify that they have received written commitments from one or more private entities to make qualified contributions valued at ten percent (10%) of the proceeds of the issue.
- (2a) Section 1521, et seq., of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA), enacted as 26 U.S.C. § 54F, provides a new source of funds for construction, rehabilitation, or repair of public school facilities or for acquisition of land for public school facilities through the issuance of qualified school construction bonds.
- (3) Eligible taxpayers may receive federal tax credits for holding the qualified zone academy ~~bonds, bonds~~ or qualified school construction bonds. It is intended that the qualified zone academy bonds and qualified school construction bonds be sold at par value—a price so that the tax credits received ~~are instead~~ produce the economic equivalent of interest that otherwise would have been paid on the bonds. Therefore, issuers of qualified zone academy bonds or qualified school construction bonds are obligated to repay the principal amount of the qualified zone academy bonds or qualified school construction bonds but need not make interest payments.
- (4) Applicable federal law limits the amount of qualified zone academy bonds and qualified school construction bonds that may be issued in North Carolina in a calendar year. The amount of qualified school construction bonds that may be issued in the State is divided between amounts specifically designated for identified local school districts pursuant to ARRTA ("local allocation") and amounts allocated to the entire State for use throughout the State ("statewide allocation").

"§ 115C-489.6. Administration; consultation; issuance of bonds.

(a) ~~State Board of Education to Administer QZAB Program.~~ – The State Board of Education is designated the State education agency responsible for administering the qualified



zone academy bond program in North Carolina for the purposes of ~~26 U.S.C. § 1397E-26~~ U.S.C. § 54E. The State Board of Education shall perform all activities required to implement and carry out the qualified zone activity bond program in North Carolina. Those activities include:

...

(a1) Qualified School Construction Bond Program. – The State Board of Education is designated the State education agency responsible for administering the statewide allocation of authority to issue qualified school construction bonds under 26 U.S.C. § 54F. The State Board of Education shall perform all activities required to implement and carry out the statewide allocation for the qualified school construction bond program in North Carolina. Those activities include:

- (1) Designing an application process under which proposals may be solicited from issuers wishing to issue qualified school construction bonds pursuant to the statewide allocation.
- (2) Awarding the State's allocation of total funds among selected applicants and establishing conditions upon the usage of the allocation. These conditions may include:
 - a. Requiring that the bond proceeds be used for purposes permitted under 26 U.S.C. § 54F.
 - b. Conditions designed to assure that the allocation is used in a timely manner and that the allocations are made in accordance with the requirements of federal statutes, regulations, and rulings.
- (3) Confirming that the terms of any qualified school construction bonds issued in accordance with this program are consistent with the terms of the federal program.
- (4) Acting as the State entity designated to receive notice from any local school district that it will not utilize its local allocation so that the unused resource will become part of the statewide allocation. Local school districts receiving a local allocation are hereby directed to coordinate the use of such allocation with the State Board of Education so that any local allocation that will not be used by the local school district becomes eligible for use as part of the statewide allocation.

(b) Assistance. – The Department of Public Instruction shall provide the State Board of Education any support it requires in carrying out this section.

(c) Consultation. – In reviewing applications and awarding allocations, the State Board of Education shall consult with the Local Government Commission to determine whether a prospective issuer of qualified zone academy bonds or qualified school construction bonds is able to issue or incur marketable obligations.

(d) Issuance of Bonds. – ~~Any bonds designated as qualified zone academy bonds or qualified school construction bonds~~ may be issued pursuant to the applicable provisions of and in compliance with the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes, or pursuant to the applicable provisions of and in compliance with G.S. 160A-20, to the extent authorized by G.S. 153A-158.1. As provided in G.S. 159-123(b), ~~bonds designated as qualified zone academy bonds or qualified school construction bonds~~ to be issued pursuant to the Local Government Bond Act may be sold by the Local Government Commission at private sale."

SECTION 2. G.S. 143-433.6 is amended by adding two new subsections to read:

"(c) The General Assembly further finds and determines that section 1400U-3 of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA) added a new type of exempt facility bond called "recovery zone facility bonds" to be used to finance construction, renovation, and equipping of recovery zone property for use in any trade or business in a recovery zone, all as defined in ARRTA, and a new type of governmental bond called "recovery zone economic development bonds." The ARRTA provides a formula for allocation of authority to issue recovery zone facility bonds and recovery zone economic development bonds to the states and by which the authority is to be reallocated by the State to counties and large municipalities within the State.

(d) The General Assembly further finds and determines that section 54D of the Internal Revenue Code of 1986, as amended, permits the issuance of tax credit bonds called "qualified energy conservation bonds" (QECBs), the proceeds of which must be used for certain energy

conservation purposes enumerated in section 54D. Section 54D and ARRTA provide a national bond limitation for the issuance of QECBs, and the Treasury Department has allocated that authority among the states. Under section 54D, the United States is required to reallocate the authority to issue QECBs to the counties and large local governments within the states based on population, in accordance with the guidelines provided by the Treasury Department, and to assure that not more than thirty percent (30%) of the QECBs issued in a state are used for private activity bonds, as defined in section 54D."

SECTION 3. G.S. 143-433.8 reads as rewritten:

"§ 143-433.8. Duties.

The Committee shall perform the following duties:

- (1) Manage the allocation of private activity bonds, low-income housing credits, ~~and qualified public educational facility bonds~~ recovery zone facility bonds, recovery zone economic development bonds, and qualified energy conservation bonds and receive advice from bond issuers, elected officials, and the General Assembly.
- (2) Continue to monitor bond markets, economic development financing trends, school financing trends, housing markets, and tax incentives available to induce events and programs favorable to North Carolina, its cities and counties, and individual citizens.
- (3) Continue to study the ways in which North Carolina can best and most fairly manage and utilize the allocation of private activity bonds, low-income housing credits, ~~and qualified public educational facility bonds~~ recovery zone facility bonds, recovery zone economic development bonds, and qualified energy conservation bonds.
- (4) Report to the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Revenue Laws Study Committee as requested and on not less than an annual basis. The annual report is due by November 1 of each year."

SECTION 4. G.S. 143-433.9(a) reads as rewritten:

"(a) To provide for the orderly and prompt issuance of ~~private activity bonds and qualified public educational facility bonds~~, there are hereby proclaimed the allocation of which is managed under this Article, the Committee must follow formulas for allocating the following: (i) the unified volume limitation, (ii) the state housing credit ceiling, and (iii) the annual aggregate limitation on the face amount of qualified public educational facility bonds, (iv) the limitation on issuance of recovery zone facility bonds, (v) the limitation on issuance of recovery zone economic development bonds, and (vi) the limitation on issuance of qualified energy conservation bonds. The unified volume limitation for all issues of private activity bonds, other than qualified public educational facility ~~bonds~~ and recovery zone facility bonds, in North Carolina shall be considered as a single resource to be allocated under this Article. The annual aggregate limitation on the face amount of qualified public educational facility bonds for all issues in North Carolina shall be considered as a single resource to be allocated under this Article. The Committee shall issue the following: (i) allocations of the unified volume limitation, (ii) allocations of the state housing credit ceiling, ~~and~~ (iii) allocations and reallocations of the aggregate limitation on the face amount of qualified public educational facility bonds, (iv) allocation and reallocation of the authority for issuance of recovery zone facility bonds allocated to the State, (v) allocation and reallocation of the authority for issuance of recovery zone economic development bonds allocated to the State, (vi) allocation and reallocation of authority for issuance of qualified energy conservation bonds allocated to the State, and (vii) allocation of other limitations on authority to issue bonds as may be directed by the Governor. The Committee shall set forth procedures for making such allocations and in the making of such allocations shall take into consideration the best interest of the State of North Carolina with regard to the economic development, school facility needs, energy conservation, green initiatives, and general prosperity of the people of North Carolina. In making the initial allocations for recovery zone facility bonds and recovery zone economic development bonds, the Committee shall follow the formula provided in section 1400U-1(a)(3) of ARRTA. In making the initial allocation for qualified energy conservation bonds, the Committee shall follow the guidelines provided in section 54D of the Internal Revenue Code of 1986. The Committee shall make all elective carryforwards of the unused unified volume ~~limitation and limitation~~, the annual aggregate limitation on the face amount of qualified public

educational facility bonds on behalf of the State, bonds, recovery zone facility bonds, qualified energy conservation bonds, and any other bonds or tax credits over which it has allocation authority on behalf of the State. The Committee shall monitor the issuance of qualified energy conservation bonds to ensure that not more than thirty percent (30%) of such bonds are used for purposes that would be treated as private activity bonds under the Internal Revenue Code of 1986, as amended. The Committee is authorized to establish a procedure to monitor whether the initial allocations of recovery zone facility bonds or recovery zone economic development bonds to counties and large municipalities pursuant to ARRTA will be utilized, for an allocation that will not be utilized to be waived by notice to the Committee, and for the reallocation of the waived allocation to other projects that qualify pursuant to ARRTA."

SECTION 5. G.S. 159-123(b) reads as rewritten:

- "(b) The following classes of bonds may be sold at private sale:
- (1) Bonds that a State or federal agency has previously agreed to purchase.
 - (2) Any bonds for which no legal bid is received within the time allowed for submission of bids.
 - (3) Revenue bonds, including any refunding bonds issued pursuant to G.S. 159-84, and special obligation bonds issued pursuant to Chapter 159I of the General Statutes.
 - (4) Refunding bonds issued pursuant to G.S. 159-78.
 - (5) Refunding bonds issued pursuant to G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
 - (6) Bonds designated as qualified zone academy bonds pursuant to G.S. 115C-489.6, the ownership of which results in a tax credit to the owners thereof pursuant to the provisions of the federal income tax laws if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
 - (7) Project development financing debt instruments.
 - (8) General obligation bonds issued pursuant to the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" (or comparable category if stated differently) or that are unrated and that are not described in subdivisions (1) through (7) of this subsection that are sold prior to December 31, 2010.
 - (9) Bonds that are part of an issue in which the interest payments on some or all of the bonds is intended to be subsidized by payments from the federal government pursuant to the provisions of the federal tax laws, if the Local Government Commission determines that a private sale is in the best interest of the issuing unit."

SECTION 6. G.S. 159C-3 reads as rewritten:

"§ 159C-3. Definitions.

The following definitions apply in this Chapter:

- ...
- (3a) Code. – The Internal Revenue Code of 1986, as amended.
- ...
- (6b) Industrial project. – Any industrial or manufacturing factory, mill, assembly plant, or fabricating plant; freight terminal; industrial research, development, or laboratory facility; industrial processing facility; facility used in the manufacturing or production of tangible personal property; facility used in the creation or production of intangible property as described in section 197(d)(1)(C)(iii) of the Code; or distribution facility for industrial or manufactured products.
- ...
- (15a) Special purpose project. – Any structure, equipment, or other facility for any one or more of the following purposes:
- ...
- m. Facilities that qualify as recovery zone property in connection with the issuance of recovery zone facility bonds pursuant to the American Recovery and Reinvestment Tax Act of 2009."

SECTION 7. G.S. 159C-6 is amended by adding a new subsection to read:

"(a1) A county or city that receives an allocation to issue recovery zone facility bonds within the meaning of the American Recovery and Reinvestment Tax Act of 2009 to finance recovery zone property may designate any authority as the governmental entity authorized to issue recovery zone facility bonds."

SECTION 8. G.S. 159D-3 reads as rewritten:

"§ 159D-3. Definitions.

The following terms, whenever used or referred to in this Article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

...
(3a) "Code" means the Internal Revenue Code of 1986, as amended.

...
(13) "Project" ~~shall mean~~ means any land, equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial project for industry which project may be any project, which may be an industrial or manufacturing factory, mill, assembly plant or plant, fabricating plant, or freight terminal, or industrial research, development or laboratory facility or facility, industrial processing facility for industrial or manufactured products, a facility used in the manufacturing or production of tangible personal property, a facility used in the creation or production of intangible property as described in section 197(d)(1)(C)(iii) of the Code, or a distribution facility for industrial or manufactured products, or (ii) any pollution control project for industry which project may be any air pollution control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill, plant, terminal or facility described in clause (i) of this subdivision, or (iii) any combination of projects mentioned in clauses (i) and (ii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition thereto.

...."
SECTION 9. G.S. 159D-45 is amended by adding the following new subsection to

read:

"(g) A county or city that receives an allocation to issue recovery zone facility bonds within the meaning of the American Recovery and Reinvestment Tax Act of 2009 to finance recovery zone property may designate the agency as the governmental entity authorized to issue recovery zone facility bonds."

SECTION 10. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 16th day of June,
2009.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:58 a.m. this 19th day of June, 2009