
COMMONWEALTH OF VIRGINIA



OFFICE OF THE GOVERNOR

NUMBER THIRTY FOUR (2011)

ALLOCATION OF A PORTION OF THE COMMONWEALTH'S SHARE OF THE CALENDAR YEAR 2009 AND 2010 NATIONAL LIMITATION FOR QUALIFIED SCHOOL CONSTRUCTION BONDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 355 (2009)) was enacted on February 17, 2009 ("ARRA"). ARRA added Section 54F to the Internal Revenue Code of 1986, as amended ("IRC"), to provide for the issuance of qualified school construction bonds ("QSCBs"). QSCBs are tax credit bonds that may be issued to finance the construction, rehabilitation, or repair of a public school facility or for qualifying public school facility land acquisitions ("Qualified Projects"). QSCBs were originally designed as taxable bonds providing the QSCB holder with a federal tax credit in lieu of interest. In the Hiring Incentives to Restore Employment Act (Pub. L. No. 111-147, 124 Stat. 71 (2010)), enacted March 18, 2010, Congress provided a direct payment subsidy option whereby an issuer of QSCBs could elect to receive a subsidy payment from the federal government on each interest payment date intended to be equal to the amount of coupon interest payable on such date.

One of the conditions for the valid issuance of QSCBs is the receipt of an allocation of the national limitation under IRC Section 54F(c) sufficient to cover the maximum face amount of the QSCBs to be issued (a "Volume Cap Allocation"). IRC Section 54F created a national limitation of \$11 billion for each of calendar years 2009 and 2010, with a provision allowing carryforwards of any unused limitation amounts to calendar years after 2010. The U.S. Secretary of the Treasury made allocations of the calendar year 2009 and 2010 national limitation amounts to the states and certain "large local education agencies" in accordance the formulae set forth in IRC Section 54F. Pursuant to Notice 2009-35 of the Internal Revenue Service (IRB 2009-17,

dated April 27, 2009) (the "Notice"), the share of the calendar year 2009 national limitation allocated to the Commonwealth of Virginia (the "Commonwealth" or "Virginia") is \$191,077,000 (the "2009 Commonwealth Share") and, pursuant to Notice 2010-17 (IRB 2010-14, dated March 17, 2010), the share of the calendar year 2010 national limitation allocated to the Commonwealth is \$172,249,000 (the "2010 Commonwealth Share"). The 2010 Commonwealth Share is less than the 2009 Commonwealth Share primarily because two Virginia localities were determined to be large local education agencies for calendar year 2010 and thereby directly received allocations of the national limitation amount that otherwise would have been added to the 2010 Commonwealth Share. The two localities and the amounts received are the City of Norfolk, which received \$15,092,000, and the City of Richmond, which received \$14,983,000.

IRC Section 54F(d)(1) also provides that the national limitation amount allocated to a state for any calendar year shall be allocated by a "state agency" to qualified issuers within the state. The General Assembly has provided no specific guidance on how such allocations are to be made in Virginia.

From the \$191,077,000 2009 Commonwealth Share, Executive Order 90 (2009) made a Volume Cap Allocation to the Virginia Public School Authority ("VPSA") in an amount sufficient to cover QSCBs to be issued by VPSA to finance certain qualifying projects in certain localities that were on the Literary Fund First Priority Waiting List approved by the Virginia Board of Education. On November 13, 2009, VPSA issued its School Tax Credit Bonds (Qualified School Construction Bonds), Series 2009-1 (the "2009 VPSA QSCBs"), pursuant to such Volume Cap Allocation. The 2009 VPSA QSCBs consumed \$61,120,000 of the 2009 Commonwealth Share.

Also from the 2009 Commonwealth Share, Executive Order 12 (2010) made a Volume Cap Allocation to VPSA in an amount sufficient to cover QSCBs to be issued by VPSA to finance certain qualifying projects in certain localities that went through a competitive evaluation process to finance energy efficiency improvements and renovations, as well as renewable energy projects, for public school buildings. The application process was supervised by the Virginia Department of Education ("VDOE") and the Virginia Department of Mines, Minerals and Energy. On July 8, 2011, VPSA issued its School Tax Credit Bonds (Direct-Pay Qualified School Construction Bonds), Series 2010-1 (the "2010 VPSA QSCBs"), pursuant to such Volume Cap Allocation. The 2010 VPSA QSCBs consumed an additional \$72,655,000 of the 2009 Commonwealth Share.

After accounting for the issuance of the 2009 VPSA QSCBs and the 2010 VPSA QSCBs, there remains unused \$57,302,000 of the 2009 Commonwealth Share. When combined with the completely unused \$172,249,000 2010 Commonwealth Share, Virginia has \$229,551,000 remaining in unused limitation amount, all of which has carried forward into calendar year 2011 (the "Carryforward Amount").

On March 2, 2011, VDOE announced the allocation of the entire Carryforward Amount to fully or partially fund 41 new construction, renovation, and expansion application-based projects in 33 school divisions. Allocations were capped at \$15.0 million per division. The application process gave priority to consolidation projects, projects eliminating overcrowding,

projects in economically stressed localities, projects replacing facilities more than 35 years old, projects creating school-wide, high-speed computer networks, and projects in divisions not receiving prior QSCB allocations. Priority was also given to projects related to health and safety and projects on the July 2010 first-priority waiting list for Literary Fund loans. It was anticipated that VPSA would issue the QSCBs supported by such allocation.

Since spend-down requirements for QSCBs under the IRC are stringent, and recognizing that some localities needed additional time to complete planning for their projects, VPSA offered the awarded localities the option to participate in one of two separate QSCB sales in calendar year 2011 and, if necessary, will schedule one or more additional sales in calendar year 2012.

VPSA is scheduled to sell the first calendar year 2011 QSCBs series (the "2011-1 QSCBs") by mid-June 2011, and to close by the end of June 2011.

The allocations to the school divisions and projects announced by VDOE on March 2, 2011, were deemed to be preliminary until the eligibility of each project for QSCB financing was determined through detailed project review. VDOE advised that prior to the sale of the applicable QSCBs, the final qualifying projects and project issuance amounts would be formally set out in an Executive Order. VDOE has advised me of the qualifying projects and maximum face amounts of QSCBs for each such project proposed to be included in the 2011-1 QSCBs. Such projects and the localities in which they are located will be referred to below respectively as the "2011-1 Awarded Projects" and the "2011-1 Awarded Localities." An additional Executive Order is anticipated to be issued prior to each future sale of QSCBs by VPSA.

Accordingly, by virtue of the powers invested in me by Article V of the Constitution of Virginia and Section 2.2-103 of the Code of Virginia of 1950, as amended, as Governor of the Commonwealth of Virginia, I hereby provide a Volume Cap Allocation to VPSA pursuant to IRC Section 54F(d)(1) from the Carryforward Amount in an amount sufficient for VPSA to issue QSCBs for the benefit of each of the 2011-1 Awarded Localities listed below in an aggregate face amount up to the respective maximum face amount listed below. Although it is anticipated that the 2011-1 Awarded Localities will participate in VPSA's 2011-1 QSCBs sale, the portion of the Volume Cap Allocation provided for any 2011-1 Awarded Locality will remain in effect and can be used in any VPSA QSCB sale until the expiration date described below. The first priority use of the sale and investment proceeds of such QSCBs (the "Local Available Project Proceeds") shall be to finance qualifying costs of the respective 2011-1 Awarded Projects, as listed below.

The 2011-1 Awarded Localities and 2011-1 Awarded Projects:

<u>2011-1 Awarded Locality</u>	<u>2011-1 Awarded Project</u>	<u>Maximum Face Amount</u>
Appomattox County	Expansion and renovation of Appomattox Primary	\$ 10,000,000
Augusta County	Expansion and renovation of Wilson Elementary	7,500,000
City of Bristol	Construction of an ADA-compliant education/central office facility	3,000,000

The 2011-1 Awarded Localities and 2011-1 Awarded Projects:

<u>2011-1 Awarded Locality</u>	<u>2011-1 Awarded Project</u>	<u>Maximum Face Amount</u>
Buckingham County	Expansion and renovation of Dillwyn Elementary and renovation of Dillwyn Lower Elementary	10,000,000
Caroline County	Expansion and renovation of Bowling Green Primary	6,000,000
Carroll County	Expansion and renovation of Carroll County Intermediate and Carroll County High	15,000,000
Henry County	HVAC upgrade at Magna Vista High; roof replacement at John Redd Smith Elementary and Sanville Elementary	3,400,000
City of Hopewell	Expansion and renovation of Hopewell High	5,000,000
Isle of Wight County	Construction of New Windsor Middle	7,500,000

In addition, pursuant to the request of the affected localities, VDOE and VPSA staff, I hereby provide Volume Cap Allocations from the Carryforward Amount directly to certain localities to finance on a first-priority basis certain projects in the maximum face amounts set forth in the chart below.

The Separate Awarded Localities and the Separate Awarded Projects:

<u>Separate Awarded Locality</u>	<u>Separate Awarded Project</u>	<u>Maximum Face Amount</u>
City of Buena Vista	Renovation of Parry McCluer Middle	\$ 510,000
City of Norfolk	Construction of new Crossroads Elementary	7,500,000
City of Richmond	Expansion and Renovation of Martin Luther King, Jr. Middle	7,500,000

The above-listed localities and projects shall be referred to herein separately as the "Separate Awarded Localities" and "Separate Awarded Projects" and, collectively with the 2011-1 Awarded Localities and the 2011-1 Awarded Projects, as the "Awarded Localities" and "Awarded Projects," respectively. The sale and investment proceeds of the QSCBs issued by the Separate Awarded Localities shall also be referred to as "Local Available Project Proceeds."

An Awarded Locality must give first priority to the application of its Local Available Project Proceeds to complete the scope of work described in the approved project application for its Awarded Project.

VDOE is directed to establish a procedure to ensure that the Local Available Project Proceeds are used to finance public school projects within an Awarded Locality ("Additional Projects") to the extent such proceeds are in excess of the amounts needed to complete the scope of work on the locality's Awarded Project. Such Additional Projects (i) must be projects that will qualify for QSCB financing under the applicable provisions of federal and Virginia law, (ii) must be able to utilize the unspent Local Available Project Proceeds within the three years after the issue date of the respective QSCBs and (iii) should be evaluated against the following criteria: consolidation projects, projects eliminating overcrowding, projects replacing facilities more than 35 years old, and projects creating school-wide, high-speed computer networks.

By June 30, 2012, VPSA and the Separate Awarded Localities shall provide to the Superintendent of Public Instruction the completed Internal Revenue Service reporting form or forms (then in effect for the QSCBs) for those QSCBs issued pursuant to the Volume Cap Allocations made to VPSA and the Separate Awarded Localities pursuant to this order. Any portion of such Volume Cap Allocations not used by June 30, 2012 will expire and be deemed waived by the VPSA and the Separate Awarded Localities, and I will direct VDOE to establish procedures for reallocating the waived Volume Cap Allocations.

I hereby authorize the Superintendent of Public Instruction to provide certificates of compliance with IRC Section 54F(c) as may be requested by the VPSA and any of the Separate Awarded Localities.

Effective Date of the Executive Order

This Executive Order shall be effective as of June 10, 2011, without any further act or filing.

Given under my hand and under the Seal of the Commonwealth of Virginia this ____ day of June, 2011.

Robert F. McDonnell, Governor

Attest:

Secretary of the Commonwealth