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Donna Little
REGULATIONS COMPILER

STATEMENT OF EMERGENCY
200 KAR 15:010E

This emergency administrative regulation is being promulgated in order to comply with the state ceiling for private activity bonds as provided for in KRS 103.286. During the 2014 Session, the General Assembly passed Senate Bill 153. As it relates to this emergency regulation, this Act, relating to energy efficiency, amended KRS 103.286, which established the Kentucky Private Activity Bond Allocation Committee. Specifically, SB 153 requires that 10% of Kentucky's private activity cap be reserved for small to medium-sized manufacturing facilities' energy efficiency bonds issued pursuant to KRS 103.282. This emergency regulation is necessary to comply with KRS 103.286, which requires the new 10% reserve for each calendar year commencing January 1, 2015. This emergency administrative regulation shall be replaced by an ordinary administrative regulation being filed with the Administrative Regulations Compiler contemporaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

12/18/14
Date

Steven L. Beshear, Governor

12/18/14
Date

Lori Flanery, Secretary
Finance and Administration Cabinet

1 **FINANCE AND ADMINISTRATION CABINET**

2 **Office of the Secretary**

3 (Emergency Amendment)

4 200 KAR 15:010E. Formula for allocation of private activity bonds.

5 RELATES TO: KRS 103.200(1)(k), (l), (m), (n), (2), 103.2101, 103.282, 103.286, Pub.L.

6 111-5

7 STATUTORY AUTHORITY: KRS 103.286(3), 26 U.S.C. sec. 146

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 103.286(3) requires the

9 Secretary of the Finance and Administration Cabinet to promulgate administrative regulations to

10 provide for the allocation of the state ceiling for the issuance of private activity bonds. This

11 administrative regulation establishes the formula for that allocation. This administrative

12 regulation also establishes the Commonwealth's role in the allocation of volume cap received as

13 a result of the American Recovery and Reinvestment Act of 2009.

14 Section 1. Definitions. (1) "Affected bonds" means "private activity bonds" as defined by

15 26 U.S.C. sec. 146, excluding any obligations not subject to the state ceiling under the Code.

16 (2) "Allocation" means the amount of volume cap that was approved by the Kentucky

17 Private Activity Bond Allocation Committee for a local issuer or state issuer.

18 (3) "ARRA" means the American Recovery and Reinvestment Act of 2009, Pub.L. 111-

19 5.

20 (4) "Available volume cap" means the amount of unallocated volume cap remaining

21 [~~from the local issuer pool~~] at the close of business on June 30.

1 (5) "Bonds" are [~~is~~] defined by KRS 103.200(2).

2 (6) "Committee" means the Kentucky Private Activity Bond Allocation Committee.

3 (7) "Eligible volume cap applicants" means Issuers and Local Issuers [~~state issuers and~~
4 ~~local project applicants~~] who file a notice of intent to issue bonds relating to [~~available~~] volume
5 cap.

6 (8) "Energy Efficiency project" means a project meeting the requirements of KRS
7 103.282

8 (9) "Energy Efficiency project reserve" means the percentage of the state ceiling that
9 shall be reserved for an energy efficiency project through June 30.

10 (10)[~~(8)~~] "Issued" means delivered and paid for.

11 (11)[~~(9)~~] "Issuer" means the public or authorized governmental body which issues the
12 bonds.

13 (12)[~~(10)~~] "Local issuer" means a public or authorized governmental body which issues
14 bonds on behalf of a local project.

15 (13)[~~(11)~~] "Local issuer pool" means the portion of the state ceiling from which
16 allocations for local projects are made to issuers of affected bonds issued on behalf or for the
17 benefit of an entity which is not a state agency.

18 (14)[~~(12)~~] "Local project" means a project, other than a project for creation or financing
19 of residential single family or multifamily affordable housing which are included under the "state
20 projects", for which bonds are issued on behalf or for the benefit of an entity which is not a state
21 agency.

22 (15)[~~(13)~~] "Lottery" means any process of random selection utilized to allocate available
23 volume cap and which is conducted:

1 (a) By staff at a public meeting of the Committee; and

2 (b) In accordance with Section 4[~~3~~] of this administrative regulation.

3 (16)[(~~14~~)] "Staff" means the Office of Financial Management of the Finance and

4 Administration Cabinet.

5 (17)[(~~15~~)] "State ceiling" means the cap imposed by 26 U.S.C. sec. 146 on private

6 activity bonds issued within the Commonwealth of Kentucky.

7 (18)[(~~16~~)] "State project" means a project, including creation or financing of residential

8 single family or multifamily affordable housing projects and student loans, for which bonds are

9 issued by, on behalf, or for the benefit of a state agency.

10 (19)[(~~17~~)] "Year" means calendar year.

11 Section 2. Evaluation of Local Projects. Local projects seeking allocation from the state

12 ceiling shall be allocated according to rankings based on the following factors:

13 (1) Creation of new jobs, as well as preservation of existing jobs, by the project;

14 (2) Average hourly wage and benefits of new employees proposed for the project;

15 (3) Capital investment in Kentucky being made as a result of the project;

16 (4) Unemployment rate in the county of the project;

17 (5) Any state economic development incentives awarded to the company; and

18 (6) Previous state ceiling allocated to the benefited borrower within the last ten (10)

19 years.

20 Section 3. Evaluation of Energy Efficiency Projects. Energy Efficiency projects seeking

21 allocation from the state ceiling under the Energy Efficiency Project Reserve shall be allocated

22 according to rankings based on the following factors:

23 (1) Annual energy savings associated with the project;

1 (2) Capital investment in Kentucky being made as a result of the project;

2 (3) Unemployment rate in the county of the project;

3 (4) Any state economic development incentives awarded to the company; and

4 (5) Previous state ceiling allocated to the benefited borrower within the last ten (10)

5 years.

6 Section 4[~~3~~]. Allocation of Available Volume Cap. (1) Allocations from the available

7 volume cap shall be made to eligible volume cap applicants [~~in the local issuer pool,~~] as follows:

8 (a) First, a lottery shall be conducted to determine the order of disbursement to local

9 projects which did not receive an allocation from the local issuer pool;

10 (b) Second, to the extent there is remaining available volume cap, a lottery shall be

11 conducted to determine the order of disbursement to local projects which received an allocation

12 from the local issuer pool, whether the allocation was issued or not; and

13 (c) Finally, any remaining available volume cap shall be allocated by the committee to

14 one (1) or more state issuers for use during the year or as carry forward.

15 (2) The committee shall choose a reasonable method of random selection for the lottery

16 process.

17 Section 5[4]. Committee Meetings. The committee shall meet as necessary to allocate the

18 state ceiling. Special meetings may be held on the call of the committee chairman.

19 Section 6[~~5~~]. An issuer shall obtain a confirmation authorizing the issuance of affected

20 bonds by filing with the committee a written notice of intent to issue bonds ("Notice of Intent"

21 form). The committee shall issue a confirmation ("Confirmation of Allocation of State Ceiling"

22 form) allocating to the issuer a portion of the state ceiling. Affected bonds shall not be issued by

23 any issuer prior to receiving confirmation by the committee of an allocation under the state

1 ceiling. Confirmations shall be dated and numbered in the order issued.

2 Section 7[~~6~~]. Notice of Issuance. Local Projects and Energy Efficiency Projects.
3 Confirmation Effective for Ninety (90) Days. A confirmation shall expire ninety (90) calendar
4 days from the date of allocation by the committee, or December 15, whichever is earlier. The
5 issuer shall deliver to the committee a notice that the affected bonds have been issued ("Notice of
6 Issuance" form). The notice of issuance may be sent by any means but the committee shall
7 receive it by the close of business on the 90th day after the confirmation. If the notice period
8 ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the
9 notice period shall be extended to the next business day.

10 Section 8[~~7~~]. Notice of Issuance. State Projects. Confirmation effective until December
11 15. The issuer shall deliver to the committee a notice of issuance. The notice of issuance may be
12 sent by any means but the committee shall receive it by the close of business on or before
13 December 15. If the notice period ends on a Saturday, Sunday, or other day upon which state
14 offices are closed for business, the notice period shall be extended to the next business day.

15 Section 9[~~8~~]. Issuance of Bonds in Lesser Amounts than Confirmation. Eighty-five (85)
16 Percent Requirement. A confirmation of affected bonds shall be effective if issued in amounts
17 less than the confirmation; if the face amount of the issued bonds is not less than eighty-five (85)
18 percent of the original confirmation. The issuer shall notify the committee if the bonds issued are
19 within the eighty-five (85) percent requirement and the unused part of the allocation shall revert
20 to the local issuer pool, or if this reversion occurs after June 30 of any year, the amount shall
21 become available volume cap.

22 Section 10[~~9~~]. Carry Forward Allocations. (1) In any year, the committee shall allocate
23 any remaining state ceiling as carry forward allocations if the aggregate amount of affected

1 bonds issued during the year is less than the state ceiling on December 15th. An issuer shall, in
2 order to receive a carry forward allocation, file with the committee by December 15th:
3 (a) A notice of intent; and
4 (b) A carry forward election of unused private activity bond volume cap (U.S. Treasury
5 Department Form 8328).
6 (2) The carry forward of any unallocated portion of the state ceiling may be for any
7 purpose authorized by 26 U.S.C. sec. 146(f).
8 (3) The committee shall issue a confirmation of the notice and election to carry forward
9 ("Confirmation of Carry Forward Allocation of State Ceiling" form).
10 (4) The committee may consider, but shall not be required to allocate, a carry forward
11 notice or election filed after December 15th.
12 Section 11[~~10~~]. The committee shall not confirm a notice of intent after the aggregate
13 amount of bond confirmations, including carry forwards, have reached the state ceiling for that
14 year.
15 Section 12[~~11~~]. Form and Manner. (1) The notice and confirmation forms required to be
16 filed with and issued by the committee are incorporated by reference in Section 14 of this
17 administrative regulation.
18 (2) An issuer of a local project or Energy Efficiency project shall not:
19 (a) File a notice of intent unless the issuance will be made within the ninety (90) day
20 confirmation period established in Section 6 of this administrative regulation; or
21 (b) Seek an allocation of the state ceiling in excess of the amount necessary to finance all
22 costs of a local project.
23 (3) An issuer of a state project shall not:

1 (a) File a notice of intent unless the issuance will be made by December 15; or

2 (b) Seek allocation of the state ceiling in excess of the amount necessary to finance all

3 costs of a state project.

4 Section 13[~~12~~]. Delegation of Functions. The committee shall review and allocate all

5 requests for state ceiling. The committee shall not delegate authority to make allocations of the

6 state ceiling to staff except if there are surplus or carry forward allocations. Any delegation of

7 authority and the limit of that authority shall be recorded verbatim in the minutes of the

8 committee meeting at which the delegation is made.

9 Section 14[~~13~~]. Volume Cap Allocations under ARRA. (1) Through the ARRA, the

10 federal government has made and may continue to make allocations of volume cap to state and

11 local governments for the issuance of bonds, such as has been made for Recovery Zone Bonds

12 and Qualified Energy Conservation Bonds. If the federal regulations governing these allocations

13 allocate volume cap directly to the Commonwealth or allow for transfer or waiver of any direct

14 volume cap allocation to a local government back to the Commonwealth, the committee shall:

15 (a) Accept any notice of waiver of volume cap as authorized by the local governing body

16 on behalf of the Commonwealth;

17 (b) Accept applications of eligible volume cap recipients consistent with federal

18 regulation; and

19 (c) Rank each application and allocate volume cap based upon:

20 1. Any federally mandated standards and objectives; and

21 2. Expected value to the Commonwealth.

22 (2) Notice of Issuance. The issuer shall deliver to the committee a notice that the affected

23 bonds have been issued within the time constraints established in the applicable federal

1 regulation, if any.

2 Section 15[~~14~~]. Incorporation by Reference. (1) The following material is incorporated

3 by reference:

4 (a) "Notice of Intent" application, December 2014[~~March 2006~~];

5 (b) "Confirmation of Allocation of State Ceiling", March 1998;

6 (c) "Confirmation of Carry-forward Allocation of State Ceiling", March 1998;

7 (d) "Notice of Issuance", March 1998; and

8 (e) "U.S. Treasury Department Form 8328".

9 (2) This material may be inspected, copied, or obtained, subject to applicable copyright

10 law, at the Office of Financial Management, 76 Capitol Annex, Frankfort, Kentucky 40601,

11 Monday through Friday, 8 a.m. to 4:30 p.m. (15 Ky.R. 2125; eff. 5-11-1989; Am. 22 Ky.R. 101;

12 715; eff. 9-28-1995; 1334; eff. 2-20-1996; 23 Ky.R. 462; 1927; eff. 10-24-1996; 25 Ky.R. 400; eff.

13 10-22-1998; 31 Ky.R. 610; 1053; eff. 1-4-2005; 32 Ky.R. 1460; 1904; eff. 6-2-2006; 36 Ky.R.

14 836; 1435; eff. 2-5-2010.)

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Signature Page

APPROVED:

Lori H. Flanery

Lori Flanery, Secretary
Finance and Administration Cabinet

12/18/14
Date

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 200 KAR 15:010E.
Contact person: Doug Hendrix
Phone Number: 502-564-6660

(1) **Provide a brief summary of:**

(a) **What this administrative regulation does:** Ensures compliance with federal regulations relative to debt ceiling on "private activity" bonds and the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes the formula for that allocation.

(b) **The necessity of this administrative regulation:**
NECESSITY, FUNCTION, AND CONFORMITY: KRS 103.286 requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations to provide for the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes that formula.

(c) **How this administrative regulation conforms to the content of the authorizing statutes**: Describes criteria for efficient allocation of the resource with the parameters established by federal tax law and the authorizing statute.

(d) **How this administrative regulation currently assists or will assist in the effective administration of the statutes**: Changes allow for statutes to be adhered to and creates an evaluation process to award the envisioned new applicants with Private Activity Volume Cap.

(2) **If this is an amendment to an existing administrative regulation, provide a brief summary of:**

(a) **How the amendment will change this existing administrative regulation:**
The amendments will create a third potential pool to allow for the projects described in the new statute KRS 103.282, effective July 15, 2014, to access Private Activity Volume Cap.

(b) **The necessity of the amendment to this administrative regulation:**
The regulation currently does not single out projects identified in the new statute KRS 103.282 and does not reserve volume cap for such projects as the revised KRS 103.286, effective July 15, 2014, statute requires.

(c) **How the amendment conforms to the content of the authorizing statutes:**
The amendment conforms to the amended authorizing statute by reserving 10% of the Private Activity Volume Cap for the first 6 months of the calendar year, as required by KRS 103.286 and adds a third pool to accommodate the type of projects specifically described in the new statute KRS 103.282.

(d) **How the amendment will assist in the effective administration of the statutes:**
The amendment creates the pool and reserves a defined amount for projects envisioned in legislation that are codified in KRS 103.282 and KRS 103.286.

(3) **List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:**
Since projects that are specifically designated in KRS 103.282 and specifically reserved for in KRS 103.286 were already eligible applicants under the previous provisions of the

existing Federal Code and state statutes and regulations, the impact of these changes is expected to be minimal or non impactful.

(4) **Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:**

In the current environment where the state has an abundance of Private Activity Volume Cap, the implementation will have very little impact on the current process. However, should Private Activity Volume Cap demand return to previous levels of demand, the additional restrictions due to the changes could cause some projects to delay implementation due to the 6 month reservation period for the new applicant pool.

(5) **Provide an estimate of how much it will cost to implement this administrative regulation:**

(a) Initially: None

(b) On a continuing basis: None

(6) **What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:** Not Applicable

(7) **Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:**

None

(8) **State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:**

No.

(9) **TIERING: Is tiering applied? (Explain why tiering was or was not used.)**

Tiering may be determined to be applied, as dictated by the amended stature KRS 103.286, related to the initial reduction and the delay of available volume cap to local issuers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 200 KAR 15:010E
Contact Person: Doug Hendrix
Phone number: 502-564-6660

(1) **What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?** The Office of Financial Management
(2) **Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.** This regulation is required pursuant to KRS 103.286.
(3) **Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.** None.
(a) **How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?** None.
(b) **How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?** None.
(c) **How much will it cost to administer this program for the first year?** None
(d) **How much will it cost to administer this program for subsequent years?** No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

200 KAR 15:010E
SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE

1). The "Notice of Intent", effective December, 2014, is a 7 page application for all state and local entities that seek to apply for the allocation of volume cap necessary to issue tax exempt bonds for private activity purposes. Any entity seeking volume cap allocation from the Commonwealth to issue private activity bonds must use the "Notice of Intent" application to apply with the Kentucky Private Activity Bond Allocation Committee.