

KENTUCKY PRIVATE ACTIVITY BOND ALLOCATION COMMITTEE
MINUTES
June 5, 2014

The Kentucky Private Activity Bond Allocation Committee (the "Committee") meeting was called to order by Lori Flanery, Secretary, Finance and Administration Cabinet, on Thursday, June 5, 2014 at 9:00 a.m. in Room 182 of the Capitol Annex, Frankfort, Kentucky. Other members present were Katie Smith, proxy for Larry Hayes, Secretary, Cabinet for Economic Development; Ed Ross, Controller, Finance and Administration Cabinet; Jane Driskell, State Budget Director; and John Hicks, proxy for Mary Lassiter, Secretary, Governor's Executive Cabinet.

Office of Financial Management ("OFM") and staff to the Committee present were Sandy Williams, Deputy Executive Director; Robin Brewer, Tom Midkiff, and Marcia Adams.

Other guests present were Joshua Nacey from the Legislative Research Commission ("LRC"); Walter Clare, representing the Kentucky Housing Corporation ("KHC"); David Carlsen, representing Kentucky Higher Education Student Loan Corporation ("KHESLC"); and Mike Herrington, from Stites & Harbison, PLLC .

Secretary Flanery verified with staff that a quorum was present and that the press had been notified of the meeting.

The first item on the agenda was the approval of the December 13, 2013 minutes. Ms. Jane Driskell made a motion to approve the minutes. Mr. Ed Ross seconded the motion. **The motion CARRIED.**

Summary of 2014 Volume Cap – Mr. Tom Midkiff directed the Committee to the 2014 Volume Cap Summary and stated this summary would be referred to during the meeting. He noted that the KY Population Estimate count increased from July 1, 2013 and that the 2014 per capita amount increased to \$100 for a total Kentucky Volume Cap CY2014 of \$439,529,500, of which 60% was made available to the State Issuer Pool and 40% was made available to the Local Issuer Pool. The application period for the Local Issuer Pool ended March 15, 2014, and one application was received. The application period for the State Issuer Pool ended May 30, 2014, and two applications were received. All three applicants were present at the meeting.

Allocation of 2014 State Volume Cap - Mr. Tom Midkiff directed the Committee to the applications from KHC and KHESLC for the state portion of the Private Activity Bond Allocation. Each agency requested half of the entire allocation amount of \$263,717,700; \$131,858,850 to KHC and \$131,858,850 to KHESLC. Staff recommended approval of the allocations.

Mr. John Hicks stated there had been several years where state volume cap had gone unallocated and that it appeared that all of the cap was now being allocated. He asked what had changed. Mr. Midkiff responded that according to Federal Code at least 50% of the state volume cap was required to be allocated to state agencies within the first six months of

the year. That has not changed. The Kentucky regulations state that at least 60% was required. Mr. Midkiff explained that although an allocation from the local issuer pool was approved, it might go unused by the applicant. If there was unused local cap still available at the end of the year, it could be allocated to and carried forward by the state agencies. This scenario has happened in each of the last three to four years. He further explained that one year the state cap allocation was delayed because of the potential of a third state agency application. Historically, the end of May was the normal time that the state cap was allocated to the agencies. Mr. Hicks asked if there was any unused cap from prior years and if so, will it expire or lapse. Mr. Midkiff answered that there has been a considerable amount of unused local cap in the last few years which was allocated to the state agencies at the end of the year. The state agencies can carry forward the balance of unused cap for three years. The unused state cap cannot be reassigned to local agencies. He stated that both KHC and KHESLC will have some cap allocation that will go unused again this year. Mr. Walter Clare informed the Committee that KHC will tentatively not use all of the 2011 cap but will use all of the 2013 carry forward and a good portion of 2014's cap. He stated that one problem KHC has is that the tax-exempt borrowing rate at this point in the market doesn't allow KHC to offer a competitive mortgage rate. Also, the Corporation would typically use the older cap first, but KHC must designate each carry forward to either single or multi-family housing. The prior year's volume cap was designated as single family; therefore, their new cap will be designated as multi-family. Mr. Hicks asked if an allocation of cap is made to a state agency and is then carried over to the next year, must the carry forward amount remain with the state agency receiving the original allocation. Mr. Midkiff answered that the carry forward cap amount could not be reallocated across state agencies. Mr. Ed Ross asked where KHESLC stood with their cap allocations. Mr. David Carlsen informed the Committee that KHESLC would be able to use approximately \$21.65 million of existing volume cap associated with their new private loan supplemental program. KHESLC also has the Federal Family Education Loan Program (FFELP) that may potentially make use of the existing volume cap. He stated that there might also be some opportunities to potentially make use of the cap by refinancing failed auction rate securities using taxable and tax-exempt LIBOR floaters. Mr. Midkiff added that both agencies currently have approximately \$500,000 in existing cap.

Secretary Flanery asked for any additional questions. With no further questions by the Committee, Mr. Hicks made a motion to approve the recommended 2014 State Volume Cap distribution that was seconded by Mr. Ed Ross. **The motion CARRIED.**

Allocation of 2014 Local Volume Cap - Mr. Tom Midkiff directed the Committee to the application from Recast Energy Louisville, LLC ("Recast"). The local pool has \$175 million available for 2014. Recast had previously been approved for an allocation by this Committee in 2012 but market conditions had not been favorable to issue bonds up to this point. Recast is the project now ready to move forward with the sale of bonds as they have contributed their own equity to the project and hope to recapture their capital with a tax-exempt issuance. The project converts the existing coal-fired industrial boiler to fire woody biomass residuals, and the company plans to use solid waste disposal bonds to finance a portion of the costs of the project. The project modifies the existing combustion system equipment and modernizes the plant's control systems and operations center. The project allows the use of biomass residuals collected and processed in and around Louisville for

beneficial use in the generation of thermal energy for sale to each of its neighboring chemical plant customers, and based on counsel's advice, these residuals qualify as solid waste as defined under Section 1.142(a)(6)-1(c)(1) of the federal regulations adopted under the Internal Revenue Code of 1986, as amended. Each of the project's customers, who collectively employ several hundred workers in Louisville, has signed an energy supply agreement to purchase specified minimum annual quantities of thermal energy from the project for fifteen (15) years. The project is expected to create sixteen (16) new jobs at an average wage of 27.97 (including benefits) and will help to retain the existing 340 jobs related to the project. Mr. Midkiff explained that applications for the cap are analyzed and ranked. Recast was the only applicant and their score was reduced because they had received cap in a prior year. The total cost of this project is approximately \$7 million and staff recommended approval. This would leave approximately \$168 million in the Local Issuer Pool and there are others waiting for the application period to be reopened. Mike Herrington represented the project and was available to answer any questions.

Mr. Herrington confirmed that the Recast project was the same project previously presented to the Committee. There was a delay in the project because the public was skeptical about the project financing and the ability to produce steam to power plants in Louisville. The project was now complete and operating since Recast put in their own equity. Recast needs to close by the end of the month because the reimbursement rates under the code only allow so long for the inducement to remain valid and then be able to recover the sunken costs.

With no further questions by the Committee, Ms. Jane Driskell made a motion to approve the recommended 2014 Local Volume Cap distribution that was seconded by Ms. Katie Smith. **The motion CARRIED.**

Secretary Flanery asked if there were any other items to be presented to the Committee. Mr. Midkiff responded that there will be a regulation change presented to the Committee due to the passage of Senate Bill 153 that will become effective July 15, 2014. He stated that the legislative change would not affect this year's allocation period. The change requires a 10% carve out of private activity cap from the local pool for manufacturing facility energy efficiency bonds issued by any issuer including Energy Service Companies, guaranteed Energy Savings Contract Providers ("ESPC's"), and small or medium sized manufacturers. The goal is to provide bonding as an option for financing to ESPC's as opposed to traditional financing. The Department for Local Government is referenced in the legislation as a bond information clearing house and a meeting has been set up with them to see how that would work. The regulations will need to be changed to include the carve out of 10% for projects that are specifically related to energy. As the regulations currently stand, the committee could approve an allocation to such a project but it may not qualify under the Code. Secretary Flanery asked if the project just approved for Recast fit that definition. Mr. Herrington answered that it might. Mr. Ross asked what would happen if no applications for the 10% were received. Mr. Midkiff answered that it would then go back into the State Issuer Pool.

With no further business before the Committee, the meeting adjourned.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'R Barrow', is written over the typed name.

Ryan Barrow
Secretary