

TITLE 2 PUBLIC FINANCE
CHAPTER 61 STATE INDEBTEDNESS AND SECURITIES
PART 7 DISTRIBUTION OF QUALIFIED ENERGY CONSERVATION BOND ALLOCATIONS

2.61.7.1 ISSUING AGENCY: State Board of Finance, 181 Bataan Memorial Building, Santa Fe, New Mexico.
[2.61.7.1 NMAC – N, 9/30/13]

2.61.7.2 SCOPE: State agencies, counties, municipalities, and Indian tribal governments.
[2.61.7.2 NMAC – N, 9/30/13]

2.61.7.3 STATUTORY AUTHORITY: Section 6-21E-1 NMSA 1978.
[2.61.7.3 NMAC – N, 9/30/13]

2.61.7.4 DURATION: Permanent.
[2.61.7.4 NMAC – N, 9/30/13]

2.61.7.5 EFFECTIVE DATE: September 30, 2013 unless a later date is cited at the end of a section.
[2.61.7.5 NMAC – N, 9/30/13]

2.61.7.6 OBJECTIVE: To establish rules and regulations governing the distribution of allocations of qualified energy conservation bonds provided for in Section 6-21E-1 NMSA 1978.
[2.61.7.6 NMAC – N, 9/30/13]

2.61.7.7 DEFINITIONS:

- A. "Board" means the state board of finance.
- B. "Bond counsel" means an attorney or a firm of attorneys listed in the most recently available "directory of municipal bond dealers of the United States", published by the bond buyer and commonly known as the "red book", in the section listing municipal bond attorneys of the United States or the successor publication thereto.
- C. "Federal act" means Section 54(d) of the federal internal revenue code and includes federal rules and guidelines adopted to carry out the provisions of that section.
- D. "Large local government" means a municipality or county with a population greater than one hundred thousand, as determined pursuant to the provisions of the federal act, or an Indian tribal government.
- E. "Qualified conservation purpose" means:
 - (1) capital expenditures incurred for the purposes of:
 - (a) reducing energy consumption in publicly owned buildings by at least twenty percent;
 - (b) implementing green community programs, including the use of loans, grants or other repayment mechanisms to implement the programs;
 - (c) rural development involving the production of electricity from renewable energy resources;or
 - (d) any qualified facility as determined under Section 45(d) of the federal internal revenue code without regard to Paragraphs (8) and (10) of that section and without regard to any placed in service date;
 - (2) expenditures with respect to research facilities and research grants to support research in:
 - (a) development of cellulosic ethanol or other nonfossil fuels;
 - (b) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuel;
 - (c) increasing the efficiency of existing technologies for producing nonfossil fuels;
 - (d) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation; or
 - (e) technologies to reduce energy use in buildings;
 - (3) mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting;
 - (4) demonstration projects designed to promote the commercialization of:
 - (a) green building technology;
 - (b) conversion of agricultural waste for use in the production of fuel or otherwise;

(c) advanced battery manufacturing technologies;
(d) technologies to reduce peak use of electricity; or
(e) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity;

(5) public education campaigns to promote energy efficiency.

F. "Qualified energy conservation bond" means a bond of a qualified issuer, the net proceeds from the sale of which are used exclusively for qualified conservation purposes and that meets all of the other requirements of the federal act for a qualified energy conservation bond.

G. "Qualified issuer" means the state, a county, a municipality or an Indian tribal government.

H. "Remaining allocation" means the state allocation, less the amounts required by the federal act to be allocated to large local governments, and plus any amount not used by a large local government and reallocated by that large local government to the state pursuant to Subsection B of 2.61.7.8 NMAC.

I. "State allocation" means the maximum amount of qualified energy conservation bonds that may be issued by qualified issuers in New Mexico pursuant to the federal act.

[2.61.7.7 NMAC – N, 9/30/13]

2.61.7.8 STATE BOARD OF FINANCE DETERMINATIONS:

A. The board hereby determines that the following amounts of the state allocation totaling \$20,587,000 are allocated to each of the following large local governments, subject to these amounts being returned to the board pursuant to Subsection B of 2.61.7.8 NMAC:

(1) to Bernalillo county \$1,173,788, of which not more than \$352,136 may be used for private activity bonds;

(2) to Dona Ana county \$2,091,561, of which not more than \$627,468 may be used for private activity bonds;

(3) to Sandoval county \$1,268,799, of which not more than \$380,639 may be used for private activity bonds;

(4) to San Juan county \$1,270,895, of which not more than \$381,268 may be used for private activity bonds;

(5) to Santa Fe county \$1,493,296, of which not more than \$447,988 may be used for private activity bonds;

(6) to the City of Albuquerque \$5,415,557, of which not more than \$1,624,667 may be used for private activity bonds.

B. Unused large local government allocations may be reallocated by a large local government, and such unused large local government allocations shall revert to the board and shall become available to other qualified issuers. Large local governments are hereby directed to advise the board in writing no later than September 30, 2014 of any portion of their large local government allocation that will not be used by December 31, 2014. After being advised of a return of large local government allocation, the board shall make an announcement of the amount of the return at its next board meeting. The board shall not consider any requests for reallocation of the returned large local government allocation until the meeting following the announcement of the return.

C. Up to thirty percent of the total state allocation totaling \$20,587,000, an amount equal to \$6,176,100, may be used for private activity bonds, the proceeds of which may be loaned or otherwise made available to private companies or for privately owned or operated projects.

[2.61.7.8 NMAC – N, 9/30/13]

2.61.7.9 DISTRIBUTION OF QUALIFIED ENERGY CONSERVATION BOND ALLOCATIONS:

A. Qualified issuers, including large local governments requesting allocations in excess of the amount determined pursuant to Subsection A of 2.61.7.8 NMAC, requesting distributions of allocations shall submit the following:

(1) For all requests:

(a) a letter from the qualified issuer setting forth the amount of the state allocation requested, the actual or expected date of adoption of the bond resolution or similar documentation by the qualified issuer, the expected date of the sale of the bonds, the expected date of closing of the bonds, and a statement of any significant conditions that need to be satisfied before the bonds can be issued;

(b) a letter from the qualified issuer stating why the purpose to be served by the issuance of the qualified energy conservation bonds could not be as economically or effectively served by a means not involving an allocation of the state allocation;

(c) a letter from the qualified issuer stating that the project and use of bond proceeds will comply with all federal restrictions, including but not limited to compliance with Davis-Bacon prevailing wage rules, restrictions on qualified energy conservation bonds contained in the American Recovery and Reinvestment Act of 2009, and restrictions imposed by the United States department of the treasury, and a statement from the qualified issuer that it will provide the board with evidence from an independent entity annually no later than January 1 that the project and use of bond proceeds continues to be in compliance therewith as long as the bonds are outstanding;

(d) a letter from the qualified issuer, with a statement that it has consulted with its bond counsel, describing any private use, ownership or operation associated with the project, and the amount of the state allocation requested that will be used for private activity bonds;

(e) a letter from bond counsel for the qualified issuer, with supporting citations to state statutes, stating that the qualified energy conservation bonds can validly be issued under state law by the qualified issuer, which the board may refer to its bond counsel or to the state's attorney general for review and comment; if the board is advised by its bond counsel or the attorney general that the opinion of the issuing authority's bond counsel is incorrect, the board may refuse to approve the allocation requested;

(f) a letter from bond counsel for the qualified issuer, with supporting citations to the federal act and the regulations, stating that the bonds are qualified energy conservation bonds requiring an allocation of the state allocation and that all requirements of the federal act have been satisfied;

(g) a copy of the inducement resolution, certified by an official of the qualified issuer;

(h) a detailed description of the project, including the qualified conservation purpose to which the project relates, and the project's specific location;

(i) information on the economic development benefits the project will create in the state, including creation of jobs, contributions to energy security, reductions in consumer energy costs, environmental protection and resource conservation, or other benefits;

(j) the estimated number and types of jobs, both construction and permanent, indicating which are expected to be filled by persons who are residents of the state at the time of submission of the request for allocation and which are expected to be filled by persons who are non-residents at the time of submission of the request for allocation;

(k) information on how the project furthers the qualified issuer's successful implementation of its mission or master plan, or otherwise furthers the qualified issuer's ability to provide critical services or benefits to its constituents;

(l) the present use or conditions of the project site and evidence that the proposed user of the project has obtained a legally enforceable right to acquire the project site; evidence of approved zoning of the proposed site must be submitted; this requires that project types for which the cap is being requested are not prohibited by the existing zoning of the proposed site;

(m) the maximum amount of the qualified energy conservation bonds and other obligations to be issued;

(n) an estimated starting month and estimated completion month of the construction of the project, the date anticipated for initial expenditure of bond proceeds, and the percent of bond proceeds likely to be expended within three years of the issuance of the bonds;

(o) a project budget, including all funding sources and an itemized list of all project costs including but not limited to personnel, equipment, materials, supplies, construction and any profits; assumptions underlying the project budget should be noted in detail;

(p) information relating to the feasibility of the proposed project showing that the project or the user will generate revenues and cash flow sufficient to make payments to pay debt service on the bonds, if applicable;

(q) the amount and source of private capital that will be used for the project in addition to proposed qualified energy conservation bond financing, as well as a table showing estimated sources and uses of funds;

(r) conceptual site plans for the project and a map locating the project area;

(s) detailed information relating to the feasibility of any technologies to be used in the project, including the maturity of the technology and whether such technologies have been implemented previously on the proposed scale;

(t) any other information regarding the economic benefits to the project's community and to the state or which the qualified issuer believes will aid the board in considering the request for allocation;

(u) résumés of the staff or development team that will oversee completion of the project;

(v) an explanation of how the qualified energy conservation bonds will be financed, including whether they will be sold at competitive or negotiated sale; whether they will be issued as private activity bonds, general obligation bonds requiring voter approval; or other types of bonds; the terms of any loan agreement that will be the source of bond debt service;

(w) if applicable, a commitment letter or letter of intent, which may be subject to common contingencies or closing conditions, from the proposed underwriter, placement agent or bond purchaser to underwrite, place or purchase the qualified energy conservation bonds; and

(x) an indication of whether an approval of a lesser amount of qualified energy conservation bond allocation than the amount requested would be beneficial.

(2) The board or its staff may ask for additional supplemental information from the qualified issuer to aid the board in considering the request.

B. Within seven business days after a qualified issuer issues any qualified energy conservation bonds, the qualified issuer or its bond counsel shall advise the board by letter of the date the bonds were issued and the total aggregate amount of the issue.

C. Qualified issuers shall comply with the following restrictions.

(1) Any qualified issuer desiring to make a request to the board for an allocation must comply with established board rules for inclusion on the board's agenda. In order to be considered for inclusion on the agenda, all materials required to be submitted to the board must be submitted by the established time period prior to the meeting date, which may be found on the board's website. It is a qualified issuer's responsibility to ascertain that deadline and comply with it. All requests for allocations of the state allocation appearing on the board's agenda for a particular meeting will be deemed to have been received simultaneously.

(2) A qualified issuer, excluding large local governments with allocations determined pursuant to Subsection A of 2.61.7.8 NMAC, shall advise the board in writing of any unusable allocation of the state allocation promptly after it becomes aware the allocation will not be used in full prior to the allocation expiration date. After being advised of a return of an allocation of the state allocation, the board shall make an announcement of the amount of the return at its next board meeting. The board shall not consider any requests for allocation of the state allocation relating to the amount of any returned allocation until the meeting following the announcement of the return.

(3) The board will not consider a request for a new allocation of the state allocation for a project whose previous allocation has expired or was voluntarily returned until the qualified issuer has resubmitted all of the information required by Subsection A of 2.61.7.9 NMAC. Such request for a new allocation will not be given a priority over other requests for allocations.

D. In the event that the face amount of all proposed qualified energy conservation bonds in valid, timely submitted applications exceeds the remaining allocation, the board will decide how the remaining allocation will be distributed to applicants by considering:

(1) the dates anticipated for the initial expenditure of bond proceeds and for completion of the project;

(2) the percent of the bond proceeds that are likely to be expended within three years of the date of the issuance of the bonds;

(3) whether the bond proceeds, together with all other money available for the project, are sufficient to complete the project; and

(4) any additional information received by the board pursuant to Paragraph (1) of Subsection A of 2.61.7.9 NMAC in the discretion of the board.

E. The allocation expiration date for any allocation approved by the board in any calendar year shall be December 31 of that calendar year, subject to discretionary extension, which the board may condition on the completion of both a sale and issuance of the qualified energy conservation bonds within the extension period.
[2.61.7.9 NMAC – N, 9/30/13]

HISTORY OF 2.61.7 NMAC: [RESERVED]