

"CHAPTER 18  
South Carolina Volume Cap Allocation Act

Section [11-18-5](#). This chapter shall be known as the 'South Carolina Volume Cap Allocation Act'.

Section [11-18-10](#). The General Assembly finds and determines that:

(a) Sections 1400U-2 and 1400U-3 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.123 Stat. 115 (2009) (codified at Section 1400U-2 and -3 of the Internal Revenue Code) ('ARRA') added two new types of bonds as recovery zone bonds:

(1) a new type of exempt facility bonds 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 ARRA; and

(2) a new type of governmental bond called 'recovery zone economic development bonds'.

(b) The provisions of ARRA provide a formula for allocation of authority to issue recovery zone facility bonds and recovery zone economic development bonds to the states and by the states to the counties and large municipalities within the states. The United States Department of the Treasury, Internal Revenue Service provided for recovery zone bond volume cap allocations in IRS Notice 2009-50 and provided calculations for individual counties and large municipalities on that same date. The notice made specific provision for reallocation of the volume cap allocations that are waived or deemed waived by a county or municipality by giving the state in which such county or municipality is located the authority to reallocate the waived volume cap in any reasonable manner as it shall determine in good faith in its discretion.

(c) Section 1112 of ARRA amended Section 54D(d) of the Internal Revenue Code to increase the volume cap authorization for qualified energy conservation bonds, which were created by Section 301(a) of Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Pub. L. 110-343.122 Stat. 1365 (2008). The United States Department of the Treasury, Internal Revenue Service provided for qualified energy conservation bond volume cap allocations to the states in IRS Notice 2009-29 and authorized the states to allocate such volume cap allocations.

(d) Because of several factors, including the relatively small amounts of some of the allocations, limitations on legal borrowing capacity affecting counties and large municipalities and the lack of access to borrowing by possible beneficiaries of the bonds described above, very little of the allocations of bonds described herein have been utilized in connection with the issuance of these bonds in South Carolina.

(e) These bonds are a valuable resource to South Carolina in its efforts to revitalize its economy and to provide additional employment, all to the promotion of the health and welfare of the citizens of South Carolina.

(f) Because recovery zone bonds must be issued before January 1, 2011, it is in the best interests of the State to provide a procedure for determining as to when counties or large municipalities have waived their allocations of these bonds and to provide for the reallocation of such waived allocations.

(g) Recovery zone facility bonds are bonds with substantially all of the proceeds of which are used for 'recovery zone property', as defined in the ARRA. The definition of 'recovery zone property' includes facilities that may not currently be authorized under the state's private activity bond enabling statutes. These projects will provide much needed employment, thus it is the best interest of the health and welfare of the citizens of the State to provide authorization for bonds to finance recovery zone property.

(h) The purpose of this chapter is to provide the procedures for the reallocation of recovery zone bonds as well as provide the authorization for the allocation of Qualified Energy Conservation Bonds and Other Federal Bonds as defined below.

Section [11-18-20](#). (a) 'ARRA Bonds' mean:

(1) recovery zone bonds authorized under Section 1401 of ARRA; and

(2) Qualified Energy Conservation Bonds authorized under Section 301(a) of Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Pub. L. 110-343, 122 Stat. 1365 (2008) as amended by Section 112 of ARRA.

(b) 'Board' means the South Carolina Budget and Control Board.

(c) 'Code' means the Internal Revenue Code of 1986, as amended.

(d) 'Local Government' means each county and municipality that received an allocation of Volume Cap pursuant to the Code and IRS Notice 2009-50.

(e) 'Other federal bonds' mean any such bond, whether tax - exempt, taxable or tax credit, created after the date hereof whereby a volume cap limitation is proscribed under the Code.

(f) 'Qualified energy conservation bond' means the term as defined in Section 54D(a) of the Code.

(g) 'Recovery zone' means the term as defined in Section 1400U-1(b) of the Code.

(h) 'Recovery zone economic development bond' means the term as defined in Section 1400U-2 of the Code.

(i) 'Recovery zone facility bond' means the term as defined in Section 1400U-3 of the Code.

(j) 'State' means the State of South Carolina.

(k) 'Volume Cap' means the amount or other limitation of ARRA Bonds allocated to each state and to counties and large municipalities within each state in accordance with Section 1400U-1(a)(4) of the Code, with respect to Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds, Section 54D(e)(1) of the Code, with respect to Qualified Energy Conservation Bonds, and any other section of the Code which imposes a volume cap limitation on any other Federal Bonds.

Section [11-18-30](#). For any Volume Cap allocation of Qualified Energy Conservation Bonds and any other Volume Cap allocation for Other Federal Bonds, which has not been or shall not be further suballocated by the Code, the Internal Revenue Service or the United States Department of the Treasury, the board is authorized to suballocate such Volume Cap allocation.

Section [11-18-40](#). (A) In accordance with the provisions of this chapter, the board shall establish a method for determining when a Local Government has waived all or part of its Volume Cap allocation and shall manage the reallocation of such Volume Cap. All allocations and reallocations made pursuant to this chapter shall be made by the board with the advice and recommendation of an advisory committee which the board may from time to time appoint and which shall be comprised of members who are, in the sole determination of the board, familiar with the subject matter germane to the specific federal bond program.

(B) When appropriate, the board shall provide written notice of Volume Cap allocations of ARRA Bonds and Other Federal Bonds to Local Governments by United States registered or certified mail. Written notice shall be effective on the date shown on the return receipt. Such notice may include a deadline by which ARRA Bonds and Other Federal Bonds must be issued.

(C) A Local Government may waive its Volume Cap allocation by providing written notice of such waiver to the board within thirty days of the written notice provided in subsection (B).

(D) In determining when a Local Government has waived all or part of its Volume Cap, the board shall provide that if it has not received from a Local Government a notice of intent to use its Volume Cap allocation within a designated number of days of the written notice provided in subsection (B), the Local Government shall be deemed to have waived its Volume Cap allocation. The form of the notice of intent to use a Local Government's Volume Cap allocation shall be determined by the board. Each notice of intent to use its Volume Cap allocation submitted by a Local Government must contain evidence satisfactory to the board, in its sole discretion, that the allocation will in fact be used. This evidence may consist of:

(1) resolution or otherwise of the designation of a Recovery Zone, if such designation is required;

(2) the form of the resolution or ordinance in substantially final form authorizing the issuance of bonds or approving such other financing as may be done accompanied by a written opinion of legal counsel that the Local Government has the legal ability to effect such issuance or borrowing;

- (3) a written opinion of legal counsel that the ARRA Bonds or Other Federal Bonds that the Local Government intends to issue will qualify, based on information available at that time to such legal counsel, as such ARRA Bonds or Other Federal Bonds when issued;
  - (4) a schedule for the closing of the issue which must not be later than a date determined by the board; and
  - (5) other documentation as the board deems appropriate.
- (E) Failure to issue ARRA Bonds or Other Federal Bonds by any deadline established by the board shall constitute a waiver of Volume Cap allocation unless the board extends such deadline.

Section [11-18-50](#). (A) Within thirty days of the effective date of this chapter, the board shall develop a form for use by any eligible issuer in applying for reallocation of any waived Volume Cap allocation. Applications for reallocation may be accepted by the board at times prescribed by the board. The board may make reallocations as soon as it determines that there is an actual or deemed waiver of any Volume Cap allocation.

(B) In making reallocations, the board may consider the following factors:

- (1) the likelihood of successful completion of such financing;
- (2) the number of jobs to be created or preserved and the wages for such jobs;
- (3) relative economic need and benefit to the applicant and any other entity benefiting from the proposed issue; and
- (4) the overall best interest of the State and the people of the State.

(C) Upon making any reallocation, the board shall provide written notice of the reallocation of Volume Cap to the eligible issuer by United States registered or certified mail.

Section [11-18-60](#). Local Governments allocated Volume Cap pursuant to this chapter may, by order or resolution of its governing body, suballocate such allocation to any other eligible issuers authorized to issue ARRA Bonds or Other Federal Bonds pursuant to the Code or any related pronouncements made by the Internal Revenue Service or the United States Treasury Department. Each Local Government that suballocates Volume Cap shall attach a copy of the order, ordinance, or resolution authorizing the suballocation to its notice of intent to use Volume Cap required by Section [11-18-40](#). Local Governments shall be authorized to take any other action required by the Code or related pronouncements made by the Internal Revenue Service or the Treasury Department to issue ARRA Bonds or Other Federal Bonds.

Section [11-18-70](#). (A) The purpose of this chapter is to ensure that the state's allocations of ARRA Bonds and Other Federal Bonds are used. To that end, the board is authorized and directed to make such exceptions and waivers or extend or shorten time requirements as it deems most likely to effect the purposes hereof. The board is encouraged to avoid the development of

rigid procedures and formalities in the determination of waived allocations or reallocations. The board is directed to focus on the probability of the Local Governments' using the Volume Cap for ARRA Bonds prior to January 1, 2011.

(B) The board may adopt any further policies and procedures it considers necessary for the equitable and effective administration of this chapter.

Section [11-18-80](#). In order to make the maximum use of Volume Cap allocations, any bond enabling act which specifies particular projects or users must be construed to provide that any recovery zone property as defined in Section 1400U-3(b) of the Code will be deemed to qualify as a project. Accordingly, any person engaged in a qualified business as defined in Section 1400U-3(b)(2) of the Code will be permitted as beneficiary of any such bonds."

B. Section [4-29-10](#)(3) of the 1976 Code, as last amended by Act 89 of 2001, is further amended to read:

"(3) 'Project' means any land and any buildings and other improvements on the land including, without limiting the generality of the foregoing, water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by the following investors or any combination of them:

- (a) any enterprise for the manufacturing, processing, or assembling of any agricultural or manufactured products;
- (b) any commercial enterprise engaged in storing, warehousing, distributing, transporting, or selling products of agriculture, mining, or industry, or engaged in providing laundry services to hospitals, to convalescent homes, or to medical treatment facilities of any type, public or private, within or outside of the issuing county or incorporated municipality and within or outside of the State;
- (c) any enterprise for research in connection with any of the foregoing or for the purpose of developing new products or new processes or improving existing products or processes;
- (d) any enterprise engaged in commercial business including, but not limited to, wholesale, retail, or other mercantile establishments; residential and mixed use developments of two thousand five hundred acres or more; office buildings; computer centers; tourism, sports, and recreational facilities; convention and trade show facilities; and public lodging and restaurant facilities if the primary purpose is to provide service in connection with another facility qualifying under this subitem; and
- (e) any enlargement, improvement, or expansion of any existing facility in subitems (a), (b), (c), and (d) of this item.

The term 'project' does not include facilities for an enterprise primarily engaged in the sale or distribution to the public of electricity, gas, or telephone services. A project may be located in

one or more counties or incorporated municipalities. The term 'project' also includes any structure, building, machinery, system, land, interest in land, water right, or other property necessary or desirable to provide facilities to be owned and operated by any person, firm, or corporation for the purpose of providing drinking water, water, or wastewater treatment services or facilities to any public body, agency, political subdivision, or special purpose district. This definition is for purposes of industrial revenue bonds only.

Notwithstanding another provision hereof, the term 'project' shall include any recovery zone property as defined in Section 1400U-3(b) of the Internal Revenue Code and any 'Qualified Conservation Purpose' as defined in Section 54D(f) of the Internal Revenue Code or other purposes set forth in Section 54D(e) of the Code. No restriction herein relating to the user or use of a project shall apply to any recovery zone property."