



E3- ARRA meets the “Q-C-PUF”, Etc.

Jim Gessford

NASB/NCSA
STATE EDUCATION
CONFERENCE 2009
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I. **The 2009 Legislature by LB 545--Sec. 24. Amended § 79-10,110, R.R.S., the Qualified Capital Purpose Undertaking Fund Law (QCPUF) to Facilitate ARRA Bonds**

A. **ARRA Bond Issuance Deadline.** Generally, these ARRA bonds must be issued in 2009 and 2010 or as stated by several authorities they “*must be issued prior to January 1, 2011.*”

B. **Types of Construction.** A school board may undertake *non-voter approved* construction of a new school facility or the acquisition of land for such a facility is to be constructed or any expansion, rehabilitation, modernization, renovation, or repair of any existing school facilities under its control.

C. **Itemized Estimate of Project and Designation.** The school board shall prepare an itemized estimate of the amounts necessary to be expended for the project or projects. The board shall also designate: (a) The particular project or projects for which the bond will be issued and the tax levy expended; (b) the period of years for which the tax will be levied to repay such bond, not exceeding the maximum term established pursuant to federal law for the type of bond as permitted by the federal American Recovery and Reinvestment Act of 2009 or, if no such term is established, *thirty years*; and (c) the amount of the levy for each year of such period.

D. **Notice and Public Hearing.** The school board must then hold a public hearing on the itemized estimate and designation. Notice of the public hearing must published in advance for three consecutive weeks in a legal newspaper published or of general circulation in the school district

E. **Issuance of Bonds, Undertake Construction, and Levy Tax.** After the public hearing, without a vote of the people, the school board may (a) issue bonds, (b) undertake construction of the project or projects and (c) may levy a tax to repay any American Recovery and Reinvestment Act of 2009 bonds.

F. **Exempt from Lid.** The tax levy to pay off the ARRA or other QCPUF Law bonds is exempt from the levy lid. See Section 77-3442, R.R.S. (“Property tax levies for the support of local governments for fiscal years beginning on or after July 1, 1998, shall be limited to the amounts set forth in this section [*one dollar and five cents per one hundred dollars of taxable valuation of property subject to the levy*] ... (10) ... bonded indebtedness approved according to law ... [is] not included in the levy limits established by this section.”

G. **NDE Allocations.** The State Department of Education shall establish procedures for allocating bond authority to school boards as may be necessary pursuant to AARA.

H. **Non-voter Approved Bonds—Freeholders Caution.** QCPUF bonds (ARRA bonds or otherwise) are non-voter approved. § 79-458, R.R.S. (the freeholders law) provides that landowners may freehold or transfer their property to another school district if “the school district in which the land is situated, regardless of the class of school district, has approved a budget for the school fiscal year in which the petition is filed that will cause the combined levies for such school fiscal year, except levies for bonded indebtedness approved by the voters of such school district and levies for the refinancing of such bonded indebtedness, to exceed the greater of (i) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (ii) the maximum levy authorized by a vote pursuant to section 77-3444.



jgessford@perrylawfirm.com



II. ARRA Bonds

A. TYPES OF BONDS—there are several types of bonds provided in ARRA. Some are new and others are either reauthorized or enhanced. Not all types will be applicable to schools. Each type has its own special characteristics and terms. Some may or may not be marketable depending on size and circumstance. Schools should consult their financial advisors or bond counsel for planning purposes. The following is a general list of ARRA bonds:¹

1. **Build America Bonds (Direct Payment)**
 - No allocation/Unlimited; taxable; Refundable tax credit given directly to the issuer equal to 35% of interest payable on each interest payment date
2. **Build America Bonds (Tax Credit)**
 - No allocation/Unlimited; taxable; Refundable tax credit given directly to Bondholder equal to 35% of interest payable on each interest payment date
3. **Qualified Zone Academy Bonds (QZABs)**
 - NE allocation 2009 \$6,760,000; taxable; Taxable; quarterly Federal tax credits to bondholders at rates determined by the Treasury on the issue date
4. **Qualified School Construction Bonds (QSCBs)**
 - NE allocation 2009 \$32,343,000
 - For the procedure school boards need to follow to try and obtain a local allocation from the state, See http://www.nde.state.ne.us/LEGAL/documents/HDRule87_2009.pdf (draft)
 - Taxable; quarterly Federal tax credits to bondholders at rates determined by the Treasury on the issue date
5. **Recovery Zone Economic Development Bonds (Direct Payment)**
 - \$10 billion national cap; taxable; 45% of coupon interest to issuer
6. **New Clean Renewable Energy Bonds (New CREBs)**
 - \$2.4 billion; issuers must apply directly to IRS by August 4, 2009
7. **Qualified Energy Conservation Bond (QECBs)**
 - NE allocation \$18,502,000
8. **Recovery Zone Facility Bonds**
 - \$15 billion national volume cap; tax exempt
9. **Traditional Tax-Exempt Bonds--NE ????**
 - Generally unlimited; tax exempt;

B. IRS GENERAL SUMMARY—See summary and related Internal Revenue Service links at <http://www.irs.gov/newsroom/article/0,,id=206044,00.html> (visited 5-30-09).

The IRS has issued legal guidance on bond provisions in the American Recovery and Reinvestment Act.

¹ On all See GILMOREBELL at http://www.gilmorebell.com/arra_bond_chart.pdf and Quarles & Brady at <http://www.quarles.com/publications/detail.aspx?publication=525> (click on "Quarles & Brady_ARRA Matrix.pdf") link for excellent charts detailing the various types of ARRA bonds and the specific attributes of each).