



September 8, 2017

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 17-0112 – Assignment of Qualified Energy Conservation
Bond Allocation

President and City Council Members:

The Law Department has reviewed City Council Bill 17-0112 for form and legal sufficiency. The bill would authorize the Mayor and City Council of Baltimore to reallocate its allocation of the national bond volume cap for qualified energy conservation bonds (QECB'S) to Maryland Clean Energy Center (MCEC)..


A Qualified Energy Conservation Bond (QECB) is a bond that enables qualified state, tribal, and local government issuers to borrow money at attractive rates to fund energy conservation projects. (it is important to note that QECBs are not grants). A QECB is among the lowest-cost public financing tools because the U.S. Department of the Treasury subsidizes the issuer's borrowing costs. QECBs may only be issued for qualified conservation purposes as defined in section 54D of the U.S. Internal Revenue Code. "Qualified conservation purposes" include capital expenditures:

1. To reduce energy consumption in publicly owned buildings by at least 20%
2. To implement green community programs (including the use of grants, loans, or other repayment mechanisms to implement such programs)
3. For rural development (including the production of renewable energy)
4. For certain renewable energy facilities (such as wind, solar, and biomass)
5. For certain mass commuting projects

Under IRC §54D a local government that has received an allocation of the national bond volume cap from the State may reallocate it back to the State. Under the Md. Code Ann., Econ. Dev. Art., §10-806, MCSC is established as an instrumentality of the State of Maryland. The State has granted authority to MCEC to borrow money and issue bonds to finance any part of the cost of a project or for any other corporate purpose of MCEC. See §10-822. Since MCEC is an instrumentality of the State and has the power to issue bonds, the reallocation is consistent with federal law. To make this abundantly clear, the Law Department suggests inserting “(an instrumentality of the State)” on page 1, line 18, after “(MCEC)”.

There has been some confusion regarding the appropriate method to reallocate a local government’s allocation. In June 2015, the IRS revised its “Frequently Asked Questions on Tax Credit Bonds and Specified Tax Credit Bonds”. The updated FAQ states that “The IRS will defer to any reasonable process under applicable State law by which a large local government, acting through its governing body or a duly authorized official of a large local government, voluntarily reallocates its volume cap for QECBs back to the State in which such large local government is located.” Pursuant to this language, this resolution of the Mayor and City Council is legally sufficient to accomplish the proposed reallocation.

The Law Department, therefore, approves the bill for form and legal sufficiency.

Sincerely,

Elena R. DiPietro
Division Chief

cc: Andre M. Davis, City Solicitor
David Ralph, Deputy City Solicitor
Karen Stokes, Director, Mayor’s Office of Government Relations
Kyron Banks, Mayor’s Legislative Liaison
Jennifer Landis, Assistant Solicitor
Hilary Ruley, Chief Solicitor
Victor Terval, Chief Solicitor