

WISCONSIN 2009 SENATE BILL 440 - WAIVER AND REALLOCATION OF RECOVERY ZONE FACILITY BOND ALLOCATIONS, COUNTIES AS ISSUERS OF INDUSTRIAL REVENUE BONDS AND CHANGES TO ELIGIBLE PARTICIPANTS IN INTERGOVERNMENTAL COOPERATION AGREEMENTS

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Background

The American Recovery and Reinvestment Act of 2009 ("ARRA") authorized various new bond programs including Recovery Zone Facility Bonds ("RZFBs"), a new economic development bond program. The Heartland Disaster Tax Relief Act of 2008 also authorized a new economic development bond program, namely Midwestern Disaster Area Bonds ("MDABs"). Both of these bond programs allow private business entities to access tax-exempt financing for a broad range of capital projects, through the issuance of conduit revenue bonds by a municipal issuer.¹

Under ARRA, the allocations for RZFBs were made directly to counties and large municipalities. Some counties and large municipalities may have used some or all of their RZFB allocation for the benefit of private business projects within their jurisdiction, and others may have made allocations to municipalities within their jurisdiction. Under 2009 Senate Bill 440 (the "Legislation")², counties and large municipalities will waive their allocation of RZFBs as of March 1, 2010 unless they take affirmative action. The Wisconsin Department of Commerce ("DOC") is charged with establishing and administering a system for a reallocation of RZFBs among authorities and local government units in response to applications received on a project by project basis.

¹ The private business entity must negotiate a commitment from a bank or other financial institution for a loan for the project. (Conduit revenue bonds are either underwritten by a financial institution or purchased by a bank based on the borrower's credit.) The municipal issuer of conduit revenue bonds then issues bonds to that bank or other financial institution and lends the bond proceeds to a borrower to use for qualifying purposes. The private business entity must repay the loan to the municipal issuer, which loan payments are used by the municipal issuer to pay debt service on the bonds. The municipal issuer has no financial liability or other obligation to repay the bonds.

² On January 28, 2010, the Legislation was adopted by both the Wisconsin Senate and Assembly. It is currently awaiting signature by the Governor. The Legislation will be effective on the day after its date of publication as designated by the Secretary of State which may not be more than 10 working days after the date of enactment (i.e., the day on which the Governor approves the Legislation).

For additional information on the requirements to issue RZFBs and MDABs, please see our prior updates and a comparison of RZFBs and MDABs, all of which are attached.

Waiver and Reallocation of Recovery Zone Facility Bonds³

The Legislation provides that a RZFB allocation that has been received by a city or county will be waived unless the city or county takes the following action:

- 1) Before March 1, 2010 sends written notice to DOC:
 - a) stating that RZFBs have been issued; or
 - b) identifying the amount of a proposed issuance of RZFBs and the nongovernmental entity that will own or operate the project being financed, along with a letter to DOC from the prospective purchaser of the RZFBs which states the prospective purchaser's expectation that an agreement for the purchase of the RZFBs will be executed before May 1, 2010, and that the RZFBs will be issued before June 1, 2010;
- 2) before May 1, 2010 sends written notice to DOC stating:
 - a) that RZFBs have been issued; or
 - b) that an agreement has been executed by the issuer of RZFBs and a bond purchaser, providing for the purchase of RZFBs; and
- 3) before June 1, 2010 sends written notice to DOC stating that RZFBs have been issued.

The Legislation requires DOC to establish and administer a system to reallocate any RZFB allocation that is waived. Any political subdivision of the state, special purpose district, agency or corporation of a political subdivision or special purpose district, intergovernmental cooperation commission, housing authority, redevelopment authority or community development authority can apply to DOC for a reallocation for a particular project.

Before DOC makes a reallocation of RZFBs, it must consider whether MDABs are an alternative source of financing for that particular project and whether sufficient MDAB bonding authority remains for that particular city or county. DOC must also consider the amount of RZFB allocation that has been waived by each city or county that seeks a reallocation after March 1, 2010 and before June 1, 2010. DOC will reallocate a RZFB allocation from the overall waived allocation to a project in a city or county that waived

³ The Legislation for the recovery zone facility bond waiver/reallocation does not affect recovery zone economic development bond allocations, a different bond program authorized under ARRA which assists state and local governments in issuing bonds to promote development or other economic activity in a "recovery zone" including to fund infrastructure and capital expenditures.

an allocation in an amount up to the total RZFB allocation that was waived by the city or county or the amount necessary for the project, whichever is less. If the amount of RZFBs requested for reallocation exceeds the amount that has been waived, DOC will prorate the available waived allocations among cities and counties in proportion to the amount the cities and counties previously waived.

If a city or county is eligible to issue MDABs (i.e., the 30 affected counties in approximately the southern 1/3 of the state) and has waived any portion of its RZFB allocation before January 1, 2011, DOC will increase that city's or county's allocation of MDAB authority by the amount that the city or county waived in RZFB allocation.

Provides Counties with the Authority to Issue Industrial Revenue Bonds

The Legislation also provides counties with specific authority to issue industrial revenue bonds pursuant to Section 66.1103, Wisconsin Statutes (the "IRB Statute"). Prior to the passage of the Legislation, only a "municipality" (defined as a city, village or town) had the ability to issue industrial revenue bonds under the IRB Statute. Facilities that qualify for financing with MDABs and RZFBs have been added to the list of eligible "projects" and "industrial projects" under the IRB Statute, regardless of the nature of the business or project to be financed.

Changes in Definition of "Municipality" for Intergovernmental Cooperation Agreements

Housing authorities, redevelopment authorities and community development authorities have been added to the definition of "municipality" under the Intergovernmental Cooperation Statute (Section 66.0301, Wisconsin Statutes), which means housing authorities, redevelopment authorities and community development authorities have been given authority to participate in intergovernmental cooperation commissions under the Legislation and will be able to enter into intergovernmental cooperation agreements. The significance of this change in terms of RZFB issuance is that intergovernmental cooperation commissions can apply for a reallocation of RZFB allocations that have been waived.⁴

Please call any of the Quarles & Brady Public Finance lawyers if you have any questions about the Legislation, RZFBs or MDABs.

⁴ Housing authorities, redevelopment authorities and community development authorities may also apply for a reallocation of RZFBs even if they are not a part of an intergovernmental cooperation commission.