

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER, NEW YORK**

Your Committee is in receipt of a transmittal from the County Executive recommending approval of an Act, which, if adopted by your Honorable Board, would authorize the County of Westchester (the "County") to reserve fifty percent (50%) of the County's allocation of \$7,880,242.00 in Qualified Energy Conservation Bonds ("QECBs"), for use by municipalities in Westchester County that have designated the Energy Improvement Corporation ("EIC") as their instrumentality for the purpose of financing the acquisition, construction and installation of renewable energy systems and energy efficiency improvements and the verification of the installation of such systems and improvements pursuant to Article 5-L of the New York General Municipal Law ("Eligible Municipalities", with each an "Eligible Municipality"). The County Executive noted that since the City of Yonkers has received its own allocation of \$2,087,662.00 in QECBs, it will not be eligible for a sub-allocation from the County's QECB allocation.

Your Committee has been advised that the proposed Act would also authorize the County Executive to request, for a period of nine months, proposals from Eligible Municipalities that would use QECBs to implement "Green Community Program" projects ("projects") for commercially-owned properties pursuant to section 54D of the Internal Revenue Code ("IRC Section 54D"). Pursuant to the Act, the proposals received are anticipated to include a "Request for Suballocation of QECB Cap" form (attached to the proposed Act transmitted herewith) which would set forth, among other items, the Eligible Municipality's request for a certain amount of the County's QECB allocation, a description of the project(s) to be financed with QECBs, an

indication of preliminary acceptance of such project(s) by EIC, as well as other representations and certifications. Proposed projects are to be prioritized as follows: 1) for affordable housing, 2) projects for not-for-profit corporations, and, if any of the reserved QECBs remain, 3) projects for entities that are for-profit.

Your Committee has been further advised that the proposed Act would authorize the County Executive or his designee, after the receipt and evaluation of proposals, to negotiate with Eligible Municipalities that have submitted proposals, as well as EIC, the terms of proposed intermunicipal agreements to effectuate the sub-allocation of a portion of the reserved QECBS to, and use of such QECBs by, the Eligible Municipalities (the “IMAs”). The IMAs would be subject to your Honorable Board’s future approval. The County Executive noted that the restriction of the use of the QECBs to commercially-owned property was recommended by EIC due to the uncertainty created by certain policies of the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) concerning individually-owned residential properties, as the covenants of certain private residential mortgages might be negatively impacted if the homeowner/mortgagor were to use this type of financing for a green energy improvement.

As your Honorable Board knows, the County was first notified of its allocation of QECBs by the New York State Energy Research and Development Authority (“NYSERDA”) on May 12, 2010. NYSERDA has been designated as the State’s administrator for the allocation of these federally-authorized tax-subsidy bonds. As your Honorable Board also knows, the Town of Bedford first brought EIC and the use of QECBs for projects to the County’s attention in

2011. Initially, there was concern over how to apply IRC Section 54D's requirement of a 70% governmental activity/30% private activity balance to projects. Your Committee has been advised that the Internal Revenue Service ("IRS") finally issued guidance, in Notice 2012-44, which resolved the issue.

Your Committee has been advised that the County's bond counsel, Hawkins Delafield & Wood LLP ("Hawkins"), has advised that the County can only sub-allocate its QECCB allocation to a lower level of government, such as other municipalities within the County. However, your Committee has been advised that the County desired to achieve the efficiency of pooling numerous municipal bond issues, and avoiding paying the interest rate penalty to which smaller bonds issues are subject. Your Committee has been advised that the County also desired to have EIC contribute its expertise to the review of the proposed projects. Your Committee has been advised that, toward that end, Hawkins worked with counsel for EIC to develop a mechanism by which the County could legally permit EIC to act as the instrumentality for the Eligible Municipalities for the purpose of the issuance of QECCBs that the County had sub-allocated to such municipalities. Your Committee has been advised that Hawkins has advised that if a municipality becomes a member of EIC, which your Committee has been advised is a not-for-profit Local Development Corporation created under section 1411 of the New York Not-For-Profit Corporation Law, then that municipality may designate EIC to issue QECCBs on its behalf.

Your Committee has also been advised that, currently, EIC has the following municipalities as members of the corporation: Town of Bedford, Village of Croton-on-Hudson, Town of Greenburgh, Town of Lewisboro, Town of North Salem, Town of Ossining, City of

Peekskill, Town of Somers, City of White Plains, and Town of Yorktown. Your Committee has been advised that other municipalities are in the process of joining EIC.

Your Committee has been advised that after the nine-month time period for proposals has elapsed, the County will review the proposals from Eligible Municipalities and determine the proposals for which the County will seek authority from your Honorable Board to sub-allocate a portion of the County's allocation of QECBs. Your Committee has been advised that, when the review process is complete, it will be necessary for the County to enter into the IMAs with Eligible Municipalities for the selected proposals for eligible projects located within each Eligible Municipality. The IMAs will enable each Eligible Municipality receiving a QECB sub-allocation to confirm that EIC is their "constituted authority" for the purposes of issuing the QECBs, memorialize the list of projects within each Eligible Municipality for which the QECBs will be used and provide the County with its normal indemnities. Your Committee has been advised that separate legislation to authorize the County to enter into the IMAs would be submitted to your Honorable Board.

Your Committee has been advised that, as the County's QECB allocation is a property right of the County that could be utilized entirely by the County to provide lower-cost financing for its own qualifying projects, the County Executive is requesting authorization from your Honorable Board for the County to reserve a portion of the County's QECB allocation and request proposals from Eligible Municipalities, as described above. Although many municipalities that have received QECB allocations appear to have used them for their own projects, this request to reserve fifty percent (50%) of the County's QECB allocation for these

non-County purposes will allow the County to help fund projects in Eligible Municipalities while still allowing the County to evaluate the savings it might obtain from its own use of the remaining fifty percent (50%) of the County's QECB allocation. However, your Committee has been advised that the County Executive shall regularly review the County's use of its allocation to determine if a further portion of the allocation would best be utilized by EIC and may amend this request of your Honorable Board.

The Planning Department has advised that, based on its review, the above-referenced Act has been classified as a Type "II" action pursuant to the State Environmental Quality Review Act ("SEQRA") and its implementing regulations, 6 NYCRR Part 617. Therefore, no further environmental review is required. Your Committee concurs with this conclusion.

Since energy conservation is an important public purpose, your Committee recommends the adoption of the proposed Act.

10/21/13

Dated: Oct 7, 2013
White Plains, New York

U.S. 11/13
P. Kelly
John B. T...
Stefano Giacotto
John B. D...
Jones M...

Judith...
P. Kelly
Bernie Spr...
Stefano Giacotto
John B. D...

Committee on Environment & Energy

Committee on Budget & Appropriations

FISCAL IMPACT STATEMENT

SUBJECT: QECB Sub-Allocation

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations Other (explain)

Identify Accounts: _____

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: Out-year impact to be determined.

Prepared by: Gideon Grande

Title: Budget Analyst

Department: Budget

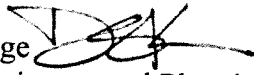
Date: September 23, 2013

Reviewed By: 

Budget Director

Date: 9/23/13

TO: George Oros
Chief of Staff

FROM: David S. Kvinge 
Director of Environmental Planning

DATE: September 23, 2013

SUBJECT: **SEQR DOCUMENTATION FOR SUB-ALLOCATION OF QUALIFIED ENERGY CONSERVATION BONDS**

In response to your request, the Planning Department has reviewed the above referenced action with respect to the State Environmental Quality Review Act and its implementing regulations, 6NYCRR Part 617 (SEQR).

The action involves an act of the Board of the Board of Legislators to authorize the County to sub-allocate a portion of the County's allocation of Qualified Energy Conservation Bonds to municipalities in Westchester County that have designated the Energy Improvement Corporation (EIC) as their instrumentality for the purpose of financing the acquisition, construction and installation of renewable energy systems and energy efficiency improvements, and the verification of the installation of such systems and improvements, pursuant to Article 5-L of the New York General Municipal Law. The act will also authorize the County to request proposals from and negotiate terms of agreements with municipalities and the EIC in connection with the above. Further Board approval, however, will be required to enter into such agreements.

Since further authorization will be needed to actually fund the projects, once identified, the proposed action may be classified as Type II, pursuant to section 617.5(c)(21), "conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action." As such, no further environmental review is required at this time.

Please contact me if you need any additional information regarding this classification.

DSK/cnm

cc: Katherine Delgado, Deputy Chief of Staff
Edward Buroughs, Commissioner of Planning

An ACT authorizing the County of Westchester to reserve fifty percent (50%) of the County's allocation of \$7,880,242.00 in Qualified Energy Conservation Bonds ("QECCBs"), for use by municipalities in Westchester County, except for the City of Yonkers which received its own QECCB allocation of \$2,087,662, that have designated the Energy Improvement Corporation ("EIC") as their instrumentality for the purpose of financing the acquisition, construction and installation of renewable energy systems and energy efficiency improvements and the verification of the installation of such systems and improvements pursuant to Article 5-L of the New York General Municipal Law; authorizing the County Executive to request, for a period of nine months, proposals from such municipalities that would use QECCBs to implement "Green Community Program" projects for commercially-owned properties; and authorizing the County Executive or his designee to negotiate with such municipalities, as well as EIC, the terms of proposed intermunicipal agreements to effectuate the sub-allocation of a portion of the reserved QECCBs to, and use of such QECCBs by, such municipalities.

BE IT ENACTED, by the County Board of the County of Westchester, as follows:

Section 1. The County of Westchester (the "County") is hereby authorized to reserve fifty percent (50%) of the County's allocation of \$7,880,242.00 in Qualified Energy Conservation Bonds ("QECCBs"), for use by municipalities in Westchester County that have designated the Energy Improvement Corporation ("EIC") as their instrumentality for the purpose

of financing the acquisition, construction and installation of renewable energy systems and energy efficiency improvements and the verification of the installation of such systems and improvements pursuant to Article 5-L of the New York General Municipal Law (“Eligible Municipalities”, with each an “Eligible Municipality”). Since the City of Yonkers has received its own allocation of \$2,087,662.00 in QECCBs, it shall not be eligible for a sub-allocation from the County’s QECCB allocation.

§2. The County Executive is hereby authorized to request, for a period of nine months from the effective date of this Act, proposals from Eligible Municipalities that would use QECCBs to implement “Green Community Program” projects (“projects”) for commercially-owned properties pursuant to section 54D of the Internal Revenue Code. Proposals received shall include a “Request for Suballocation of QECCB Cap” form (attached hereto) which would set forth, among other items, the Eligible Municipality’s request for a certain amount of the County’s QECCB allocation, a description of the project(s) to be financed with QECCBs, an indication of preliminary acceptance of such project(s) by EIC, as well as other representations and certifications. Proposed projects are to be prioritized as follows: 1) for affordable housing, 2) projects for not-for-profit corporations, and, if any of the reserved QECCBs remain, 3) projects for entities that are for-profit.

§3. The County Executive or his designee is hereby authorized, after the receipt and evaluation of proposals, to negotiate with Eligible Municipalities that have submitted proposals, as well as EIC, the terms of proposed intermunicipal agreements to effectuate the sub-allocation

of a portion of the reserved QECBS to, and use of such QECBs by, the Eligible Municipalities (the "IMAs"). The IMAs shall be subject to future approval by the Board of Legislators.

§4. This Act shall take effect immediately.

Request for Sub-Allocation of QECB Cap

The undersigned, as authorized by resolution of the [Town/Village/City] [Board/Council] of the [Town/Village/City] of _____, New York (the “[Town/Village/City]”) adopted _____ 2013, does hereby request that the County of Westchester (the “County”) sub-allocate \$ _____ of the County’s issuing authority with respect to qualified energy conservation bonds (“QECB Cap”) determined under Section 54D(e) of the Internal Revenue Code of 1986 (the “Code”) to Energy Improvement Corporation (“EIC”). EIC is a constituted authority of its members, including the [Town/Village/City], with full power and authority to issue qualified energy conservation bonds (“QECBs”) on behalf of the [Town/Village/City] and for the attainment of which a sub-allocation of QECB Cap is requested.

In furtherance of this request for sub-allocation of QECB Cap (the “Request”), the undersigned, on behalf of the [Town/Village/City] and in reliance on the attached certificate of EIC, certifies and represents as follows:

1. Each of the conservation purposes to be financed with proceeds of QECBs to be issued by EIC pursuant to the sub-allocation of QECB Cap and the reasonably estimated cost of the purposes to be so financed are [set forth below][set forth on the schedule attached hereto (the “Schedule”)];
2. The sum of the costs to be financed with proceeds of QECBs to be issued by EIC pursuant to the sub-allocation of QECB Cap, including costs of issuance (as limited by Code Section 54A(e)(4)), is \$ _____, which is equal to the sum of (a) the sub-allocation of QECB Cap requested hereby and (b) the earnings reasonably expected to be derived from the investment thereof;
3. The purposes to be financed with proceeds of QECBs to be issued by EIC pursuant to the sub-allocation of QECB Cap are described in, or are consistent with, Q/A-10 of Notice 2012-44, 2012-28 I.R.B. 45, relating to green community programs;
4. The expenditures to be financed with proceeds of QECBs to be issued by EIC pursuant to the sub-allocation of QECB Cap are properly chargeable to capital account for federal income tax purposes;
5. Except for costs of issuance, the expenditures to be financed with proceeds of QECBs to be issued by EIC pursuant to the sub-allocation of QECB Cap relate to conservation purposes located solely within the corporate boundaries of the [Town/Village/City]; and
6. When timely, the [Town/Village/City] will cause a certificate to be provided to the County to the effect that (a) all proceeds of the QECBs to be issued by EIC pursuant to the sub-allocation of QECB Cap, and all earnings derived from the investment of such proceeds, have been expended for the intended purposes of the issue, or (b) if such proceeds and earnings are not or cannot be expended within the maximum period permitted by law, that all unspent amounts have been timely allocated to the redemption of the QECBs issued by EIC.

The [Town/Village/City] of _____, New York

By: _____

Name: _____

Office: _____

Dated: _____, 2013

STATE OF NEW YORK)
) ss.
WESTCHESTER COUNTY)

I HEREBY CERTIFY that I have compared the foregoing Act, Act No. 172 - 2013, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of the said original Act, which was duly adopted by the County Board of Legislators, of the County of Westchester on October 28, 2013, and approved by the (Acting) County Executive on November 8, 2013.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 15th day of November, 2013.



Tina Seckerson

The Clerk of the Westchester County
Board of Legislators

County of Westchester, New York

