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# COMMONWEALTH OF VIRGINIA



## OFFICE OF THE GOVERNOR

### EXECUTIVE ORDER NUMBER NINETY (2009)

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#### **ALLOCATION OF A PORTION OF THE COMMONWEALTH'S SHARE OF THE CALENDAR YEAR 2009 NATIONAL LIMITATION FOR QUALIFIED SCHOOL CONSTRUCTION BONDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 355) was enacted on February 17, 2009 ("ARRA"). Section 3(a) of ARRA sets forth the purposes of ARRA, which include (i) preserving and creating jobs and promoting economic recovery, (ii) assisting those most impacted by the recession, (iii) investing in infrastructure that will provide long-term economic benefits, and (iv) stabilizing State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

Section 1521(a), Title I, Division B of ARRA added Section 54F to the Internal Revenue Code of 1986, as amended (the "Tax Code"). Section 54F provides for the issuance of qualified school construction bonds ("QSCBs"). QSCBs are tax credit bonds that are designed to bear no interest and may be issued to finance the construction, rehabilitation, or repair of a public school facility or for qualifying public school facility land acquisitions. Among the conditions for the valid issuance of QSCBs is the receipt of an award of the national limitation for the calendar year in which the QSCBs are to be issued.

Section 54F(c) creates a national limitation of \$11 billion for each of calendar years 2009 and 2010. Section 54F(d)(1) requires the U.S. Secretary of the Treasury to make allocations to the States in proportion to the respective amounts each State is eligible to receive under Section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the most recent federal fiscal year ending before the calendar year. Pursuant to Notice 2009-35 of the Internal Revenue Service (IRB 2009-17, dated April 27, 2009) (the "Notice"), the share of the calendar year 2009 national limitation allocated to the Commonwealth of Virginia (the "Commonwealth" or "Virginia") is \$191,077,000 (the "2009 Commonwealth Share").

Section 54F(d)(1) also provides that the national limitation amount allocated to a state for any calendar year shall be allocated by the state to issuers within the state. The Notice provides that eligible issuers of QSCBs include states, political subdivisions as defined for purposes of Section 103 of the Tax Code, large local educational agencies that are state or local governmental entities, certain "on-behalf-of" issuers and certain conduit financing issuers. Neither Virginia nor federal law provides any process for making allocations of the 2009 Commonwealth Share to eligible issuers.

In order to effectuate the purposes of ARRA, it is imperative that the Commonwealth begin allocating the 2009 Commonwealth Share to benefit qualifying projects.

In preparation for the initial allocation of the 2009 Commonwealth Share set forth herein, I directed the staff of the Virginia Public School Authority ("VPSA") to survey the localities with projects on the First Priority Waiting List for assistance from the Literary Fund as of April 2009 (the "FPWL") to determine which FPWL localities were interested in pursuing, and could qualify for, QSCB financing through a VPSA pooled QSCB issue in the fall of 2009.

Accordingly, by virtue of the powers invested in me by Article V of the Constitution of Virginia and Section 2.2-103 of the Code of Virginia of 1950, as amended, as Governor of the Commonwealth of Virginia, I hereby allocate to VPSA pursuant to Section 54F(d)(1) of the Tax Code a portion of the 2009 Commonwealth Share sufficient for VPSA to issue a face amount of QSCBs at one time or from time to time to produce for each of the below-listed projects an amount of net sale proceeds up to the maximum amount specified below:

<u>Locality</u>	<u>Project</u>	<u>Maximum Net Sale Proceeds</u>
Petersburg City	Robert E. Lee Elementary	\$6,493,700
	Walnut Hill Elementary	\$5,818,691
Portsmouth City	Simonsdale Elementary	\$18,000,000
Lynchburg City	Sandusky Middle School	\$18,000,000
Lexington City	Lylburn Downing Middle School	\$7,500,000
Richmond County	Richmond County Elementary	\$2,290,819
Fluvanna County	Fluvanna County High School	\$6,000,000
Montgomery County	New Elliston-Lafayette & Shawsville Elementary School	\$7,500,000

In order to facilitate (i) additional executive orders allocating the 2009 Commonwealth Share to further the purposes of Section 3(a) of ARRA and (ii) the carrying over to calendar year 2010 of any unused 2009 Commonwealth Share, the Secretary/Treasurer of VPSA shall notify

the Chief of Staff in writing of how much of the 2009 Commonwealth Share VPSA has used pursuant to this Executive Order within five business days following each VPSA issuance of the QSCBs contemplated hereby.

This Executive Order shall be effective as of September 15, 2009, without any further act or filing and shall remain in force and effect so long as Section 54F shall remain in effect, unless sooner rescinded or amended by further executive order. I intend to issue an additional Executive Order to provide for the allocation of the remaining 2009 Commonwealth Share and the Commonwealth's share of the calendar year 2010 national limitation for QSCBs.

Given under my hand and under the Seal of the Commonwealth of Virginia this 4th day of September, 2009.

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Timothy M. Kaine, Governor

Attest:

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Secretary of the Commonwealth