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THURSDAY, APRIL 2, HAYNSWORTH SINKLER BOYD, P.A. TO HOST DIAL-IN Q&A ON FEDERAL STIMULUS ACT

The American Recovery and Reinvestment Act of 2009 (the "Stimulus Act") is the largest one-time domestic spending program in the history of the United States. It contains bond provisions, grant opportunities and reporting and compliance requirements that will affect South Carolina local governments. We believe that it is important for you to understand those provisions of the Stimulus Act highlighted below and invite you to participate in a one hour telephonic question and answer session on Thursday, April 2nd.

QUESTIONS?

E-mail them to one of our attorneys at tdubose@hsblawfirm.com to be answered during the call. **A more detailed summary may be found on Haynsworth Sinkler Boyd's Web site at WWW.HSBLAWFIRM.COM. We will use this outline as a guide for the telephonic session.**

BOND PROVISIONS

The Stimulus Act allows local governments to issue **Build America Bonds** during 2009 and 2010. Build America Bonds are similar to traditional tax-exempt bonds, with one critical distinction. Rather than bearing a tax-exempt rate, Build America Bonds bear interest at a taxable rate and entitle the bond owner to a non-refundable federal tax credit. Alternatively, the issuer may elect to receive a direct payment of the credit in cash. Based on current market conditions, it appears that the tax credit will result in an appreciably lower net interest rate to be paid by the issuer.

The Stimulus Act further authorizes the creation of **Recovery Zones** in areas that are subject to significant poverty, unemployment, home foreclosures, or economic distress. Cities with a population in excess of 100,000 and counties of all sizes may then issue **Recovery Zone Economic Development Bonds** for certain types of projects within the Recovery Zone. These bonds are supported by a 45% tax credit rate, which will significantly lower the cost of borrowing. The Stimulus Act has authorized up to \$10 billion in Recovery Zone Economic Development Bonds. These amounts have not yet been allocated among the States and eligible local issuers.

Cities with a population in excess of 100,000 and counties of all sizes may also issue **Recovery Zone Facility Bonds** for certain types of projects within a Recovery Zone. These bonds may be used to provide depreciable property for private enterprises. The Stimulus Act has authorized up to \$15 billion in Recovery Zone Facility Bonds. Again, these amounts have not yet been allocated among the States and eligible local issuers.

The Stimulus Act authorizes the issuance of two distinct types of bonds for energy efficiency projects. The first type, **New Clean Renewable Energy Bonds (New CREBs)**, is an extension of an existing program and allows local governments to finance projects that produce energy from a variety of renewable sources, such as wind, biomass, solar, and geothermal. The second type, **Qualified Energy Conservation Bonds (QECBs)**, is new and allows local governments to finance a range of green projects that are designed to increase local energy conservation.

The Stimulus Act includes additional bond incentives generally applicable to all issues. Most notably, during 2009 and 2010 it raises the **bank qualification limit from \$10 million to \$30 million**. The increased limit will create opportunities for bank placement that have not previously existed. The Stimulus Act also expands the ability of banks to deduct interest expense they incur in acquiring or carrying tax-exempt bonds, including private activity bonds issued in 2009 or 2010. Again, this provision should encourage the purchase of local government bonds by banks and, accordingly, should result in a lower interest rate to local governments.

GRANT OPPORTUNITIES

The bulk of the Stimulus Act involves federal spending in targeted areas, many of which may directly benefit local governments. The funding opportunities are too diverse and numerous to fully summarize here, but include funding for a variety of local government programs and infrastructure. Questions about specific grant opportunities are welcome.

REPORTING AND COMPLIANCE

The Stimulus Act creates reporting and compliance requirements that are commensurate with the size of the spending package. Under the Stimulus Act, local government projects are not directly subject to Federal Acquisition Regulations ("FAR"). However, grant requirements for particular projects may incorporate FAR requirements. Moreover, even if FAR is not applicable to a particular project, the Stimulus Act adds a significant layer of federal regulation onto local government projects funded by the Stimulus Act. For example, starting on July 10, recipients of stimulus money will be required to report to the Federal agency providing the award with a variety of information, including a detailed list of all projects or activities for which recovery funds were obligated and expended, an evaluation of the completion status of the project or activity, an estimate of the number of jobs created and the number of jobs retained by the project or activity, and, for infrastructure investments made by local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment.

The need for accurate and truthful reporting and careful spending is heightened in that Stimulus Act funded projects may be subject to the Federal False Claims Act. Finally, Stimulus Act funded Projects are also subject to audit.

ASK A LAWYER

You are invited on Thursday, April 2nd at 12:30 pm, to participate in a one hour telephonic question and answer session on the Stimulus Act and its affects on South Carolina local governments hosted by Haynsworth Sinkler Boyd, P.A.

To register, visit WWW.HSBLAWFIRM.COM and click on News and Events, or contact Jenny Worthington at 803.540.7763, or register via e-mail at jworthington@hsblawfirm.com. You will then be sent dial-in instructions for the call.

Submit your Stimulus Act questions prior to the call to tdubose@hsblawfirm.com. If you have additional questions during the hour session, email them to the same address. Your identity will remain anonymous.

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

A GUIDE FOR LOCAL GOVERNMENTS
AND SCHOOLS

Haynsworth Sinkler Boyd, P.A.

BUILD AMERICA BONDS

New taxable bond with either 35% of interest as a direct subsidy to issuers or a 35% tax credit to bondholders

- **Eligible Issuers:**
 - State and Local Governments
- **Permitted Projects:**
 - Governmental purpose projects
 - Not available for 501(c)(3) nonprofit or private activity projects
- **General Eligibility:**
 - Must meet the requirements of a tax-exempt bond, including arbitrage, private activity and rebate rules
- **Timeframe:**
 - Must be issued prior to January 1, 2011
- **Volume Cap Limitation:**
 - None

RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS

New taxable bond with either 45% of interest as a direct subsidy to issuers or a 45% tax credit to bondholders

- **Eligible Issuers**
 - Cities with a population of over 100,000 and all Counties
- **Permitted Projects**
 - Governmental purpose projects or programs (including capital expenditures, expenditures for job training and educational programs)
 - Not available for 501(c)(3) nonprofit or private activity purposes
- **General Eligibility**
 - Project must be located in or benefit a “recovery zone” designated by the issuer
 - Recovery Zone is any area having significant poverty, unemployment, foreclosures, general distress, or distress by reason of military base closures
 - Must meet same requirements as Build America Bonds
 - Federal Davis-Bacon prevailing wage rules apply
- **Timeframe**
 - Must be issued prior to January 1, 2011
- **Volume Cap Allocation**
 - \$10 billion, nationwide
 - Allocation among states based on relative employment declines during 2008
 - Allocation within a state to Eligible Issuers based on relative employment declines during 2008

RECOVERY ZONE FACILITY BONDS

New type of tax-exempt qualified private activity bond

- **Eligible Issuers**
 - Cities with a population of over 100,000 and all Counties
 - Proceeds loaned to eligible private businesses located in Recovery Zones (see prior slide for Recovery Zone designations)
- **Permitted Projects**
 - Buildings or equipment constructed or acquired by a private business located in a Recovery Zone
- **Timeframe**
 - Must be issued prior to January 1, 2011
- **Volume Cap Allocation**
 - \$15 billion, nationwide
 - Allocated among the states in the same manner as the allocation for Recovery Zone Economic Development Bonds (see prior slide)

SMALL ISSUE INDUSTRIAL DEVELOPMENT BONDS

Expansion of the type of facilities which may be financed with industrial development bonds

- **Eligible Issuers**
 - State and local governments
 - Proceeds loaned to eligible private businesses
- **Advantages**
 - Authority to issue tax-exempt “small issue” industrial development bonds is expanded to include those facilities used in the creation or production of intangible property (such as computer software) as well as R&D facilities for intellectual property associated with biotech, pharmaceutical and other fields
- **Timeframe**
 - Must be issued prior to January 1, 2011
- **Volume Cap Allocation**
 - No change in existing law

NEW CLEAN RENEWABLE ENERGY BONDS

Increases allocation for this tax-credit bond designed to provide the issuer with a 70% interest subsidy through tax credits to bondholders

- **Eligible Issuers**
 - State and local governments, municipal utilities, electric cooperatives and certain cooperative lenders
- **Permitted Projects**
 - A variety of renewable energy generation facilities
- **General Eligibility**
 - Facility has to be owned by a public power provider, a state or local government or a cooperative electric company
 - Federal Davis-Bacon prevailing wage rules apply
- **Timeframe**
 - No sunset date specified
- **Volume Cap Allocation**
 - \$2.4 billion, nationwide
 - Allocation made by application to IRS

QUALIFIED ENERGY CONSERVATION BONDS

Increases allocation for this tax-credit bond designed to provide the issuer with a 70% interest subsidy through tax credits to bondholders

- **Eligible Issuers**
 - State and Local Governments
 - A portion may be loaned to private companies
- **Permitted Projects**
 - A variety of “green” expenditures including:
 - Implementing green community programs; Grants to support research in emerging energy technology; Rail and bus facilities; Public education programs; Renewable energy facilities; Demonstration projects for emerging energy technologies
- **Timeframe**
 - No sunset date specified
- **Volume Cap Allocation**
 - \$3.2 billion, nationwide
 - Allocation among states according to population
 - Up to 30% may be allocated for private activity bonds
- **Special Requirements**
 - Federal Davis-Bacon prevailing wage rules apply

TRIBAL ECONOMIC DEVELOPMENT BONDS

New category of tax-exempt bonds

- **Eligible Issuers**
 - Federally recognized Indian tribes
- **Permitted Projects**
 - Any project a state could finance with governmental or private activity bonds
- **General Eligibility**
 - Project must be located in designated Tribal boundaries
- **Timeframe**
 - No sunset date specified
- **Volume Cap Allocation**
 - \$2 billion, nationwide
 - Allocations made by Department of Treasury upon consultation with Department of Interior

QUALIFIED SCHOOL CONSTRUCTION BONDS

New type of taxable bond with a tax credit to bondholders that is intended to result in zero interest to issuer

- **Eligible Issuers**
 - School Districts only
- **Projects**
 - Construction, rehabilitation, or repair of a public school facility, including acquisition of land for that facility
- **Volume Cap Allocation**
 - \$11 billion in each of 2009 and 2010, nationwide
 - 40% allocated by formula to 100 large districts, plus up to 25 more selected by the Secretary of the federal Department of Education
 - Remaining 60% allocated among the states based on relative child populations
 - General Assembly must adopt legislation directing allocation among S.C. school districts
- **Special Requirements**
 - Federal Davis-Bacon prevailing wage rules apply
- **Limitations**
 - Debt limit applies; will General Assembly allow lease-purchase?
 - Regulations may limit term to 15 year maximum repayment; may need to refinance at end of term
 - Expected that authorization will be allocated to a relatively small number of school districts
 - Market acceptance

QUALIFIED ZONE ACADEMY BONDS

Expansion of taxable bond with a tax credit to bondholders that is intended to result in zero interest to issuer

- **Eligible Issuers**
 - School Districts only
- **Projects**
 - Renovation, rehabilitation, or repair of an existing public school facility (existing footprint only), equipment, curriculum development, teacher training
 - Available only to districts with 35% participation in free/reduced lunch programs
- **Volume Cap Allocation**
 - \$1.4 billion in new allocation added by ARRA
 - Apportioned to States by population
 - Allocated in SC by State Department of Education
- **Special Requirements**
 - Contribution from third party (money, materials, training) equal to 10% of bond face value

TEMPORARY SUSPENSION OF AMT AS APPLIED TO TAX-EXEMPT BONDS

- Applies to new money bonds issued in 2009 and 2010
- Outstanding AMT bonds issued between 2004 and 2008 may be refinanced in 2009 and 2010 on a non-AMT basis

EXPANSION OF “BANK QUALIFIED” ELIGIBILITY

- Issuers impacted by change
 - State and local government issuers that issue no more than \$30 million of tax-exempt debt annually
 - Conduit issuers that issue bonds for 501(c)(3) organizations that borrow less than \$30 million tax-exempt annually
- Benefits of the change
 - Banks can deduct up to 80% of the interest expense that is allocable to a “bank qualified bond.” This results in a lower interest rate for the borrower
- Timeframe
 - Must be issued prior to January 1, 2011

EXPANSION OF 2% *DE MINIMIS* RULE

- Permits banks to avoid limits on interest expense deductions for new money, non-bank qualified bonds issued in 2009 and 2010, provided such bonds do not exceed 2% of its total assets (encourages the purchase of non-bank qualified bonds by banks)

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