

EXECUTIVE ORDER 86-04

STATE ADMINISTRATION OF NONESSENTIAL FUNCTION BOND STATE CEILING VOLUME CAP

WHEREAS, the United States House of Representatives has passed H.R. 3838, entitled the "Tax Reform Act of 1985" (the "Proposed Act") which, although not enacted into law, imposes an annual state-by state ceiling (the "State Ceiling") on the issuance of nonessential function bonds and certain portions of essential function bonds (together, "Nonessential Function Bonds") which State Ceiling initially is equal to the greater of (a) \$200 million or (b) an amount equal to \$175 multiplied by a state's population and which is applicable to Nonessential Function Bonds issued after December 31, 1985; and

WHEREAS, Section 701(b) of the Proposed Act would, if enacted, add a new Section 145 to the United States Internal Revenue Code (the "Code") which allocates the State Ceiling to governmental units within the state having authority to issue Nonessential Function Bonds (the "Issuers") and allocates the State Ceiling among the different types of Nonessential Function Bonds unless the state provides by law a different formula of allocation; and

WHEREAS, the method of allocation of the State Ceiling set forth in the Proposed Act may restrain the issuance of Nonessential Function Bonds for qualified facilities and other eligible uses; and

WHEREAS, the Proposed Act provides that a state may by law, which may be enacted before passage of the Proposed Act, provide for a different formula for allocating the State Ceiling among Issuers; and

WHEREAS, the State has enacted Chapter 247, Laws of 1986, authorizing the governor to establish by executive order a different formula for allocation of the State Ceiling; and

WHEREAS, it is in the best interest of the residents of the State of Washington to promote industrial and economic development and encourage private investment in our state's economy, while preserving the ability of local governmental units to finance public improvements, housing, health care facilities, student loans, higher education facilities and other facilities provided by private nonprofit corporations;

NOW THEREFORE, I, Booth Gardner, Governor of the State of Washington, do hereby order:

Section 1. From and after December 31, 1985, or any other date from which Section 701(b) of the Proposed Act becomes effective with respect to allocation of the State Ceiling, the State Ceiling for calendar year 1986 is reserved to the state and shall be reserved for Nonessential Function Bonds allocated to Issuers within the state as follows:

- A. \$185,900,000 for qualified 501(c)(3) bonds (as defined in the Proposed Act), of which \$158,400,000 is reserved for Statewide Issuers of qualified 501(c)(3) bonds and \$27,500,000 is reserved for Local Issuers of qualified 501(c)(3) bonds;

B. \$261,000,000 for qualified housing related bonds (as defined in Section 3 of this Executive Order), is reserved for allocation in accordance with existing state statute (RCW 43.180.200(5)) as amended; and

C. \$247,600,000 for qualified student loan bonds, bonds issued by or on behalf of state agencies not otherwise receiving an allocation under this order, and other Nonessential Function Bonds generally, of which \$82,900,000 is reserved for qualified student loan bonds and state agencies, and \$164,700,000 is reserved for Community Economic Revitalization Board umbrella bonds and other Nonessential Function Bond Issuers generally.

D. \$77,162,500 is held in reserve for further allocation on or after October 1, 1986. If these funds are not allocated by October 15, 1986, they will be automatically allocated among the categories and subcategories in subsections A, B, and C of this section proportional to their original allocation.

Any Issuers that have used allocations under the Proposed Act before the effective date of this Executive Order shall report such usage to the Office of Financial Management on or before June 1, 1986. To the extent that allocations have been taken before the effective date of this Executive Order under the formula set forth in the Proposed Act, such allocations are confirmed and will be applied against the appropriate allocation.

Section 2. From and after December 31, 1985, or any other date from which Section 701(b) of the Proposed Act becomes effective with respect to allocation of the State Ceiling, that portion of the State Ceiling to be used for qualified 501 (c)(3) bonds is reserved to the state and shall be allocated by the Department of Community Development to the Issuers within the state pursuant to this order in accordance with rules promulgated by the Department of Community Development.

Section 3. From and after December 31, 1985, or any other date from which Section 701(b) of the Proposed Act becomes effective with respect to allocation of the State Ceiling, that portion of the State Ceiling to be used for exempt facility bonds for qualified residential rental projects, qualified mortgage bonds and qualified veteran's mortgage bonds (all as defined in the Proposed Act) and for other housing projects (collectively, "housing related bonds") issued by the Washington Housing Finance Commission or Local Issuers of qualified housing bonds is reserved to the state and shall be allocated to Issuers within the state pursuant to this order in accordance with rules promulgated by the Department of Community Development in the same manner and in the same percentages as allocations are made under RCW 43.180.200(5) as amended and shall be so allocated without regard as to whether such bonds are issued for the purpose of financing qualified residential rental projects, qualified mortgage bonds, qualified veteran's mortgage bonds or for other housing related projects.

Section 4. From and after December 31, 1985, or any other date from which Section 701(b) of the Proposed Act becomes effective with respect to allocation of the State Ceiling, that portion of the State Ceiling to be used for Nonessential Function Bonds generally, is reserved to the state and shall be allocated by the Department of Trade and Economic Development to Issuers within

the state pursuant to this order in accordance with rules promulgated by the Department of Trade and Economic Development that are as consistent as practicable with the provisions of Chapter 39-86 RCW. The portion of the State Ceiling allocation reserved for qualified student loan bonds and the portion of the State Ceiling allocation reserved for Nonessential Function Bonds issued by or on behalf of state agencies is reserved to the state and shall be further allocated by the Office of Financial Management to Issuers within the state pursuant to this order in accordance with rules promulgated by the Office of Financial Management.

Section 5. From and after December 31, 1985, when the Proposed Act relating to the State Ceiling may take effect retroactively and, except for bonds allocated under Section 3, the State Ceiling for the State of Washington shall be allocated to each Issuer in the order of the date of filing with the appropriate agency (Department of Community Development, the Department of Trade and Economic Development, or the Office of Financial Management referred to hereafter as the "Allocating Agencies") a document indicating firm and convincing evidence that bonds will be issued within 90 days of application.

Each Issuer of such Bonds shall accomplish such application by submitting to the appropriate Allocating Agency a photocopy of the required documentation, along with a Notification Form as provided by the Allocating Agencies. The Issuer will receive confirmation of an allocation under the State Ceiling within 15 days of an Allocating Agency's receipt of an application. If a Closing Certification Form, as provided by the Allocating Agencies, is not filed within 90 days of confirmation, the amount of the State Ceiling reserved will revert back to the Allocating Agency, unless a waiver for exceptional circumstances is granted by the Allocating Agency. The appropriate documentation and notification form must then be refiled, and the effective date of the filing for the purpose of allocation of the State Ceiling will be the date a complete application is refiled.

In the event that the amount of Bonds issued at the time of closing is different than the amount contemplated by the original application or reapplication, the allocation received by the issuer shall be adjusted to the amount actually sold at closing as long as it is less than the original allocation. If it is greater, the allocation will be disallowed.

Section 6. In order for the state to properly anticipate the need for a reallocation of unused bond authority under the State Ceiling, Issuers who anticipate the need for an allocation of the State Ceiling during any time of the allocation year, shall notify the Office of Financial Management, the Department of Trade and Economic Development, or the Department of Trade and Economic Development, whichever is the appropriate agency, on the first day of each month as to the timing and size of their anticipated allocation needs. All 501(c)(3) issuers will report to the Department of Community Development. Agencies that issue housing related bonds will report to the Department of Community Development. The Student Loan Finance Association and state agencies will report to the Office of Financial Management. All other Nonessential Function Bond Issuers will report to the Department of Trade and Economic Development.

The Department of Community Development and the Department of Trade and Economic Development shall report to the Office of Financial Management on the 15th of each month and the Office of Financial Management shall report to the Governor on June 1, September 1,

December 1, and February 1, or as needed, concerning the actual and anticipated consumption of State Ceiling allocations.

Issuers shall promptly report to the Office of Financial Management, the Department of Community Development, and the Department of Trade and Economic Development respectively, when such Issuers find that it is reasonably likely that a portion of the State Ceiling reserved for them will not be consumed within the allocation year. When an allocation surplus is identified, it shall be reported to the Office of Financial Management immediately by the respective reporting agencies listed above.

Section 7. Any Issuer of tax exempt bonds may, upon exhaustion or anticipated exhaustion of the portion of the State Ceiling allocated to an Allocating Agency, make application to the Governor through its Allocating Agency for an additional allocation of the State Ceiling. No reallocation of the State Ceiling as defined by Section 1 will take place before October 1, 1986. Any executive order reallocating unused portions of the State Ceiling will be preceded by a 30-day notice.

Section 8. The allocation formulas provided by this Executive Order shall be effective until (a) the effective date of legislation enacted by the state which provides for a different method of allocating the State Ceiling among Issuers within the state, (b) Federal law or Federal regulations require the use of a different formula, (c) the Executive Order is rescinded, or (d) July 1, 1987.

IN WITNESS WHEREOF, I have hereunto
set my hand and caused the seal of the State
of Washington to be affixed at Olympia
this 15th day of May A.D., Nineteen hundred and eighty-six.

Additional

By:

BOOTH GARDNER
Governor of Washington

BY THE GOVERNOR:
Secretary of State