

EXECUTIVE ORDER 86-06

RESCINDED [86-04](#)

STATE ADMINISTRATION OF FEDERALLY MANDATED PRIVATE ACTIVITY BOND STATE CEILING VOLUME CAP

WHEREAS, on December 17, 1985, the United State House of Representatives passed a bill entitled the "Tax Reform Act of 1985" (the "House Bill") which, although not enacted into law, created a category of tax-exempt obligations defined as "nonessential function bonds" and imposed an annual state-by-state ceiling (the "House Ceiling") on the issuance of such nonessential function bonds and certain portions of essential function bonds (together, "nonessential function bonds"), which House Ceiling initially was equal to the greater of (a) \$200 million or (b) an amount equal to \$175 multiplied by a state's population and which was applicable to Nonessential Function Bonds issued after December 31, 1985; and

WHEREAS, the House Bill would have, if enacted, allocated the House Ceiling to governmental units within the state having authority to issue Nonessential Function Bonds, and would have further allocated the House Ceiling among the different types of Nonessential Function Bonds unless the state provided a different formula of allocation by law; and

WHEREAS, the House Bill provided that a state may by law, which may be enacted before passage of the House Bill, provide for a different formula for allocating the House Ceiling among the Issuers of Nonessential Function Bonds; and

WHEREAS, in response to the House Bill, the state enacted chapter 247, Laws of 1986 (the "Interim Allocation Act") , authorizing the Governor to establish by executive order a different formula for allocation of the House Ceiling; and

WHEREAS, pursuant to the Interim Allocation Act, the Governor promulgated Executive Order EO 86-04 on May 15, 1986, establishing a different formula for allocation of the House Ceiling; and

WHEREAS, subsequent to the promulgation of Executive Order EO 86-04, the United States Senate passed an amendment to the House Bill (the "Senate Bills") in the nature of a substitute, which, if enacted into law, would have retained the annual state-by-state ceiling on the issuance of private activity bonds contained in the Internal Revenue Code of 1954 (the "1954 Code"); and

WHEREAS, a Conference Committee comprised of members of the United States House of Representatives and the United States Senate reconciled the differences between the House Bill and the Senate Bill and prepared a new bill entitled the "Tax Reform Act of 1986" (the "1986 Code"), which has been enacted into law; and

WHEREAS, the 1986 Code imposes an annual state-by-state ceiling (the "State Ceiling") on the issuance of tax exempt private activity bonds, certain portions of governmental bonds and other bonds described in section 1317(25) of the 1986 Code (together, "Private Activity Bonds"), applicable to Private Activity Bonds issued after August 15, 1986, which is different from either

the House Ceiling or the ceiling imposed by the 1954 Code and which initially is equal to the greater of (a) \$250 million or (b) an amount equal to \$75 multiplied by a state's population and drops in calendar years after 1987 to the greater of (a) \$150 million, or (b) an amount equal to \$50 multiplied by a state's population; and

WHEREAS, the 1986 Code allocates the State Ceiling to governmental units within the state having authority to issue Private Activity Bonds (the "Issuers") unless the state provides by law a different formula of allocation; and

WHEREAS, the 1986 Code provides that a state may by law, which may be enacted before passage of the 1986 Code, provide for, a different formula for allocating the State Ceiling among Issuers; and

WHEREAS, the Interim Allocation Act also authorizes the Governor to establish by executive order a formula for allocation of any volume limitation provided by other federal legislation, such as the 1986 Code, which is different from that established for the House Ceiling; and

WHEREAS, the State Ceiling for Private Activity Bonds under the 1986 Code is smaller and more restrictive than the House Ceiling and necessitates this Executive Order to provide an allocation formula for the remainder of 1986; and

WHEREAS, the method of allocation of the State Ceiling set forth in the 1986 Code may restrain the issuance of Private Activity Bonds for qualified facilities and other eligible uses; and

WHEREAS, the State has, pursuant to chapter 446, Laws of 1985 (the "1985 Allocation Act"), previously provided a formula for allocation of the volume limitations contained in the 1954 Code; and

WHEREAS, pursuant to its terms, the 1985 Allocation Act, applies only to those private activity bonds which were defined in the 1954 Code on the effective date of such legislation, as well as private activity bonds which were defined in any later amendments to the 1954 Code. but only if such amendments are approved by the State Community Economic Revitalization Board ("CERB"); and

WHEREAS, the change in 1954 Code's definition of private activity bonds effected by the 1986 Code have not been approved by CERB, and THEREFORE the formula for allocating any limitation on private activity bond volumes contained in the 1985 Allocation Act is of no application to the volume limitation provisions affecting Private Activity Bonds as redefined in the 1986 Code; and

WHEREAS, the method of allocation of the federal limitations contained in the 1985 Allocation Act, if it were made applicable to Private Activity Bonds as redefined in the 1986 Code, might restrain the issuance of Private Activity Bonds for qualified facilities and other eligible uses; and

WHEREAS, it is in the best interests of the citizens of the state of Washington to have an orderly system for the allocation of the State Ceiling that is flexible enough to meet the diverse

needs of the citizens of the state but at the same time is efficient enough to meet the deadlines required by the 1986 Act; and

WHEREAS, it is in the best interests of the citizens 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 governmental units to finance public improvements, housing, student loans, and other facilities;

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

Section 1. From and after August 15, 1986, the State Ceiling for calendar year 1986 is reserved to the state and shall be allocated by the State Office of Financial Management to Issuers within the state as follows:

A. \$100,000,000 for qualified housing related bonds is reserved for allocation in accordance with existing state statute (RCW 43.180.200(5)) as amended;

B. \$230,675,000 for qualified student loan bonds, bonds issued by or on behalf of state agencies not otherwise receiving an allocation under this order, and other Private Activity Bonds generally, of which \$60,000,000 is reserved for qualified student loan bonds, \$43,800,000 is reserved for Chelan County Public Utility District Number One, \$43,100,000 is reserved for Grant County Public Utility District Number Two, \$20,200,000 is reserved for Douglas County Public Utility District Number One, and \$63,575,000 is reserved for Community Economic Revitalization Board Umbrella Bonds and other Issuers of Private Activity Bonds.

Section 2. From and after August 15, 1986, the State Ceiling shall be allocated to each Issuer in the order of the date of filing with the Office of Financial Management a document indicating firm and convincing evidence that bonds will be issued by 12:00 noon on December 31, 1986; provided, that for purposes of determining the date of filing of such evidence, filings with the Department of Community Development, the Department of Trade and Economic Development and the Office of Financial Management, which filings were made in accordance with Executive Order EO 86-04 prior to the date of this Executive Order, shall be considered to have been made with the Office of Financial Management pursuant to this Executive Order on the same date and with the same priority as they had under Executive Order EO 86-04; provided further, that such filings shall be reconfirmed by the timely filing by the Issuer of a "notification form," in the manner described in the following paragraph.

Each Issuer of such bonds shall accomplish such application by submitting to the Office of Financial Management a "notification form," provided by the Office of Financial Management indicating firm and convincing evidence that the bonds will be issued by 12:00 noon on December 31, 1986, as well as any other additional information as the Office of Financial Management may require. The Issuer will receive confirmation of an allocation under the State Ceiling within ten days of the Office of Financial Management's receipt of a completed application. If a closing certification form," as provided by the Office of Financial Management,

is not filed by 12:00 noon on December 31, 1986, the amount of the State Ceiling reserved will automatically be reallocated in accordance with Section 4 of this Executive Order

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 of bonds actually issued, as long as such amount is less than the original allocation, and any unused portion of the State Ceiling shall automatically be reallocated in accordance with Section 4 of this Executive Order. If the amount of bonds actually issued is greater than the allocation, the entire allocation shall be disallowed.

Section 3. Issuers shall promptly report to the Office of Financial Management when such Issuers find that it is reasonably likely that any portion of the State Ceiling reserved for them will not be consumed by 12:00 noon on December 31, 1986.

Section 4. If all of the State Ceiling has not been utilized by 12:00 noon on December 31, 1986, that portion which has not been utilized shall automatically be reallocated as follows:

A. Any portion of the State Ceiling which has not been utilized by 12:00 noon on December 31, 1986, up to and including the first \$15,000,000 shall automatically be reallocated to the Washington Student Loan Guarantee Association for the purpose of issuing qualified student loan bonds, and shall be considered a "carryforward" as described in section 146(f) of the 1986 Code; and

B. Any portion of the State Ceiling which has not been utilized by 12:00 noon on December 31, 1986, exceeding the first \$15,000,000, shall automatically be reallocated to the Washington Housing Finance Commission for the purpose of issuing qualified mortgage bonds or mortgage credit certificates, and shall be considered a "carryforward" as described in section 146(f) of the 1986 Code.

Section 5. The Interim Allocation Act requires the Department of Community Development to submit an interim study on December 1, 1986, to the Governor and the Legislature reviewing bond usage under previous and existing state volume caps, making projections for future demand for state volume cap allocation, and making recommendations for future allocation systems. The Department of Community Development is requested to work closely with all potential Issuers, the Department of Trade and Economic Development and the Office of Financial Management on this interim study and to work closely with the appropriate legislative committees on the development of this interim study to assist the Fiftieth Legislature to be fully informed on this issue in order to allow them to address the issue of future allocation systems as soon in the 1987 legislative session as possible.

Section 6. For the purposes of the 1986 Code, this Executive Order shall be considered a gubernatorial proclamation.

Section 7. Executive Order EO 86-04 is hereby rescinded.

Section 8. The means of allocating the State Ceiling provided for in this Executive Order shall be effective until (a) this Executive Order is rescinded or superseded by a new executive order, or (b) January 1, 1987, whichever occurs first.

IN WITNESS WHEREOF, I have hereunto
set my hand and caused the seal of the State
of Washington to be affixed at Olympia
this 10th day of November A.D., Nineteen hundred and eighty-six.

Additional

By:

BOOTH GARDNER
Governor of Washington

BY THE GOVERNOR:

Secretary of State