

EXECUTIVE ORDER 87-03

1987 STATE CEILING FOR PRIVATE ACTIVITY BOND VOLUME

WHEREAS, the "Tax Reform Act of 1986" imposes an annual state-by-state ceiling (the "State Ceiling") on the issuance of tax-exempt private activity bonds ("Private Activity Bonds"), 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 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 of Washington 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 Internal Revenue Code of 1954 (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 the 1954 Code's definition of private activity bonds effected by the 1986 Code has 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, in anticipation of changes to the 1954 Code, 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 State Ceiling; and

WHEREAS, although the Washington State Legislature may enact a law to allocate the State Ceiling, such a law may not be enacted in time to allow financing to be obtained for certain industrial development projects; and

WHEREAS, it is in the best interests of the citizens of the state of Washington to promote industrial development and encourage private investment in our state's economy;

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

Section 1. A portion of the State Ceiling for calendar year 1987, in the amount of \$30,000,000, is reserved to the state and shall be allocated by the State Department of Community Development to Issuers of Qualified Small Issue Bonds within the state for industrial development purposes.

Section 2. Issuers of Qualified Small Issue Bonds may request an allocation of the State Ceiling under this Executive Order by applying to the State Department of Community Development. Such Issuers shall submit all relevant information required by the Department of Community Development.

No Issuer may receive an allocation of the State Ceiling without a written certificate of approval from the Department of Community Development.

In accordance with any applicable law enacted by the State Legislature in 1987, any allocation amount granted to an Issuer under this Executive Order shall be treated as a part of the initial allocation amount for the small issue bond use category.

Section 3. In making allocation decisions, the director of the Department of Community Development shall consult with the director of the State Department of Trade and Economic Development and with the chair of the State Community Economic Revitalization Board.

The director of the Department of Community Development shall consider only those applications that can demonstrate firm and convincing evidence that the lack of allocation authority prior to enactment of 1987 legislation to allocate the state ceiling would seriously jeopardize the project's feasibility. The director of the Department of Community Development shall also consider the following factors with respect to each Issuer's request:

- A. The amount of the State Ceiling available;
- B. The cost or availability of alternative methods of financing the project;
- C. The number of employment opportunities the project is likely to create or retain in relation to the amount of allocation;
- D. A commitment to providing employment opportunities to low-income persons in cooperation with the Employment Security Department of Washington State;
- E. The number of persons who will benefit from the project; and

F. The order in which requests are received.

Section 4. If an Issuer determines that bonds for which an allocation of the State Ceiling was granted will not be issued, the Issuer promptly shall notify the Department of Community Development so that the allocation may be cancelled and the amount may be available for reallocation among other Issuers of Qualified Small Issue Bonds.

Within three business days after the date that bonds for which an allocation of the State Ceiling was granted have been delivered to the original purchasers, the Issuer shall mail to the Department of Community Development a written notification of the bond issuance.

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 amount shall be available to be reallocated in accordance with this Executive Order. If the amount of bonds is greater than the allocation, the entire allocation shall be invalid.

Section 5. If bonds have not been issued for any portion of the small issue bond use category of the State Ceiling authorized to be allocated under this Executive Order within the time frame identified in Section 7, that portion shall revert to the State and be subject to any 1987 laws enacted by the State with respect to the allocation of the State Ceiling.

Section 6. For the purposes of Section 146(c) of the 1986 Code, this Executive Order shall be considered a gubernatorial proclamation providing a different formula for allocating the State Ceiling.

Section 7. 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; (b) September 1, 1987; or (c) the effective date of any 1987 State legislation with respect to the allocation of the State Ceiling, 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 27th day of February A.D., Nineteen hundred and eighty-seven.

Booth Gardner
Governor of Washington

BY THE GOVERNOR:

Secretary of State
