



**OFFICE OF THE GOVERNOR**

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LEGISLATIVE REFERENCE  
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EXECUTIVE ORDER #7

WHEREAS, legislation has been adopted by the Ninety-Ninth Congress of the United States which imposes a "Unified Volume Cap" during each calendar year on the aggregate amount of "Private Activity Bonds" (as defined in the Act) that may be issued by or on behalf of the State of Wisconsin and its political subdivisions; and

WHEREAS, the Act affects the interests of the State of Wisconsin and its political subdivisions in economic development, education, health care and housing because it applies to all Private Activity Bonds issued after August 15, 1986; and

WHEREAS, the formula for allocation of the Unified Volume Cap for Private Activity Bonds included in the Act is ill-suited for the needs of the State of Wisconsin and its political subdivisions; and

WHEREAS, the Act provides that the Governor of any state may proclaim a different formula for allocating the Unified Volume Cap among the government units in such state having the authority to issue Private Activity Bonds; and

WHEREAS, the authority for the Governor of the State of Wisconsin to make such a proclamation expires after the earlier of (1) December 31, 1987 or (2) the effective date of any legislation enacted by the Legislature of the State of Wisconsin with respect to the allocation of the Unified Volume Cap of Private Activity Bonds; and

WHEREAS, the Act provides that a state official designated by state law must certify that any Private Activity Bonds are in compliance with the aforementioned Unified Volume Cap provision; and

WHEREAS, based on the most recent census estimate of the resident population of the State of Wisconsin released by the Bureau of the Census before the beginning of 1987, the Unified Volume Cap for the State of Wisconsin for the remainder of the calendar year 1987 is \$358,875,000;

NOW, THEREFORE, BE IT PROCLAIMED AS FOLLOWS:

1. Within this Executive Order, the following terms shall have the following respective meanings:

"Act" means the Tax Reform Act of 1986, as amended.

"Carryforward Purpose" has the meaning assigned to that term in Section 146(f)(5) of the Code.

"Code" means the Internal Revenue Code of 1986, as amended.

"Department" means the Department of Development.

"Federally-Assisted Project" means a project for which the application for an allocation received pursuant to §5(b) includes a statement that an allocation is requested for a Federally-Assisted Project and is accompanied by a copy of an application for (i) an urban development action grant under Section 119 of the Housing and Community Development Act of 1974 with respect to the project, or (ii) insurance, guaranty or grant in connection with the bonds,

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issued by the Federal Housing Administration, the Governmental National Mortgage Association or the Department of Housing and Urban Development pursuant to the National Housing Act, as amended, or the United States Housing Act of 1937, as amended.

"Issuers" means the counties, cities, towns, villages and other public bodies described in §67.01(5), Wis. Stats., and agencies, authorities and political subdivision of the State of Wisconsin (and public corporations and commissions established by any such body) empowered to borrow money.

"Issuer-Owned Project Bonds" means bonds issued for a facility that is owned by an Issuer and would be treated as owned by the Issuer pursuant to Section 142(b)(1)(B) of the Code (although the referenced section applies only to a facility described in paragraph (1), (2) or (3) of Section 142(a) of the Code, for the purposes of this definition it shall be treated as though it applies to any facility). "Issuer-Owned Project Bonds" do not include Single Family Housing Bonds but could include Multifamily Housing Bonds.

"Multifamily Housing Bonds" means bonds issued for a "qualified residential rental project", as such term is defined in Section 142(d)(1) of the Code.

"Other Private Activity Bonds" means Private Activity Bonds other than those certified to the Department as Issuer-Owned Project Bonds, Qualified Redevelopment Bonds, Multifamily Housing Bonds or Single Family Housing Bonds.

"Private Activity Bonds" has the meaning assigned to that term in Section 141(a) of the Code.

"Qualified Redevelopment Bonds" has the meaning assigned to that term in Section 144(c) of the Code.

"Single Family Housing Bonds" means "qualified mortgage bonds", as such term is defined in Section 143(a) of the Code.

"Unified Volume Cap" means the state ceiling for the issuance of Private Activity Bonds applicable to the State of Wisconsin for calendar year 1987, as provided in Section 146(d)(1) of the Code, which is an amount equal to the latest census estimate of the resident population of the State of Wisconsin released by the Bureau of Census before the beginning of calendar year 1987, multiplied by \$75 per person, namely \$358,875,000.

2. There is hereby allocated to the Wisconsin Housing and Economic Development Authority for calendar year 1987 \$25,000,000 of the Unified Volume Cap to be utilized for such purposes as the Authority in its discretion shall determine. The Authority shall certify to the Department promptly after issuance of any Private Activity Bonds the amount of such bonds issued pursuant to this allocation. Any amount of the allocation that remains unused on October 1, 1987, shall be automatically transferred to the Department, to be further allocated as provided in §5, and the Authority shall promptly certify to the Department the amount of the unused allocation.
3. Any application by the Wisconsin Housing and Economic Development Authority for an allocation under §5 with respect to Single Family Housing Bonds shall contain a certification by the Issuer that any allocation under §2 and any unused allocation from a prior year carried forward and available to such Issuer for the Single Family Housing Bonds and has been (or will as part of the bond issuance be) fully utilized and separate certifications from the Building Commission and the Governor that the Building Commission and the

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Governor, respectively, had approved such issue of Single Family Housing Bonds and, after being advised by the Department of the current status of the allocation to the Department made under §5(a) and giving due consideration to alternative uses of such allocation had decided that the utilization of the allocation for such issue of Single Family Housing Bonds is in the best interests of the people of the State of Wisconsin.

4. There is hereby allocated to the Building Commission for calendar year 1987 \$10,000,000 of the Unified Volume Cap, to be further allocated by the Building Commission and utilized for such Private Activity Bonds as the Building Commission in its discretion shall determine. The Building Commission shall certify to the Department promptly after issuance of any Private Activity Bonds the amount of such bonds issued pursuant to this allocation. Any amount of the allocation that remains unused on October 1, 1987, shall be automatically transferred to the Department, to be further allocated as provided in §5, and the Building Commission shall promptly certify to the Department the amount of the unused allocation.
5. There is hereby allocated to the Department on behalf of the Issuers, for calendar year 1987, the remainder of the Unified Volume Cap (\$323,875,000), to be further allocated as follows:
  - (a) Prior to October 1, 1987, the allocation to the Department shall be set aside and accounted for in three separate categories, as follows:
    - (i) \$65,000,000 for Issuer-Owned Project Bonds and Qualified Redevelopment Bonds,
    - (ii) \$35,000,000 for Multifamily Housing Bonds, and
    - (iii) the remainder for Single Family Housing Bonds and Other Private Activity Bonds.

On and after October 1, 1987, the allocation to the Department shall be aggregated into a single category and available for Issuer-Owned Project Bonds, Qualified Redevelopment Bonds, Multifamily Housing Bonds, Single Family Housing Bonds and Other Private Activity Bonds.

- (b) Any Issuer, or any person acting on its behalf, may make an application to the Department for an allocation of the Unified Volume Cap. Each application must provide
  - (i) evidence that official action has been taken by the Issuer with respect to the issuance of the obligations (which, with respect to obligations issued pursuant to §66.521, Wis. Stats., shall be the initial resolution previously filed with the Department with respect to such obligations), and
  - (ii) a written, signed opinion of the Issuer's legal counsel, or of bond counsel, to the effect that a reasonable basis exists to conclude that the obligations would be Private Activity Bonds subject to the Unified Volume Cap and indicating whether the bonds would be Issuer-Owned Project Bonds, Qualified Redevelopment Bonds, Multifamily Housing Bonds, Single Family Housing Bonds or Other Private Activity Bonds.

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Any application with respect to a Federally-Assisted Project shall also contain a statement that the application is for a Federally-Assisted Project and shall include a copy of

- (i) the application (on the form prescribed by the United States Department of Housing and Urban Development) for an urban development action grant pursuant to Section 119 of the Housing and Urban Development Act of 1974 with respect to the project, or
  - (ii) an application (on the form prescribed by the respective federal agency) for insurance or guaranty in connection with the bonds issued by the Federal Housing Administration, the Government National Mortgage Association or the Department of Housing and Urban Development pursuant to the National Housing Act, as amended, or the United States Housing Act of 1937, as amended.
- (c) Upon receipt of any application (which the Department shall record by date and time of receipt, except that all applications received on or before the effective date hereof shall be deemed received at the same time), the Department shall promptly certify the portion of the relevant category of its allocation of the Unified Volume Cap that has not been allocated to Issuers and shall allocate the available portion of the amount requested to such Issuer for a period equal to the lesser of 90 calendar days (or, in the case of an application with respect to a Federally-Assisted Project, 120 calendar days) or the remainder of the calendar year, unless the amount shall exceed the maximum amount authorized for issuance under the official action taken by the Issuer with respect to such obligations. Certain allocations are subject to earlier termination pursuant to §5(h). Any allocation received under this §5 will be valid only with respect to bonds issued in calendar year 1987. Any allocations for a Carryforward Purpose must be obtained under the provisions of §6.
- (d) In making any such allocation, the Department shall only consider compliance with the requirements of §5(b), the dollar amount of the request and the portion of the relevant category of its allocation of the Unified Volume Cap that has not been allocated to Issuers.
- (e) Each Issuer, or a person acting on its behalf, shall, on or before five business days after the issuance of the bonds, notify the Department in writing as to the amount of obligations issued pursuant to such allocation (and in the case of a Federally-Assisted Project, shall include evidence of the award of
- (i) an urban development action grant, or
  - (ii) insurance, guaranty or grant in connection with the bonds issued by the Federal Housing Administration, the Government National Mortgage Association or the Department of Housing and Urban Development pursuant to the National Housing Act, as amended, or the United States Housing Act of 1937, as amended, with respect to the project), and upon such notification the allocation in the amount issued shall (subject to the next sentence) become permanent and irrevocable.

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The Department shall treat any notice received pursuant to this §5(e) more than five business days after the issuance of the bonds as a reapplication pursuant to §5(f). If an allocation is certified to such Issuer pursuant to such reapplication, this §5(e) shall be deemed to have been complied with as though the notice of issuance had been timely received.

- (f) Subject to §10, all applications shall be processed in the order received by the Department. It is intended that applications should be made only within 90 calendar days (or, with respect to Federally-Assisted Projects, 120 calendar days) prior to the planned issuance of the bonds. Any reapplication shall be effective only upon the day on which the previous allocation expires (except that a notice of issuance which is treated as a reapplication pursuant to §5(e) shall be effective upon receipt by the Department).
- (g) An Issuer, or a person acting on its behalf, may surrender all or any part of its rights to a particular allocation, in whole or in part, under any section of this Executive Order prior to its expiration, and in such event the allocation shall expire. An Issuer that has received an allocation for a Federally-Assisted Project, or a person acting on its behalf, may alternatively surrender only its rights to an extended allocation period, whereupon such allocation shall be treated for all purposes hereunder as if it were not for a Federally-Assisted Project.
- (h) Unless the Department has received notice of the issuance of bonds pursuant to §5(e) or a deposit of cash or a certified or cashier's check in an amount equal to 0.5% of the allocation requested, any allocation shall terminate on the earlier of 30 days after the allocation is made or December 1, 1987. Unless the Department has received a deposit of cash or a certified or cashier's check in an amount equal to 0.5% of the allocation requested, no allocation shall be made after December 1, 1987. No additional deposit shall be required with respect to an allocation made upon reapplication if a deposit in an amount equal to 0.5% of the allocation requested has already been made (and not refunded) with respect to the project. Such deposit shall be refunded, without interest, if prior to January 1, 1988, bonds are issued by the Issuer pursuant to such allocation (or an allocation made upon reapplication), or no allocation is made to the Issuer upon reapplication, or no allocation is made to the Issuer; provided that a ratable portion of such deposit proportionate to the amount by which the allocation exceeds the face amount of the bonds issued shall not be refunded. Any such deposits, or portions thereof, which have not become refundable pursuant to the preceding sentence as of January 1, 1988, shall vest in the State of Wisconsin to be used for the benefit of the people of the State of Wisconsin in such manner as the Legislature in its discretion may determine. Any deposits made and not refunded pursuant to Executive Order 113 shall be similarly used for the benefit of the people of the State of Wisconsin. Any refund shall be made within 30 days after a request for refund (together with such evidence as the Department may reasonably require) is furnished to the Department.
- (i) Notwithstanding any other provision herein, the deposit required with respect to any Issuer-Owned Project Bonds or Qualified Redevelopment Bonds or any allocation to the State Building Commission shall be \$1,000 for each \$5,000,000 of allocation or portion thereof requested. In the event the set-aside for Issuer-Owned Project Bonds and Qualified Redevelopment Bonds under §5(a)(i) is exceeded prior to October 1, 1987, allocations for Issuer-Owned Project Bonds may be made from the set-aside under §5(a)(iii).

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(j) Prior to October 1, 1987, any allocation pursuant to this §5 to an Issuer given an allocation pursuant to §2 or §4 or any other agency or authority of the State of Wisconsin shall be provisional, and may not be used, until approved by the Governor and any application by such Issuer for an allocation shall contain a certification by the Issuer that any allocation under §2 or §4 available to the Issuer for such bond issue has been (or will as part of the bond issuance be) fully utilized. The Governor's approval shall not be given until notice has been given and an opportunity to comment (in writing and at a public hearing) provided. Notice shall be given by publication in the official state newspaper and by mail to any person who has made a request of the Department to receive any such notice. The approval shall state that, after consideration of any comments received and after being advised by the Department of the current status of the allocation to the Department made under §5(a) and giving due consideration to alternative uses of such allocation, the Governor has decided that the utilization of the allocation for such bond issue is in the best interests of the people of the State of Wisconsin. The allocation shall be revoked, and any deposit refunded, unless the Governor approves in writing such allocation within 14 calendar days after the public hearing.

6. (a) On December 30, 1987, the Department shall determine the portion of its allocation of the Unified Volume Cap that has not been allocated to Issuers and shall thereafter make allocations only for Carryforward Purposes. No allocations for Carryforward Purposes shall be made pursuant to this §6(a) prior to such date. The requests shall be considered by the Department in the order received, and a request shall be deemed not to be received if an allocation has been made and not surrendered with respect to the same project or portion thereof. Such allocations shall be made to any Issuer that has

(i) requested an allocation for a Carryforward Purpose,

(ii) provided the Department with such information as is requested by the Department and approved by the Department as showing that an effective election can be made by the Issuer under the Act and any applicable Income Tax Regulations promulgated pursuant to Section 146 of the Code, and

(iii) paid to the order of the Department a deposit of immediately available funds or a certified or cashier's check in an amount equal to 1% of the amount of the allocation requested. Such deposit shall be refunded, without interest, if an allocation is not made to the Issuer or bonds are issued by the Issuer, on or before December 31, 1990, for the Carryforward Purpose indicated in the application for such allocation; provided that an amount of such deposit equal to 1% of the amount by which the allocation exceeds the face amount of bonds actually issued shall not be refunded.

Any refund shall be made within 30 days after a request for refund (together with such evidence as the Department may reasonably require) is furnished to the Department. Any deposit under §5(h) shall not be credited toward the deposit required under this §6(a). Any such deposits, or portions thereof, which have not become refundable pursuant to the preceding sentence as of January 1, 1991, shall vest in the State of Wisconsin to be used for the benefit of the people of the State of Wisconsin, in such manner as the Legislature in its discretion may

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determine. Notwithstanding any other provision herein, the deposit required with respect to any Issuer-Owned Project Bonds or Qualified Redevelopment Bonds or any allocation to the State Building Commission shall be \$1,000 for each \$5,000,000 of allocation or portion thereof requested.

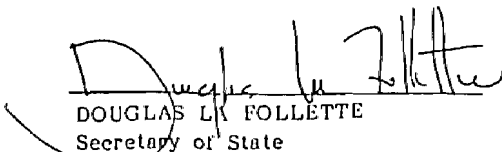
- (b) On December 31, 1987, the Department shall determine the portion of its allocation of the Unified Volume Cap that has not been allocated to Issuers and for which it has not received requests with respect to Carryforward Purposes, and shall assign such portion to the Wisconsin Housing and Economic Development Authority. The Wisconsin Housing and Economic Development Authority shall make an election, pursuant to any applicable Income Tax Regulations promulgated pursuant to Section 146 of the Code, to carry forward such portion for any Carryforward Purpose.
7. The Secretary of the Department (or his delegate) shall, at the request of an Issuer that has complied with all of the provisions of this Executive Order and has received an allocation, or of any person acting on its behalf, certify that the bond issue meets the requirements of Section 146 of the Code.
  8. For the purpose of this Executive Order, time shall be computed as provided in § 990.001(4), Wis. Stats.
  9. Any interest earned upon investment of amounts deposited under this Executive Order shall inure to the State of Wisconsin for the benefit of the people of the State of Wisconsin, to be used in such manner as the Legislature may determine.
  10. This Executive Order shall be effective March 11<sup>th</sup>, 1987. All applications received for an allocation under §5 on or before that date shall be treated as received at the same time. If allocations are not available for all applications which are received on such date and which meet the requirements of §5, the priority of each such application, considered in whole, shall be determined by lot or such other random method as the Department may in its discretion determine.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this 11<sup>th</sup> day of March in the year one thousand nine hundred eighty-seven.

  
TOMMY G. THOMPSON

By the Governor:

  
DOUGLAS L. FOLLETTE  
Secretary of State