

The State of Wisconsin



OFFICE OF THE GOVERNOR

THE STATE OF WISCONSIN

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER 113

WHEREAS, legislation ("H.R. 3838" or the "Act") has been adopted by the Ninety-Ninth Congress of the United States which imposes a new "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 has an immediate effect on 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 of 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 governmental 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 1986, the Unified Volume Cap for the State of Wisconsin for the remainder of the calendar year 1986 is \$357,450,000.

NOW, THEREFORE, BE IT PROCLAIMED AS FOLLOWS:

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

"Act" means H.R. 3838, also known as the Tax Reform Act of 1986.

RECEIVED

DEC 1 1986

LEGISLATIVE REFERENCE
BUREAU

"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.

"Private Activity Bonds" has the meaning assigned to that term in Section 141(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 1986, 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 1986, multiplied by \$75 per person, namely \$357,450,000.

§2. There is hereby allocated to the Wisconsin Housing and Economic Development Authority for calendar year 1986 \$100,000,000, plus any amounts assigned under §6(c), of the Unified Volume Cap to be utilized for the issuance of such Private Activity Bonds as the authority in its discretion shall determine.

§3. There is hereby allocated to the Building Commission for calendar year 1986 \$-0- of the Unified Volume Cap to be utilized for such student loan bond financings as the Building Commission in its discretion shall determine.

§4. There is hereby allocated to the Building Commission for the calendar year 1986 \$-0- of the Unified Volume Cap, to be further allocated by the Building Commission and utilized as provided in §§13.487(2), 234.50(4) and 234.60(3)(bm) of the statutes.

§5. There is hereby allocated to the Department of Development (the "Department") on behalf of the counties, cities, towns, villages, agencies, authorities and political subdivisions of the State of Wisconsin (and public corporations established by any of the aforementioned) empowered to borrow money, including those hereinabove referred to (hereinafter collectively referred to as "Issuers"), for calendar year 1986, the remainder of the Unified Volume Cap (\$257,450,000), to be further allocated as follows:

(a) 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. In addition, any application for an allocation for bonds from the Wisconsin Housing and Economic Development Authority shall include a certification that there is no remaining portion available of its allocation under §2; and any application for an allocation from the Building Commission shall include a certification that there is no remaining portion available of its allocation under §3 (with respect to a student loan bond financing) or §4 (with

RECEIVED

DEC 1 1986

LEGISLATIVE REFERENCE
BUREAU

respect to a financing pursuant to §§13.487(2), 234.50(4), or 234.60(3)(6m) of the statutes), as appropriate.

(b) 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 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 (subject to the next sentence) to 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. The preceding sentence notwithstanding, any such allocation which is received prior to December 15, 1986 shall expire on December 15, 1986 unless (i) bonds are issued pursuant to such allocation, and the Department has been notified of such issuance pursuant to §5(d), on or before December 15, 1986 or (ii) on or before December 15, 1986, a deposit of immediately available funds or a certified or cashier's check in an amount equal to the lesser of \$25,000 or 0.5% of the amount of the allocation has been paid to the order of the Department. Said deposit shall be refunded, without interest, if bonds are issued pursuant to said allocation; provided that an amount of such deposit equal to 0.5% of the amount by which the allocation exceeds the face amount of bonds actually issued shall not be refunded. Any such deposits, or portions thereof, not refundable pursuant to the preceding sentence shall vest in the Department to be used for development purposes. Any allocation received under this §5 will be valid only with respect to bonds issued in calendar year 1986. Any allocations for a Carryforward Purpose must be obtained under the provisions of §6.

(c) In making any such allocation, the Department shall only consider compliance with the requirements of §5(a), the dollar amount of the request and the portion of its allocation of the Unified Volume Cap that has not been allocated to Issuers; provided, however, that prior to December 15, 1986 no allocation shall be made to the Wisconsin Housing and Economic Development Authority if the amount of such allocation, together with all other allocations made to the Wisconsin Housing and Economic Development Authority (including under §2) hereunder, exceeds \$100,000,000. Any application for an allocation that would exceed said \$100,000,000 limit, which is received before December 15, 1986, shall be disregarded.

(d) 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 upon such notification the allocation in the amount issued shall (subject to the next sentence) become permanent and irrevocable. The Department shall treat any notice received pursuant to this §5(d) more than five business days after the issuance of the bonds as a reapplication pursuant to §5(e). If an allocation is certified to such Issuer pursuant to such reapplication, this §5(d) shall be deemed to have been complied with as though the notice of issuance had been timely received.

RECEIVED

DEC 1 1986

(e) Subject to §9, all applications shall be processed in the order received by the Department. 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(d) shall be effective upon receipt by the Department).

(f) An Issuer, or a person acting on its behalf, may surrender all 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.

(g) Any allocation certified by the Department: (i) for "private activity bonds" (as defined in §66.522(1)(e) of the Wisconsin Statutes) which were issued after August 15, 1986 and before the date this Executive Order is signed with respect to which the notice described in §66.522(2)(c) of the Wisconsin Statutes has been timely received by the Department or (ii) for "Nonessential Function Bonds" (as defined in Executive Order 94) which were issued after August 15, 1986 but before the date this Executive Order is signed with respect to which the notice described in §6(e) of Executive Order 94 has been timely received by the Department shall, subject to the further provisions of this subsection, be deemed to have been made hereunder and be permanent and irrevocable pursuant to §5(d). The Department shall notify each Issuer which has received an allocation described in this subsection (and if the application for such allocation was received from bond counsel, the Department shall notify such bond counsel) of the promulgation of this Executive Order. The notice shall inform such Issuer that such allocation shall be revoked unless the Department shall receive on or before the tenth day after such notice is sent to the Issuer (and to bond counsel, if applicable), an opinion of bond counsel that the allocation is necessary under the Code. The Department may treat the failure to provide such an opinion that the allocation was necessary as conclusive evidence that the allocation is unnecessary.

(h) The Department shall notify each Issuer to which it has certified an unexpired allocation of Wisconsin's Volume Cap for Nonessential Function Bonds pursuant to Executive Order 94 or for private activity bonds pursuant to §66.522 of the Wisconsin Statutes, but with respect to which the notices described in §66.522(2)(c) of the Wisconsin Statutes or §6(e) of Executive Order 94 have not been received (or were not received on a timely basis) (and, if the application for such allocation was received from bond counsel, shall also notify such bond counsel) of the promulgation of this Executive Order. Such notice shall inform such Issuer that a new allocation is required hereunder unless the bonds to be issued pursuant to the existing allocation are not subject to the Unified Volume Cap.

§6. (a) The Building Commission and the Wisconsin Housing and Economic Development Authority may each make an election, pursuant to any applicable Income Tax Regulations promulgated pursuant to Section 146 of the Code, to carry forward any portion of its unused allocation for any Carryforward Purpose, if in their judgment an effective election can be made. On or before December 15, 1986, the Wisconsin Housing and Economic Development Authority shall make a written assignment to the Department of its allocation of the Unified Volume Cap for 1986 to the extent such allocation will exceed the aggregate amount of Private

RECEIVED

DEC 1 1986

LEGISLATIVE REFERENCE
BUREAU

Activity Bonds to be issued in 1986 and has not been carried forward, to be further allocated as provided in §5.

(b) On December 30, 1986, 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 §5(b) prior to such date. The requests shall be considered by the Department in the order received. 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 and satisfies the Department 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 the lesser of \$50,000 or 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, 1989, 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 such deposits, or portions thereof, which have not become refundable pursuant to the preceding sentence as of January 1, 1990 shall vest in the Department to be used for development purposes.

(c) On December 31, 1986, 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 amount to the Wisconsin Housing and Economic Development Authority. The Wisconsin Housing and Economic Development Authority shall make the election described in Section 6(a) with respect to such amount for the purpose of issuing qualified mortgage bonds, the purpose of issuing exempt facility bonds for qualified residential rental projects, or specific amounts for each of the foregoing purposes.

§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) of the statutes.

§9. This Executive Order shall be effective November 5, 1986. 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

RECEIVED

DEC 1 1986

LEGISLATIVE REFERENCE
BUREAU

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 31st day of October, in the year one thousand nine hundred eighty-six.

Anthony S. Earl
ANTHONY S. EARL

By the Governor:

Douglas La Follette
DOUGLAS LA FOLLETTE
Secretary of State

RECEIVED

DEC 1 1986

LEGISLATIVE REFERENCE
BUREAU