



**OFFICE OF THE GOVERNOR**

EXECUTIVE ORDER 94

WHEREAS, Section 103(n) of the Internal Revenue Code of 1954, as amended (the "Code"), imposes a ceiling during each calendar year on the aggregate amount of "private activity bonds" that may be issued by or on behalf of the State of Wisconsin and its political subdivisions; and

WHEREAS, the Legislature of the State of Wisconsin has enacted Act 29, Laws of 1985, to provide for the allocation of the ceiling amount among the governmental units in the State of Wisconsin having authority to issue private activity bonds; and

WHEREAS, legislation ("H.R. 3838" or the "Act") is being considered by the Ninety-Ninth Congress of the United States which, if adopted and signed into law, would impose a "Volume Cap" during each calendar year on the aggregate amount of "Nonessential Function Bonds" 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 would by its terms apply to all Nonessential Function Bonds issued after December 31, 1985; and

WHEREAS, Act 29, Laws of 1985, continues to provide a method of allocation of the ceiling amount currently imposed by §103(n) of the Code, but does not provide for the allocation of the proposed Volume Cap for Nonessential Function Bonds; and

WHEREAS, the formula for allocation of the Volume Cap of Nonessential Function 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 Volume Cap among the governmental units in such state having the authority to issue Nonessential Function Bonds; and

WHEREAS, the authority for the governor of the State of Wisconsin to make such a proclamation expires after the earlier of (1) January 1, 1987 or (2) the effective date of any legislation with respect to the allocation of the Volume Cap of Nonessential Function Bonds enacted by the Legislature of the State of Wisconsin; and

WHEREAS, the Act provides that a state official designated by state law must certify that any Nonessential Function Bond is in compliance with the aforementioned Volume Cap provisions; and

WHEREAS, based on the most recent census estimate of the resident population of the State of Wisconsin published by the Bureau of the Census before the beginning of 1986, the Volume Cap for the State of Wisconsin for calendar year 1986 would be \$835,625,000.

NOW, THEREFORE, BE IT PROCLAIMED AS FOLLOWS:

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

"Act" means H.R. 3838, also known as the Tax Reform Act of 1985, and any successor legislation.

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"Carryforward Project" has the meaning assigned to the term in §145(f)(5) of the Proposed Code.

"Code" means the Internal Revenue Code of 1954, as amended.

"Housing Related Volume Cap" means one-half of the remainder of (i) the Volume Cap less (ii) the Qualified 501(c)(3) Volume Cap, namely, \$358,125,000.

"Housing Related Bonds" means the bonds referred to in §145(h)(1) of the Proposed Code.

"Nonhousing Related Bonds" means Nonessential Function Bonds other than Housing Related Bonds or Qualified 501(c)(3) Bonds.

"Nonessential Function Bond" has the meaning assigned to that term in §141(a) of the Proposed Code.

"Nonhousing Related Volume Cap" means the remainder of (i) the Volume Cap less (ii) the Qualified 501(c)(3) Volume Cap and less (iii) the Housing Related Volume Cap, namely, \$358,125,000.

"Proposed Code" means the Code as it would be amended by the enactment of the Act.

"Qualified 501(c)(3) Bond" has the meaning assigned to that term in §144(b) of the Proposed Code.

"Qualified 501(c)(3) Volume Cap" means the Volume Cap for the issuance of Qualified 501(c)(3) Bonds applicable to the State of Wisconsin for calendar year 1986, as provided in §145(g)(2) of the Proposed Code, namely \$119,375,000.

"Volume Cap" means the Volume Cap for the issuance of Nonessential Function Bonds applicable to the State of Wisconsin for calendar year 1986, as provided in §145(d)(1) of the Proposed Code, namely, \$835,625,000.

§2. There is hereby allocated to the Wisconsin Housing and Economic Development Authority for calendar year 1986 \$3,000,000 of the Nonhousing Related Volume Cap, which shall be reserved for bonds issued pursuant to §234.70 of the statutes as the authority in its discretion shall determine.

§3. There is hereby allocated to the Building Commission for the calendar year 1986 \$20,000,000 of the Nonhousing Related 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 calendar year 1986 \$60,000,000 of the Housing Related Volume Cap, to be utilized for such qualified veterans mortgage bond financings as the Building Commission in its discretion shall determine.

§5. There is hereby allocated to the Building Commission for the calendar year 1986 \$178,000,000 of the Housing Related 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.

§6. 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, all of the Qualified 501(c)(3) Volume Cap and the remaining portions of the Housing Related Volume Cap (\$120,125,000) and the Nonhousing Related Volume Cap (\$335,125,000), 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 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), (ii) a description of the obligations by category, as Qualified 501(c)(3) Bonds, or Housing Related Bonds, or Nonhousing Related Bonds, and (iii) 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 Nonessential Function Bonds or an issue described in §141(a)(3) of the Proposed Code subject to the Volume Cap and the category of such obligations described in the application. In addition, any application for an allocation for Nonhousing Related 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 for Nonhousing Related Bonds from the Building Commission shall include a certification that there is no remaining portion available of its allocation under §3.

(b) Upon receipt of any application (which the Department shall record by date and time of receipt), the Department shall promptly certify the portion of its allocation of the Volume Cap that has not been allocated to Issuers and shall allocate the amount requested to such Issuer for a period equal to the lesser of 60 calendar days or the remainder of the calendar year, unless the requested amount shall exceed such portion of the Volume Cap available for such category of obligation, or unless the amount shall exceed the maximum amount authorized for issuance under the official action taken by the Issuer with respect to such obligations.

(c) The Qualified 501(c)(3) Volume Cap shall be available only for Qualified 501(c)(3) Bonds. The housing Related Volume Cap shall be available only for Housing Related Bonds; and prior to September 1, 1986, the remaining portion of the Housing Related Volume cap allocated to the Department pursuant to §6 shall be available only for exempt facility bonds for qualified residential rental projects as defined in §142(c) of the Proposed Code, and thereafter for any Housing Related Bonds. The Nonhousing Related Volume Cap shall be available for (i) Nonhousing Related Bonds, (ii) for Qualified 501(c)(3) Bonds when the Qualified 501(c)(3) Volume Cap is exhausted, and (iii) for Housing Related Bonds when the Department's allocation of the Housing Related Volume Cap (as restricted in this §6(c)) is exhausted.

(d) In making any such allocation, the Department shall only consider compliance with the requirements of §6(a), the dollar amount of the request and the portion of its allocation of the Qualified 501(c)(3) Volume Cap, or the Housing Related Volume Cap, or the Nonhousing Related Volume Cap, as appropriate, that has not been allocated to Issuers.

(e) Each Issuer, or a person acting on its behalf, shall, on or before five calendar 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 become permanent and irrevocable, except as provided in §6(h).

(f) All applications shall be processed in the order received by the Department. It is intended that applications should be made only within 60 days prior to the planned issuance of the obligations. Any reapplication shall be effective only upon the day on which the previous allocation expires.

(g) An Issuer, or a person acting on its behalf, may surrender all rights to a particular allocation under any section of this Executive Order prior to its expiration, and in such event the allocation shall expire.

(h) In the event the Act is adopted with any substantive change from the form of the Act at the time of this Executive Order, the Department shall determine the extent to which any allocations made prior to the enactment of the Act were unnecessary (because such obligations are not subject to the Volume Cap). To the extent any allocation is determined to be unnecessary, the allocation shall be revoked ten days after written notice is sent to the Issuer, unless the Department shall receive on or before the tenth day after written notice is sent to the Issuer, an opinion of bond counsel that the allocation was and remains necessary. The Department may treat the failure to provide such an opinion that the allocation was necessary as conclusive evidence that the allocation was unnecessary.

(i) An allocation made by the Department under this §8 shall be void unless the Department is furnished, on or before December 15, 1986, with either (i) an affidavit of publication of a notice of public hearing with respect to the Nonessential Function Bonds for which the allocation has been made, or (ii) a letter from bond counsel for such Nonessential Function Bonds stating that a notice of public hearing with respect to such bonds has been published, or (iii) in the case of an issue described in §141(a)(3) of the Proposed Code subject to the Volume Cap, a letter from bond counsel for such bonds that a public hearing is unnecessary and

that the issue is reasonably expected to close in 1986; or (iv) a notification of issuance required under §8(e) hereof with respect to such Nonessential Function Bonds.

§7. If the Wisconsin Housing and Economic Development Authority or the Building Commission shall use any of their respective Nonhousing Related Volume Cap allocation under §52 or 3 for Housing Related Bonds or Qualified 501(c)(3) Bonds, then that Issuer shall certify the amount and use of the allocation to the Department, and the Department shall then reduce the Department's allocation of Qualified 501(c)(3) Volume Cap or Housing Related Volume Cap, and increase the Department's allocation of Nonhousing Related Volume Cap, by the same amount.

§8. (a) On or before October 31, 1986, the Building Commission and the Wisconsin Housing and Economic Development Authority shall each certify to the Department and to each other the amount of their respective allocations under §52, 3, 4 and 5 that they reasonably and in good faith expect to utilize in 1986. Such certification shall reserve to each respective entity the amount certified as expected to be utilized in 1986, and shall act as a release of the remainder. The Building Commission and the Wisconsin Housing and Economic Development Authority may each, on or before November 14, 1986, reserve part or all of the allocation released in the preceding sentence by filing a certificate with the Department and with each other on or before November 14, 1986, stating the amount and type of allocation so reserved. If the reservations made as permitted in the preceding sentence exceed the amounts released, then the amounts released shall be divided equally by type of allocation. Any Volume Cap allocation not reserved by certificate on or before November 14, 1986, shall be deemed allocated to the Department, to be further allocated as provided in §6.

(b) 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 §145(f) of the Proposed Code, to carry forward any portion of its unused allocation for any Carryforward Project, if in their judgment an effective election can be made. On or before December 15, 1986, the Building Commission and the Wisconsin Housing and Economic Development Authority shall each make a written assignment to the Department of its allocation of the Volume Cap for 1986 to the extent such allocation will exceed the aggregate amount of Nonessential Function Bonds to be issued in 1986 and which has not been carried forward.

(c) On or before December 30, 1986, the Department shall determine the portion of its allocation of the Volume Cap that has not been allocated to Issuers and shall thereafter make allocations only for Carryforward Projects. Such allocations shall be made to any Issuer that has requested an allocation for a Carryforward Project and has provided the Department with such information as 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 §145(f) of the Proposed Code. The requests shall be considered by the Department in the order received.

§9. The Secretary of the Department (or his delegatee) 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 §145 of the Proposed Code.

§10. Nothing herein shall be deemed to limit or repeal §§13.487(2), 39.37(4m)(b), 66.522, 231.03(6w)(a)2, 234.18(2m)(a)2, 234.50(4) and 234.60(3)(bm) of the statutes. The Department shall continue to perform separately its duties under §66.522. Any private activity bonds (as defined in §66.522(1)(e)) issued by the building Commission, Health Facilities Authority or Housing and Economic Development Authority or certified by the Department under §66.522(2) prior to the date hereof shall be deemed to have been properly issued or certified Nonessential Function Bonds under this Executive Order and shall be counted against the allocations made hereunder, and the Department, upon application as provided herein, shall so certify.

§11. For the purpose of this Executive Order, time shall be computed as provided in § 990.001(4) of the statutes.

§12. Each of the entities allocated a portion of the ceiling amount under §52, 3, 4 and 5 or any Issuer allocated a portion of the ceiling amount under §6 herein shall, upon issuing a Nonessential Function Bond pursuant to such allocation, issue a certificate signed by the officer or employee responsible for such allocations and stating, under penalty or perjury under the laws of the United States, that the allocation was not made in consideration of any bribe, gift gratuity or direct or indirect contribution to any political campaign.

§13. With respect to every allocation made under §6, the Department shall issue a certificate, signed by the officer or employee responsible for such allocation, stating, under penalty or perjury under the laws of the United States, that the allocation was not made in consideration of any bribe, gift, gratuity or direct or indirect contribution to any political campaign.

§14. I hereby certify, under penalty of perjury under the laws of the United States of America, that this Executive Order was not made in consideration of any bribe, gift, gratuity or direct or indirect contribution to any political campaign.



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 19th day of March 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