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STATE OF NEBRASKA  
OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NO. \_\_\_\_\_

PRIVATE ACTIVITY BOND ALLOCATIONS PROCLAMATION

WHEREAS, Division A of H.R. 4170 (enacted by the United States Congress and signed into law by President Reagan on July 18, 1984), entitled the "Tax Reform Act of 1984," in Title VI amended the Internal Revenue Code of 1954, as amended (the "Code"), among other things, to establish a limit on the dollar amount of "private activity bonds" (as defined in H.R. 4170) that may be issued by each state and its agencies (including quasi-state agencies) and political subdivisions in a calendar year (the "State Ceiling"); and

WHEREAS, H.R. 4170 provides that the State Ceiling applies to obligations issued after December 31, 1983, except that the State Ceiling shall not apply to any issue of obligations if (a) there was an inducement resolution (or other comparable preliminary approval) for the issue before June 19, 1984 and (b) the issue is issued before January 1, 1985; and

WHEREAS, "private activity bonds," as defined in H.R. 4170, include industrial development bonds and student loan bonds (including certain refunding bonds to the extent that the amount of an obligation issued to refund a prior obligation exceeds the amount of the refunded obligation), but do not include (i) industrial development bonds issued pursuant to Section 103(b)(4)(A) of the Code to finance multifamily housing or any public housing program obligation under Section 11(b) of the United States Housing Act of 1937; (ii) obligations issued to finance certain governmentally owned convention or trade show facilities, as described in Section 103(b)(4)(C) of the Code; (iii) obligations issued to finance certain governmentally owned airports, docks, wharves, mass commuting facilities (including mass commuting vehicles) or storage or training facilities directly related to any of the foregoing, as described in Section 103(b)(4)(D) of the Code; or (iv) obligations issued to finance parking facilities related to those facilities described in Section 103(b)(4)(D) of the Code (all of the foregoing types of obligations are hereinafter referred to as "Private Activity Bonds"); and

WHEREAS, H.R. 4170 provides that the State Ceiling applicable to any state for calendar years 1984 through 1986 shall be an amount equal to the greater of (1) \$150 multiplied by the state's population, as determined by the most recent census estimate of the resident population of the state published by the Bureau of the Census before the beginning of such calendar year, or (2) \$200,000,000; and

WHEREAS, the population of the State of Nebraska is 1,586,000 as estimated by the 1983 Census (which is the most recent census published by the Bureau of the Census before the beginning of calendar year 1984), and the Nebraska State Ceiling is equal to \$237,900,000; and

WHEREAS, H.R. 4170 establishes a formula for allocating the State Ceiling among issuing authorities within each state, the effect of which formula would be to allocate one-half of the State Ceiling to the state and its quasi-state agencies and the other one-half of the State Ceiling to each village, city and county on a per capita basis (the county per capita basis to exclude persons living within any village or city in the county); and

WHEREAS, H.R. 4170 also provides that a state may by law provide a different formula for allocating the State Ceiling among the governmental units in such state having authority to issue Private Activity Bonds ("Governmental Units"); and

WHEREAS, H.R. 4170 provides that the governor of any state may proclaim a different formula for allocating the State Ceiling among the Governmental Units in such state except that such authority of the governor to issue a proclamation shall not apply after the earlier of (i) the first day of the first calendar year beginning after the legislature of the state has met in regular session for more than 60 days after the date of the enactment of H.R. 4170 or (ii) the effective date of any state legislation with respect to the allocation of the State Ceiling; and

WHEREAS, under the provisions of H.R. 4170, the Governor of Nebraska has the authority to proclaim a different formula for allocating the Nebraska State Ceiling among the Governmental Units in the State of Nebraska ("Nebraska Governmental Units") until the earlier of (i) January 1, 1986 or (ii) the effective date of any State legislation with respect to the allocation of the Nebraska State Ceiling; and

WHEREAS, the Nebraska Legislature has not met in regular session more than 60 days after the date of enactment of H.R. 4170 and is not scheduled to meet in regular session until January of 1985; and

WHEREAS, without a change in the State Ceiling allocation formula, villages, cities and counties, particularly rural areas, would be effectively precluded by H.R. 4170 from issuing any Private Activity Bonds, such as industrial development bonds; and

WHEREAS, in order to allow the orderly continuation of the issuance of Private Activity Bonds by Nebraska Governmental Units, which consist of Nebraska quasi-state agencies and local governments, to carry out and achieve their public purposes, it is in the best interests of the State of Nebraska to immediately establish guidelines for the allocation of the Nebraska State Ceiling among such Nebraska Governmental Units; and

WHEREAS, this Proclamation is intended to govern the issuance of Private Activity Bonds until such time as it is amended or superseded by legislation; and

WHEREAS, subsequent to the issuance of this Proclamation, advice will be solicited from Nebraska Governmental Units and other interested persons in order to consider modifications to the allocation formula and procedures established hereby; and

WHEREAS, as permitted by H.R. 4170, this Proclamation is intended to establish a different formula from that set forth in H.R. 4170 for allocating the Nebraska State Ceiling among Nebraska Governmental Units;

NOW, THEREFORE, I ROBERT KERREY, GOVERNOR OF THE STATE OF NEBRASKA, DO HEREBY PROCLAIM the following guidelines for allocating the Nebraska State Ceiling in substitution for the formula set forth in H.R. 4170:

Section 1. Allocation of State Ceiling. The Nebraska State Ceiling applicable to Private Activity Bonds which are subject to the State Ceiling for each of the calendar years 1984 and thereafter shall be allocated on a first-come first-served basis to all Nebraska Governmental Units (whether Nebraska quasi-state agencies or local governments). These Nebraska Governmental Units ("Issuers") include, without limitation: Nebraska Investment Finance Authority, Nebraska Higher Education Facilities Authority, Nebraska Higher Education Loan Program, Inc., Counties, Cities (including Cities of the Metropolitan, Primary, First and Second Classes), and Villages of the State.

Section 2. Designation and Authority of Governor's Agent. The undersigned Governor hereby delegates to the Director of the Nebraska Department of Economic Development (the "Director") all authority to make such allocations in accordance with this Proclamation. Allocations made pursuant to Section 1 shall be made in writing and shall be determined on the basis of the chronological order of receipt from a Nebraska Governmental Unit of a project-specific (or program specific if a governmental program is being carried out) application in the form determined by the Director. In making such allocation, the Director shall only consider the dollar amount of the request and the amount of the unallocated State Ceiling. The Director shall establish such procedures as are necessary to implement such allocation process and prevent abuses thereof, including (without limitation) a limit on the number of days for which an allocation shall be effective (and if unused within such time period shall be deemed terminated) and a limit on the amount of unused allocations outstanding for any particular Governmental Unit or beneficiary of a Private Activity Bond. Such allocation shall not be subject to review or approval (i) under either the Nebraska Administrative Procedure Act or any other law of the State of Nebraska or (ii) by any other agency or political subdivision of the State of Nebraska. The Director may charge a fee for any such allocation to pay reasonable administrative costs of carrying out the allocation process. Any finding or determination by the Director pursuant to this Section, including the public purpose of any allocation made, shall be conclusive.

Section 3. Phase-in Allocation for Previously Issued Bonds. Prior to the date hereof, a portion of the State Ceiling has been allocated, pursuant to letter proclamations of the undersigned Governor, to certain Issuers for specified projects. Such allocations are hereby ratified and confirmed, effective as of the date of such respective letters (which are on file in the Office of the Director). These allocations are effective whether the related Private Activity Bonds are issued prior or subsequent to the effective date hereof, but only if the Private Activity Bonds are issued no later than December 1, 1984.

If any Nebraska Governmental Unit has issued Private Activity Bonds which are subject to the State Ceiling before the date of this Proclamation, other than as set forth in the immediately preceding paragraph, such Issuer shall immediately notify the Director in writing of the total dollar volume of such Bonds and shall submit a written request for an allocation meeting the requirements of Section 2 above. Upon receipt of such notice and request, the Director shall to the extent possible immediately make an allocation to such Issuer from the unallocated portion of the State Ceiling.

Section 4. County Governments as Issuers on Behalf of Cities or Villages. Counties are authorized to be Issuers of Private Activity Bonds which are subject to the State Ceiling for projects within the boundaries of the county, without regard to whether such projects are also within the incorporated boundaries or zoning jurisdiction of any City or Village.

Section 5. Projections for Succeeding Calendar Years by Nebraska Governmental Units. On or before December 1 of each year, any Governmental Unit which intends to issue Private Activity Bonds in the next three calendar years may submit to the Director a report describing its plans or present intentions to issue Private Activity Bonds during such next calendar year or years, specifying the project (or projects) to be financed, the initial owner or operator of each project and the amount of Private Activity Bonds to be issued for each project. Based upon such information, prior to the end of such calendar year the Director shall make an election with the Internal Revenue Service as to the amount of the Final Allocation for such year available to be carried forward to the next calendar year or years and the specific projects to which such Final Allocation will be allocated.

Section 6. Internal Revenue Service Form 8038. Any Nebraska Governmental Unit which issues Private Activity Bonds after the date of this Proclamation shall file with the Director a copy of the Internal Revenue Service Form 8038 for each such bond issue within the time specified by the Director. Failure to file the Internal Revenue Service Form 8038 shall not in any way affect the validity of any bonds issued after the date of this Proclamation. The obligation of a Nebraska Governmental Unit to make filings under this Section shall survive the expiration of this Proclamation.

Section 7. Certifications by Director.

(a) At the request of any Nebraska Governmental Unit made in connection with the issuance of any Private Activity Bonds by such Unit, the Director may certify as of the date of such certification the following:

(i) the allocation to such Nebraska Governmental Unit of a portion of the Nebraska State Ceiling for such issuance of Private Activity Bonds;

(ii) the continuing effect of such allocation;

(iii) the fact that the total allocations made pursuant to this Proclamation do not exceed the Nebraska State Ceiling; and

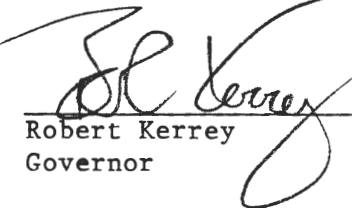
(iv) any other similar or related matters that may reasonably be requested by such Nebraska Governmental Unit or its bond counsel in order to establish the existence of a valid allocation for the proposed issuance of Private Activity Bonds and to establish that the Nebraska State Ceiling has not been exceeded. The Director shall keep records of all allocations made by him and of all other matters that he deems necessary.

(b) In addition (to the extent required by H.R. 4170), upon the request of the Issuer of any Private Activity Bonds which are subject to the State Ceiling, the Director shall certify, prior to the issuance of any Private Activity Bond allocated any portion of the State Ceiling, that the allocation was not made in consideration of any bribe, gift, gratuity or direct or indirect contribution to any political campaign.


Section 8. Severability. If any provision of this Proclamation or the application of it to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity shall not affect other provisions or any other application of this Proclamation which can be given effect without the invalid provision or application, and for this purpose, the provisions of this Proclamation are declared severable.

Section 9. Effective Date. This Proclamation shall take effect immediately.

Given Under My Hand and the  
Great Seal of the State of  
Nebraska in the City of  
Lincoln, This 16<sup>th</sup> day of  
November, 1984.

  
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Robert Kerrey  
Governor

ATTEST:

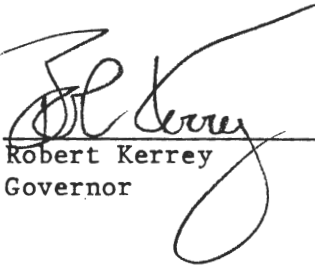
  
\_\_\_\_\_  
Allen Beermann  
Secretary of State



CERTIFICATION

In accordance with the provisions of H.R. 4170, I, Robert Kerrey, Governor of the State of Nebraska, hereby certify under the penalties of perjury that the allocations of the Nebraska State Ceiling made in the foregoing Proclamation dated \_\_\_\_\_, 1984 were not made in consideration of any bribe, gift, gratuity or direct or indirect contribution to any political campaign.

11/16/84  
Date

  
Robert Kerrey  
Governor