



SINGLE COPY

NEBRASKA PUBLICATIONS CLEARINGHOUSE

JUN 03 1998

NEBRASKA LIBRARY COMMISSION LINCOLN, NE 68508

STATE of NEBRASKA  
EXECUTIVE OFFICE  
LINCOLN

EXECUTIVE ORDER  
98-3

WHEREAS, the "Tax Reform Act of 1986" designated the Internal Revenue Code of 1986 (the "Code") and established a limit on the dollar amount of "private activity bonds" (as defined in the Code), as well as certain other tax-exempt obligations, 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, the Tax Reform Act of 1986 provided that the State Ceiling applied to obligations issued after August 15, 1986; and

WHEREAS, the term "private activity bonds," defined in the Code, includes (a) exempt facility bonds (other than certain governmentally owned airport facilities, (b) qualified mortgage bonds, (c) qualified small-issue bonds, (d) qualified student loan bonds, (e) qualified redevelopment bonds, (f) the nongovernmental portion (in excess of \$15 million) of certain governmental bonds, and (g) certain obligations which are excluded from the definition of private activity bonds contained in the Code by virtue of transitional rules (all of the foregoing types of obligations are hereinafter referred to as "Private Activity Bonds"); and

WHEREAS, Section 146 of the Code provides that the State Ceiling applicable to any state shall be an amount equal to the greater of (a) \$50 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 (b) \$150,000,000; and

WHEREAS, recent estimates of the population of the State of Nebraska (the "State") made by the Bureau of the Census result in a Nebraska State Ceiling equal to \$150,000,000; and

WHEREAS, Section 146 of the Code 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, county or other issuer of Private Activity Bonds on a per capita basis (the county per capita basis to exclude persons living within any village or city in the county); and

WHEREAS, under the provisions of the Code, the Governor of Nebraska had the authority to proclaim a different formula for allocating the Nebraska State Ceiling among the Governmental Units in the State ("Nebraska Governmental Units") until the earlier of (a) December 31, 1987 or (b) the effective date of any State legislation with respect to the allocation of the Nebraska State Ceiling; and

WHEREAS, it was determined that, without a change in the State Ceiling allocation formula, villages, cities and counties, particularly rural areas, would have been effectively precluded by the Code from issuing any Private Activity Bonds; and

WHEREAS, the allocation method provided in the Code would have fragmented the Nebraska State Ceiling, and such fragmentation was determined not to be conducive to targeting allocations to those projects which are of the most benefit to the State; and

WHEREAS, Section 10-1001 of the Revised Statutes of Nebraska (Reissue 1997) provides that the Governor may, by executive order, establish a method for the allocation of the State Ceiling among any or all entities in the State having authority to issue Private Activity Bonds and may delegate any administrative authority vested in him/her to any state agency or instrumentality which exercises essential public functions; and

WHEREAS, the Governor, by Executive Order dated December 13, 1989, established the method for the allocation of the State Ceiling, which Executive Order was amended by Executive Order No. 91-3 (collectively, the "Prior Executive Order"); and

WHEREAS, the Governor has determined to amend and supersede such Prior Executive Order by this Executive Order No. 98-3; and

WHEREAS, the Nebraska Investment Finance Authority, a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions, was and continues to be an appropriate body for managing and supervising the allocation of the Nebraska State Ceiling under the terms of this Executive Order in order to assure utilization of the available State Ceiling in the manner most beneficial to the economic, agricultural and industrial development of the State and to assure, to the extent possible, an equitable distribution throughout the State; and

WHEREAS, it shall be the policy of the State to use Private Activity Bonds (other than for housing uses or student loan programs) to expand, equitably throughout the State to the extent possible, the State's economic base by bringing new wealth into the State or to reduce the loss of wealth from the State, and projects consistent with this policy involve manufacturing enterprises which sell or have the potential to sell products or services to out-of-state markets or to replace or

compete with products or services being imported to the State, particularly those projects whose request for State Ceiling does not exceed \$10,000,000; and

WHEREAS, it shall be the policy of the State to use Private Activity Bonds issued for residential rental projects to provide housing for low- and moderate-income tenants, particularly for tenants in the rural areas of the State; and

WHEREAS, it shall be the policy of the State, in order to best serve the needs of the State, to use qualified mortgage bonds to provide housing for low- and moderate-income persons through statewide-offered programs; and

WHEREAS, in order to allow the orderly continuation of the issuance of Private Activity Bonds in Nebraska to carry out and achieve public purposes, it is in the best interests of the State to immediately amend and supersede the Prior Executive Order for the allocation of the Nebraska State Ceiling; and

WHEREAS, this Executive Order 98-3 is intended to govern the allocation of the Nebraska State Ceiling until such time as it is amended or superseded by legislation or a subsequent executive order,

NOW, THEREFORE, I, E. Benjamin Nelson, Governor of the State of Nebraska, DO HEREBY PROCLAIM, pursuant to the authority vested in me by Neb. Rev. Stat. § 10-1001 (Reissue 1997), the following guidelines for allocating the Nebraska State Ceiling (as defined in and by Section 146 of the Code) in substitution for the formula set forth in Section 146 of the Code:

Section 1. *Applicability.* This Executive Order supersedes the Prior Executive Order with respect to the State Ceiling.

Section 2. *Initial Allocations.* The Nebraska State Ceiling applicable to Private Activity Bonds which are subject to the State Ceiling shall be initially reserved for, and allocated to, Nebraska Governmental Units under the management and supervision of the Nebraska Investment Finance Authority as follows:

- (a) An amount equal to 50% of the State Ceiling is hereby reserved for allocations for the issuance of qualified mortgage bonds (as defined in the Code) for programs conducted on a statewide basis;
- (b) An amount equal to 20% of the State Ceiling is hereby reserved for allocations to types of Private Activity Bonds not addressed in (a) above, including allocations in connection with the Nebraska Investment Finance Authority's Agricultural Development Direct Loan Program, allocations to industrial or manufacturing projects, allocations to qualified residential rental projects, or allocations for qualified mortgage bonds for very low-income or special needs programs which are not available on a statewide basis, of which amount:

- (i) 50 percent of the reserved allocation shall be available from January 1 to June 30; and
- (ii) 50 percent of the reserved allocation shall be available from July 1 through December 31.

provided, however, that the Governor may, in the Governor's sole and absolute discretion, alter this schedule for allocations. Any State Ceiling reserved for allocations pursuant to this subsection (b) for the period January 1 to June 30, but remaining unused as of June 30, shall automatically be made available until December 31.

- (c) An amount equal to 30% of the State Ceiling shall be retained and used by the Governor for discretionary allocations to any of the foregoing categories. The Governor may also grant allocations from this amount for projects which, but for this subsection, would be ineligible to receive an allocation under this Executive Order; and
- (d) Notwithstanding the foregoing, and subject to the provisions of this subsection (d), up to \$30,000,000 of the State Ceiling may be allocated to qualified student loan bonds. Requests made for State Ceiling for qualified student loan bonds in accordance with this subsection (d) shall be given priority consideration over other requests made for State Ceiling available pursuant to subsection (a) and/or subsection (c) of this Section 2 at the time of such request. Any allocation for qualified student loan bonds shall be allocated from amounts, if any, available pursuant to subsection (a) and/or subsection (c) of this Section 2. At such time, during the first three calendar months of the year, that amounts available pursuant to subsection (a) and subsection (c) shall, in the aggregate, be \$30,000,000 or less, the Nebraska Investment Finance Authority shall give notice of the remaining amount to Nebraska issuers of qualified student loan bonds who have so requested to be notified. Amounts allocated pursuant to subsection (a) of this Section 2 shall be allocated by the Nebraska Investment Finance Authority and amounts allocated pursuant to subsection (c) of this Section 2 shall be allocated by the Governor; provided that any request for State Ceiling for qualified student loan bonds for a particular calendar year shall be made within the first three calendar months of the calendar year in which such State Ceiling will be used for qualified student loan bonds, and further that such qualified student loan bonds shall be issued within the first nine calendar months of the calendar year in which such State Ceiling was requested. If not so used, the amount of State Ceiling allocated pursuant to this subsection (d) shall be returned and allocated in accordance with this Executive Order.

### Section 3. *Allocation Procedure.*

- (a) Allocations under Section 2 shall be granted by the Board of Directors of the Nebraska Investment Finance Authority (the "Board"), and the Governor hereby delegates to the Board all authority to make such allocations in accordance with this Executive Order and to certify pursuant to Section 149(e)(2)(F) of the Code that the issuance of each series of bonds does not exceed the amount of available State Ceiling pursuant to this Executive Order. Requests for allocations shall be made in writing and shall be considered on the basis of the chronological order of receipt of a project-specific application in the form determined by the Board. In making such allocations, the Board shall consider the dollar amount of the request and the remaining amount of the unallocated Nebraska State Ceiling; provided, however, that the Board may deny, defer or subordinate those requests for allocations which for any reason appear excessive, premature or less supportive of the purposes for which other bonds of such type are to be issued, notwithstanding prior public approval of the underlying project, if any. Additionally, the Board may establish priorities for allocating the amount of State Ceiling available pursuant to subsection (b) of Section 2, which priorities may take into account the preambles of this Executive Order and the following objectives:
- (i) an equitable distribution of State Ceiling across the State;
  - (ii) with respect to qualified residential rental projects, the particular need in nonmetropolitan areas of the State for such projects;
  - (iii) unanticipated needs of particular communities in the State which may best be addressed through the allocation of State Ceiling;
  - (iv) the continued viability of the Nebraska Investment Finance Authority's Agricultural Development Direct Loan Program; and
  - (v) the limited amount of State Ceiling, which amount, until the State Ceiling is increased pursuant to federal law, shall not be allocated pursuant to subsection (b) of Section 2 for any particular project in an amount in excess of \$10,000,000.

An allocation request may be approved or denied by the Board based on its determination that the project to be financed is or is not in furtherance of the policy of the State and the priorities established by the Board and the objectives outlined above, including that Private Activity Bonds be used to the greatest extent possible to effect an equitable distribution across the State to expand the State's economic base by bringing new wealth into the State or to reduce the loss of wealth from the State or to provide housing for low- and moderate-income

persons and families in the case of housing projects. The Board shall have the authority to make its determination based on its sole and absolute discretion. The amounts initially reserved in subsections (a), (b) and (d) of Section 2 for categories of projects may be changed at any time by the Governor in the Governor's sole and absolute discretion.

- (b) The Board shall establish such rules and regulations as are necessary to implement such allocation process and prevent abuses thereof. Such rules and regulations may include (without limitation) a limit on the time for which an allocation shall be effective (and, if unused within such time period, shall be deemed terminated). In addition, the Board may adopt rules and regulations delegating the authority to grant allocations or extensions of allocations to the Chairperson of the Nebraska Investment Finance Authority for the administrative convenience of parties requesting allocations. In all cases, parties denied an allocation or denied an extension under these rules and regulations may have their request considered by the Board, and the Board shall have the right to overrule such determinations. 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, or (ii) by any other agency or political subdivision of the State. The Board may establish a fee schedule for any such allocation, which may include no more than a one-percent fee (which fee may, at the discretion of the Executive Director of the Board, be charged up front or on an ongoing basis) for allocations for State Ceiling pursuant to subsection (b) or (c) of Section 2 for purposes of (i) industrial, (ii) manufacturing, (iii) qualified residential rental projects, or (iv) single-family mortgage revenue bonds, where such single-family mortgage revenue bonds are used for a program not carried out on a statewide basis. Such fee, if collected, shall be established by the Board and may be reduced for projects or programs which do not exceed \$3,000,000. The Board may designate all or a portion of such fee (which fee may be up to 1%) for the benefit of such housing programs as are identified by the Board.

Section 4. *Carry-Forwards for Succeeding Calendar Years.* Requests for a carry-forward of a portion of the unallocated Nebraska State Ceiling for specific projects to succeeding calendar years may be submitted to the Board on or before December 15, in the form and manner prescribed by the Board. The Board may, within its sole and absolute discretion, consider carry-forward requests submitted after that date. Based upon the policies underlying the use of Private Activity Bonds in Nebraska as stated in subsection (a) of Section 3 of this Executive Order, the Board shall, within its sole and absolute discretion, make an election as to the amount of the final allocation available to be carried forward to the next calendar year and the specific projects to which such final allocation will be allocated. The Board shall have the authority to set forth the procedures necessary to administer and consider carry-forward requests and to provide for the timely submission of carry-forward elections to the Internal Revenue

Service. The Board may adopt procedures that permit the carry-forward of previously approved allocations for specific projects in order that the previously allocated portion of the Nebraska State Ceiling will be utilized. To avoid any loss to the State of the State Ceiling, any amounts remaining on December 31 in any categories shall be carried forward by the Board for the purposes described in subsection (a) of Section 2 of this Executive Order, as designated by the Board.

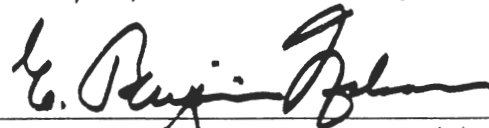
Section 5. *Transfer of Allocation.* Any recipient of an allocation pursuant to this Executive Order may not transfer any portion of its allocation to any other person or entity (unless that person or entity is a "related person" within the meaning of Section 144(a)(3) of the Code) without the prior written consent of the Board. Notwithstanding any applicable law, charter, ordinance or other corporate document, any recipient of an allocation pursuant to this Executive Order may return any portion of its allocation to the Nebraska Investment Finance Authority for reallocation.

Section 6. *Internal Revenue Service Form 8038.* Any recipient of an allocation pursuant to this Executive Order shall file with the Board, within the time specified by the Board, a copy of the Internal Revenue Service Form 8038 for each bond issued after the date of this Executive Order.

Section 7. *Severability.* If any provision of this Executive Order, 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 Executive Order which can be given effect without the invalid provision or application; and, for this purpose, the provisions of this Executive Order are declared severable.

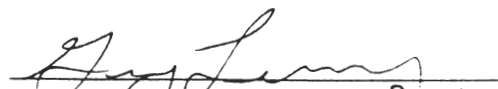
Section 8. *Effective Date.* This Executive Order shall take effect immediately.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the Great Seal of the State of Nebraska to be affixed this 8th day of April, in the year of our Lord One Thousand Nine Hundred and Ninety-Eight.



E. Benjamin Nelson  
Governor

Attest:



Scott Moore Deputy  
Secretary of State  
SECY OF STATE

