



STATE of NEBRASKA
EXECUTIVE OFFICE
LINCOLN

FILED

JUN 29 1988

SECRETARY OF STATE

By _____ DEPUTY

EXECUTIVE ORDER

No. 88-5

WHEREAS, the "Tax Reform Act of 1986" designates the Internal Revenue Code of 1986 (the "Code") and establishes 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 provides that the State Ceiling applies to obligations issued after August 15, 1986; and

WHEREAS, the term "private activity bonds," as defined in the Code, includes (i) exempt facility bonds (other than certain governmentally owned airport facilities), (ii) qualified mortgage bonds, (iii) qualified small-issue bonds, (iv) qualified student loan bonds, (v) qualified redevelopment bonds, (vi) the nongovernmental portion (in excess of \$15 million) of certain governmental bonds and (vii) 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 (1) \$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 (2) \$150,000,000; and

WHEREAS, the population of the State of Nebraska is 1,606,000, as estimated by the 1985 Census (which is the most recent census published by the Bureau of the Census before the beginning of calendar year 1986), and the Nebraska State Ceiling is 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 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) December 31, 1987 or (ii) the effective date of any State legislation with respect to the allocation of the Nebraska State Ceiling; and

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

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

WHEREAS, L.B. 1233, passed by the Nebraska legislature and approved by the Governor on April 8, 1988, 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 her to any state agency or instrumentality which exercises essential public functions; and

WHEREAS, the Nebraska Investment Finance Authority, a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions, is an appropriate body for managing and supervising the allocation of the Nebraska State Ceiling in 1988 and future years 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, industrial and commercial development of the State of Nebraska; and

WHEREAS, it shall be the policy of the State of Nebraska to use Private Activity Bonds (other than for housing uses or student loan programs) to expand 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 replace or compete with products or services being imported to the State; and

WHEREAS, it shall be the policy of the State of Nebraska to use Private Activity Bonds issued for residential rental projects to provide housing for elderly tenants; 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 of Nebraska to immediately amend the guidelines for the allocation of the Nebraska State Ceiling; and

WHEREAS, this Executive Order 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, KAY ORR, GOVERNOR OF THE STATE OF NEBRASKA, DO HEREBY PROCLAIM pursuant to the authority vested in me by L.B. 1233 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 1986 Executive Order of November 25, 1986 with respect to the State Ceiling prior to the enactment of L.B. 1233.

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 the Nebraska Governmental Units under the management and supervision of the Nebraska Investment Finance Authority as follows:

(a) An amount equal to 30% of the State Ceiling is hereby reserved for allocations to housing uses, including the issuance of qualified mortgage bonds and bonds for qualified residential rental projects. In order to qualify for an allocation, bonds for qualified residential rental projects must finance residential rental projects where at least 75% of the units are leased to elderly tenants. For these purposes, "elderly tenants" shall be defined as tenants 55 years old or older.

(b) An amount equal to 20% of the State Ceiling is hereby reserved for allocations to qualified student loan bonds.

(c) An amount equal to 20% of the State Ceiling is hereby reserved for allocations to types of Private Activity Bonds not addressed in (a) or (b) above, including allocations in connection with the Nebraska Investment Finance Authority's Agricultural Development Direct Loan Program or allocations to industrial or manufacturing projects.

(d) Of the amounts set forth in subsections (a) through (c) of this Section, 50% of the reserved allocation shall be available from January 1 to June 30 and 50% 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. For calendar year 1988, the amounts set forth in subsections (a) through (c) of this Section shall be available on an equal basis throughout the year. For calendar years beginning after 1988, any State Ceiling reserved for the period January 1 to June 30 but remaining unused as of June 30, shall automatically be made available until December 31.

(e) An amount equal to 30% shall be retained and used by the Governor for discretionary allocations to any of the foregoing categories. The Governor may grant

allocations from this amount for projects, which but for this subsection, would be ineligible to receive an allocation under 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. 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, the Board may deny, defer or subordinate those requests for allocations which for any reason appear excessive, premature or less supportive of the purpose for which the bonds are to be issued, notwithstanding the prior public approval of the underlying project. 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 of Nebraska that Private Activity Bonds be used 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 elderly tenants in the case of allocations for residential rental projects. The Board may consider in making this determination that projects consistent with this policy involve manufacturing or nonmanufacturing enterprises which sell or have the potential to sell products or services to out-of-state markets or replace or compete with products or services being imported to the State. The Board shall have the authority to make its determination based on its sole and absolute discretion. The amounts initially reserved in Section 2(a) through (c) 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 30-day 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 to grant extensions of allocations to the Chairman of the Nebraska Investment Finance Authority for the administrative convenience of parties requesting allocations. In all cases, a party 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 of Nebraska or (ii) by any other agency or political subdivision of the State of Nebraska. The Board may charge a fee for any such allocation to pay reasonable administrative costs of carrying out the allocation process.

Section 4. Phase-in Allocation for Previously Induced Bonds. Prior to the date hereof, a portion of the State Ceiling allocated to the Nebraska Investment Finance Authority and other Nebraska Governmental Units by the provisions of Section 146 of the Code has been reallocated, pursuant to letter proclamations of the undersigned Governor, to the Nebraska Investment Finance Authority and other Nebraska Governmental Units for specified projects. Such reallocations are hereby ratified and confirmed, effective as of the date of such respective letters (which are on file in the Office of the Governor) or as of the date of such previous allocations, and the amount of the initial allocation pursuant to Section 2 hereof is hereby reduced accordingly. These reallocations 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 31, 1988.

Section 5. 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 Section 3(a) 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.

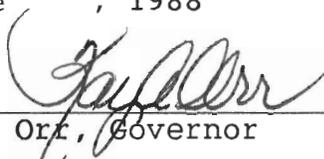
Section 6. Transfer of Allocation. Any recipient of an allocation pursuant to this Executive Order may not transfer any portion of its allocation to any other person or entity (unless that person or entity is a "related person" within the meaning of Section 144(a)(3) of the Code) without the prior written 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 7. 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 8. 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 9. Effective Date. This Executive Order shall take effect immediately.

Given Under My Hand and the Great Seal of the State of Nebraska in the City of Lincoln, This 27th Day of June , 1988



Kay Orr, Governor

Attest:



Allen Beermann, Secretary of State

