

STATE OF LOUISIANA
EXECUTIVE DEPARTMENT
BATON ROUGE

EXECUTIVE ORDER NO. EWE 92-47

WHEREAS,

the Tax Reform Act of 1986 (the "Act"), restricts the total principal amount of certain private activity bonds the interest on which is excludable from gross income for Federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (including the portion of government use bonds allocated to non-governmental use which is required by the Act to receive an allocation as herein provided) (such bonds sometimes referred to herein as "Bonds") which may be issued within the State of Louisiana (the "State") during each calendar year to a dollar amount equal to \$50 per person based on the most recently published estimate of population for the State released by the United States Bureau of Census before the beginning of each such calendar year; and

WHEREAS,

by Executive Order No. 88-35 effective September 1, 1988 ("88-35") and under the authority of and pursuant to the Act and Act No. 51 of the 1986 Regular Session of the Legislature ("Act 51 of 1986"), the Governor of the State established (i) a method for the allocation of bonds subject to the private activity bond volume limits (the "ceiling"), (ii) the procedure for obtaining an allocation of bonds under the ceiling, and (iii) a system of central record keeping for such allocations; and

WHEREAS,

88-35 will expire on August 21, 1992; and

WHEREAS,

as authorized by the Act and Act 51 of 1986, the Governor of the State now desires to issue this Executive Order providing for the determination of the ceiling, reestablishing the formula for allocating bonds under the ceiling, setting forth the procedure for obtaining an allocation of bonds subject to such ceiling and a system of record keeping of such allocations.

NOW THEREFORE I, EDWIN W. EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested in me by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1: All terms defined in the preamble hereof shall have the same meanings in this Executive Order.

SECTION 1.2: All terms not defined herein shall have the same meanings as used in the Act.

SECTION 1.3: In addition, the following terms shall have the following meanings:

"issuer" or "issuers" means any entity or entities now or hereafter authorized to issue bonds under the Constitution or laws of the State.

"statewide jurisdiction" means authority to issue bonds to finance projects located anywhere within the geographic limits of the State and not limited to any particular area of the State.

ARTICLE II

DETERMINATION OF CEILINGS FOR 1992 AND THEREAFTER

SECTION 2.1: The determination made by the staff of the Louisiana State Bond Commission (the "SBC Staff") of the ceiling for certain private activity bonds for the year 1992 pursuant to the provisions of the Act and 88-35; namely, the product of \$50 times the most recently published estimate of population for the State released by the United States Bureau of Census before January 1, 1992 is hereby ratified and established as the ceiling for the calendar year 1992.

SECTION 2.2: On or before January 15, 1993 and on or before the fifteenth day of each subsequent calendar year during the life of this Executive Order, the SBC Staff is hereby directed to determine the ceiling for each calendar year by multiplying \$50 times the most recently published estimate of population for the State released by the United States Bureau of Census before the beginning of each respective calendar year. Upon making such determination of the ceiling, the SBC Staff is hereby further directed to publish as soon as practicable a notice of the amount of such ceiling in *The Advocate*.

ARTICLE III

GENERAL ALLOCATION POOL

SECTION 3.1: There is hereby created a pool to be designated the "General Allocation Pool". The entire ceiling for each calendar year is hereby credited to the General Allocation Pool. Allocation for all types of bonds which require allocations under the Act may be requested and granted from the General Allocation Pool. During each of the calendar years 1992 and thereafter, amounts shall be reserved for allocations from the General Allocation Pool as follows:

Until the earlier of September 15 of each year or the date on which the amount remaining in the General Allocation Pool is reduced below one-third of the ceiling, an amount at least equal to 60% of the General Allocation Pool shall be reserved for allocations for bonds issued by the LPFA. There shall also be reserved, until the earlier of September 15 of each year or the date on which the amount remaining in the General Allocation Pool is reduced below one-third of the ceiling, an amount at least equal to 10% of the General Allocation Pool for allocations to be granted for bonds issued by issuers, other than the LPFA, having statewide jurisdiction.

ARTICLE IV

APPLICATION PROCEDURE FOR ALLOCATIONS

- SECTION 4.1:** Except as limited in Article III hereof, all issuers in and of the State may apply for allocations on a equal basis. It is the intent hereof that allocations (other than allocations for qualified mortgage bonds) be granted primarily on a first-come first-serve basis until the ceiling reaches a level at which discretion is necessary to ensure the most favorable economic return to the State or an area within the State.
- SECTION 4.2:** The allocation of the ceiling from the General Allocation Pool created hereby (other than allocations for qualified mortgage bonds) will be considered on the basis of the chronological order or receipt by the SBC Staff from an issuer of the application set forth in Section 4.3 of this Executive Order.
- SECTION 4.3:** An issuer which proposes to issue bonds for a specific project or purpose must make application for an allocation of a portion of the ceiling for the particular project or purpose by submitting an application to the SBC Staff which contains the following information:
- (a) the name and address of the issuer of the bonds;
 - (b) the name and location (by mailing address or other definitive description) of the project or purpose for which an allocation from the ceiling is requested;
 - (c) in the case of bonds other than qualified student loan bonds or qualified mortgage bonds, the name and mailing address of (i) the initial owner or operator of the project, (ii) an appropriate person from whom information regarding the project can be obtained, and (iii) the person to whom notification of the allocation should be made;
 - (d) the date of adoption by the issuer of an inducement resolution adopted for the purpose of taking "official action", as required by the Internal Revenue Code of 1986, as amended (the "Code"), if the issue of bonds for which the allocation of the ceiling is requested requires the taking of "official action" under the Code;
 - (e) the amount of the ceiling which the issuer is requesting be allocated for the project or purpose of the application and a general description of the project or purpose to be financed;
 - (f) either (i) a bond purchase agreement or other written commitment to purchase the bonds for which an allocation is requested, executed by one or more purchasers, setting forth in detail the principal and interest payment provisions and the security for the bonds, accepted by the issuer or the beneficiary of the bonds, (ii) in the case of a public offering of the bonds for which the allocation from the ceiling is requested, a binding bond purchase or underwriting agreement obligating the underwriter or underwriters to sell or purchase the bonds within 60 days of the receipt of an allocation hereunder, setting forth in detail the proposed principal and interest payment provisions and the security for the bonds, accepted by the issuer or the beneficiary of the bonds, or (iii) a \$7,500 escrow deposit which will be forfeited in the event the bonds for which an allocation is granted are not delivered prior to the expiration of

such allocation as provided in Section 4.8 hereof. The \$7,500 deposit shall be returned to the party depositing the same without interest upon the substitution of the items described in (i) or (ii) above or delivery of the bonds within the allocation period (including any extension). In the event that such bonds are not delivered within the allocation period, the deposit shall be forfeited and deposited in the State Treasury, unless the failure to deliver such bonds is the result of the State Bond Commission denying approval of such bonds, in which case the deposit shall be returned to the party depositing same, without interest; and

- (g) a letter from bond counsel to the effect that the bonds for which an allocation is requested are subject to the ceiling.

SECTION 4.4: Upon receipt of the completed application required by Section 4.3 hereof for allocation (except with respect to allocations for qualified mortgage bonds which are to be allocated by the Governor) the SBC Staff shall, within ten days of the receipt thereof, notify the person designated in the application of the allocation from the ceiling to be applied to the project or purpose requested in the issuer's application.

SECTION 4.5: Until November 15 of each year, the maximum amount of allocation that may be granted for any project or purpose (other than for qualified mortgage bonds) shall not exceed \$20,000,000. Until November 15 of each year, the maximum amount of allocation that may be granted for qualified mortgage bonds (other than for qualified mortgage bonds issued by the LHFA) shall not exceed \$25,000,000. If an issuer submits a request for an allocation in excess of the amount herein authorized, the SBC Staff shall retain the application for consideration of the allocation of additional amounts on or after November 15 of that year. Notwithstanding the foregoing, if the Governor determines that a project serves a crucial need or provides an extraordinary benefit to the State of an area within the State, the Governor, by written approval, may authorize allocations for a project prior to November 15 up to a total of \$50,000,000 for such project or purpose. Allocations for qualified mortgage bonds issued by the LHFA shall not be governed by this Section.

SECTION 4.6: On the earlier of September 15 of each year or the date that the amount remaining in the General Allocation Pool is reduced below one-third of the ceiling, the remaining amounts reserved in Article III shall be combined and allocation from such remaining amount shall be granted at the discretion of the Governor without regard to reservations for any particular issuers.

SECTION 4.7: Upon receipt of the completed application required by Section 4.3 hereof for allocations which must be granted by the Governor, the SBC Staff shall immediately forward such application to the Governor, together with a form used for the granting of allocations which is complete in all respects other than the amount of the allocation. The Governor shall determine the amount of allocation (if any) and may evidence his approval by entering the amount of the allocation on the form and signing the allocation form.

SECTION 4.8: Any allocation from the ceiling (other than carryforward allocations described in Section 4.14 hereof) will remain valid if the bonds for which such allocation is granted are delivered by the earlier of (i) 60 days from the date the notice of the allocation is mailed to the person designed or (ii) December 31 of the calendar year granted; unless, in the

case of (i) above, the issuer requests an extension of time for the allocation to remain valid, in which event the allocation will be extended one time to the earlier of (i) 30 days from the date of the expiration of the 60 days period or (ii) December 31 of the calendar year granted. Notwithstanding the foregoing, an allocation shall be deemed invalid immediately upon the State Bond Commission's denial of the approval of the bonds which have received an allocation.

SECTION 4.9: On November 15 of each year the SBC Staff shall determine the remaining amount of the ceiling and shall submit to the Governor for consideration all applications for allocations of bonds in excess of the amounts permitted herein for which the SBC Staff has received in writing during the period commencing October 15 through November 14 of such year a notification of the applicants continued desire to receive an increased allocation. Thereafter, the Governor may grant, until the ceiling is exhausted, allocations limited to \$20,000,000 per project or purpose (in addition to previous allocations granted) unless the Governor determines that a project satisfies a particularly important State or local need, in which event the Governor may allocate additional amounts limited only to the amount of the ceiling remaining.

SECTION 4.10: In the event the allocation of the ceiling for a particular project or purpose expires as provided in Section 4.8 of this Executive Order, the issuer may resubmit its application for an allocation of a portion of the ceiling for such project or purpose, and the application of the issuer relating to such project or purpose will be reviewed in chronological order of receipt of its resubmission, but no preference or priority will be given to the issuer as a result of its prior application for such project or purpose.

SECTION 4.11: In order to make maximum use of the ceiling, to promote economic growth in the State, and to treat all interests fairly, it is the intent of this Executive Order that the SBC Staff shall not exercise any discretion in the allocation of bonds. The SBC Staff shall handle and dispose of each application in the chronological order of receipt.

SECTION 4.12: The SBC Staff shall maintain accurate records of all allocations and all bonds delivered. All issuers of bonds which have received an allocation must notify the SBC Staff of the delivery of bonds within five days after the delivery of such bonds and shall specify the total principal amount of bonds issued. The SBC Staff shall provide to any person so requesting every two weeks and any other time requested: (i) a list of the amount of unallocated ceiling remaining on the date such request is made, (ii) a list of allocation (naming the issuer and amount of allocation) which have been made by the SBC Staff and the date of each allocation and any extension, (iii) a list of applications being held by the SBC Staff which have requested a larger allocation than permitted and (iv) a list of bonds which have been given an allocation and have been delivered.

SECTION 4.13: If at any time the remaining amount of the ceiling is insufficient to meet the request for allocation of two or more applications which were received in completed form by the SBC Staff on the same day, then the allocation shall be considered based on the chronological order of adoption of an inducement or other resolution by the respective issuer for the project or purpose for which an allocation is requested, and if the inducement or other resolution of such applications were adopted on the same day, the allocation for those projects induced on the same day shall be made on a pro-rata basis.

SECTION 4.14: If the ceiling exceeds the aggregate amount of bonds issued during any year by all issuers, the Governor may allocate such excess to issuers for use as a carryforward for one or more carryforward projects permitted under the Act through the issuance of an Executive Order for all carryforward projects which have submitted an application containing as may elements described in Section 4.3 hereof as possible to the SBC Staff and a request to be treated as a carryforward project. The SBC Staff shall notify the issuers which are allocation a portion of the ceiling for a carryforward project at least five days prior to the last date an election to carryforward a portion of the ceiling may be made.

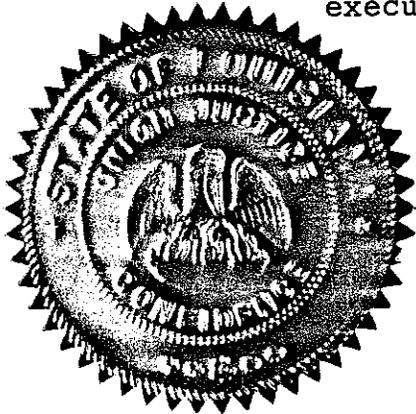
SECTION 4.15: This Executive Order only relates to bonds subject to the private activity bond volume limitation set forth in the Act. No issuer shall apply for or be entitled to an allocation from the ceiling for bonds which are not subject to the private activity bond volume limitation set forth in the Act.

SECTION 4.16: The responsibility of the SBC Staff hereunder shall be exercised by the SBC Staff independent of any of its other duties and responsibilities with respect to the Louisiana State Bond Commission.

SECTION 4.17: The Governor may modify, amend, supplement or rescind this Executive Order to reflect any subsequent federal or state legislation; provided however, that any modification, amendment, supplement or rescission shall not rescind any allocation granted for a project or purpose pursuant to the terms of this Executive Order if such allocation is required under federal law in order to maintain the tax-exempt status of the bonds issued for such project or purpose.

SECTION 4.18: The Governor will supply with each allocation granted a certificate complying with Section 149(e)(2)(F) of the Code.

SECTION 4.19: This Executive Order shall be effective on the date of execution hereof by the Governor.



IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 30th day of June, 1992.

Edwin Edwards
GOVERNOR OF LOUISIANA

ATTEST BY
THE GOVERNOR

Joseph S. Kitley
SECRETARY OF STATE