

State of Kansas
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NO. 87-95
ALLOCATION FOR PRIVATE ACTIVITY
BONDS PURSUANT TO THE
INTERNAL REVENUE CODE OF 1986

WHEREAS, Section 146 of the Internal Revenue Code of 1986, as amended (the "Code") restricts the aggregate amount of certain "private activity bonds" within the meaning of Sections 141, 146(g), 146(h) and 146(i) of the Code, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, which may be issued within any state of the United States during calendar year 1987 to \$250,000,000 or an amount equal to \$75 per resident of a state, whichever is greater (hereinafter referred to as the "State Ceiling"); and

WHEREAS, Section 146 of the Code ("Section 146"), provides a formula for allocating the State Ceiling among the various state agencies, cities, counties and other issuing authorities in a state ("Issuers"), which shall be effective unless the legislature or governor of a state provides for a different formula for allocating the State Ceiling within a state; and

WHEREAS, the provisions of Section 146 for allocating the State Ceiling within the State of Kansas are unworkable in the State of Kansas; and

WHEREAS, the Governor of the State of Kansas has found and determines that the economic development of the State of Kansas and the best interests of the citizens of the State of Kansas will be served by the promulgation of a different formula for allocating the

State Ceiling among Issuers in the State of Kansas for calendar year 1987.

NOW, THEREFORE, pursuant to the authority vested in me as Governor and chief executive of the State of Kansas and in accordance with Section 146, I hereby establish the following formula for allocating the State Ceiling for the State of Kansas for calendar year 1987.

(1) For calendar year 1987, the State Ceiling shall be allocated to Issuers, whether local or state, by the Secretary of Commerce or his designee (the "Secretary") in accordance with the provisions of this Order.

(2) The State Ceiling for the State of Kansas for calendar year 1987 is hereby determined to be \$250,000,000. Prior to November 15, 1987, the Secretary shall reserve (a) an amount equal to \$25,000,000 for allocation exclusively for the private activity portion of government use bonds in accordance with the requirements of Section 141(b)(5) of the Code and (b) an amount equal to \$25,000,000 for allocation exclusively for Qualified Student Loan Bonds (as described in Section 144(b) of the Code). On and after November 15, 1987, the State Ceiling shall be available for allocation to Issuers without regard to the reservations set forth in the immediately preceding sentence. (3) Prior to any issuance of Private Activity Bonds subject to the State Ceiling, all Issuers, whether state or local, shall first submit an Application for each Project to the Secretary in substantially the form attached hereto as Exhibit A. (4) Subject to the provisions of Section (2) hereof, the Secretary shall approve each properly filed Application for an allocation of \$5,000,000 or less on the basis of the chronological order of receipt from Issuers. If an Application is in excess of \$5,000,000, the Secretary may approve the total amount, approve a partial amount or reject the Application, in accordance with Section (5) hereof. (5) Within five (5) business days after receipt of an Application, the Secretary shall notify the Issuer in writing that (i) the Application has been approved and the amount of the approved allocation, (ii) the Application has been denied or (iii) the Application has been placed on hold pending receipt of additional information with respect to the Application or pending a review of the effect of approving the Application on the State Ceiling. Unless an extension is approved by the Secretary as provided in Section (6) hereof or a carryforward election is approved by the Secretary pursuant to Section (9) hereof, such approved allocation shall expire on the earlier of (i) 11:59 P.M. C.S.T. on the date which is sixty (60) days from the date the approved allocation is mailed to the Issuer (or such other date as has been specified by the Secretary in his notification of such approved allocation), (ii) the date upon which such approved allocation is voluntarily surrendered to the Secretary by the Issuer, or (iii) 11:59 P.M. C.S.T. on December 18, 1987. (6) An Issuer may request an extension of the expiration date of the approved allocation by filing a

written notice for extension with the Secretary, which must be received by the Secretary not less than five days prior to the expiration date specified pursuant to Section (5). In such instances, the Secretary may, in his discretion, approve an extension for a period ending on the earlier of (i) 11:59 P.M. C.S.T. on the date which is thirty (30) days beyond the initial expiration date specified by the Secretary pursuant to Section (5) hereof, (ii) the date upon which such approved allocation is voluntarily surrendered to the Secretary by the Issuer, or (iii) 11:59 P.M. C.S.T. on December 18, 1987. The Secretary shall notify the Issuer within five (5) business days after receipt if the request for extension has been approved or denied. In the event the bonds are not issued on or before the last day of the applicable extension period pursuant to the immediately preceding sentence, the approved allocation shall expire unless a carryforward election is approved by the Secretary pursuant to Section (9) hereof.

(7) Notwithstanding any other provision of this Order, if an approved allocation or extension thereof expires on December 18, 1987 in accordance with the provisions of Sections (5) or (6) hereof, the Secretary, in his discretion, may grant an extension (or further extension) for a period ending not later than 11:59 P.M. C.S.T. on December 31, 1987.

(8) The Secretary shall provide to the Issuer on or prior to the date of issuance of any bonds for which an approved allocation has not expired a certification, in substantially the form of Exhibit B attached hereto, that such bonds meet the requirements of Section 146.

(9) On or after December 14, 1987, the Secretary may, in his discretion, approve a carryforward election with respect to an approved allocation or any extension thereof if the Issuer, in writing: (a) requests such action and (b) indicates that the bonds for which the approved application was granted cannot be issued in calendar year 1987. Such approved carryforward election shall be made by the Issuer by means of a statement, signed by a duly authorized official of such Issuer. Such statement shall be filed with the Secretary and with the Internal Revenue Service prior to the end of calendar year 1987 in accordance with Section 146(f) of the Code and the regulations promulgated thereunder. An Issuer may elect to carryforward such issuing authority only for qualified mortgage bonds, mortgage credit certificates, qualified student loan bonds, qualified redevelopment bonds (as such terms are defined in Sections 142, 143 and 144 of - the Code) or for bonds to finance a project described in Section 141(d)(1)(A) of the Code. In no event shall such carryforward be effective for a period longer than permitted by Section 146(f) of the Code and the regulations promulgated thereunder.

(10) In the event an approved allocation expires as provided in Section (5), Section (6) or Section (7) hereof, the Issuer may re-submit an Application for

an allocation for the same project. Such re-submitted Application shall be reviewed in the order of date received with no preference or priority being given as a result of the prior Application and allocation for the same project for financing. (11) All Issuers, whether state or local, are hereby required to report the amount of all Private Activity Bonds issued pursuant to an approved allocation under this Executive Order to the Secretary by telephone no later than the second business day after the date of issuance of said bonds, which notice shall be confirmed in writing by overnight delivery service approved by the Secretary, or by certified mail, return receipt requested, postmarked no later than five (5) calendar days after the issuance of such bonds, such notice to be in the form of Exhibit C attached hereto. (12) Failure by an Issuer to report in accordance with the provisions of Section (11), or otherwise to abide by the terms of this Order, may, at the discretion of the Secretary, result in the forfeiture of future allocations for Private Activity Bonds. (13) The secretary, from time to time, shall review and evaluate the use and demand for Private Activity Bonds in proportion to the unused or uncommitted portion of the State Ceiling. If, in the discretion of the Secretary, it appears that the allocation of the state Ceiling pursuant to the provisions hereof should be revised, then the Secretary shall recommend to the Governor an alternative method by which to utilize the unused or uncommitted portion of the State Ceiling. (14) This Order shall continue in full force and effect until the earlier of:

(a) the effective date of any act of the Legislature of the State of Kansas with respect to the subject matter hereof; or

(b) the date any subsequent Executive Order with respect to the subject hereof is promulgated.

This document shall be filed with the Secretary of State as Executive Order No. 87-95 and shall become effective immediately.

Dated March 27, 1987.

(Editor's note: Exhibits A, B, and C referred to in this order can be reviewed at the offices of the Secretary of the Senate and the Chief Clerk of the House of Representatives.)

MIKE HAYDEN

Governor

Attest: BILL GRAVES

Secretary of State