

EXECUTIVE ORDER

MAY 9 1986

86-9

Roy D. Blount

WHEREAS, on December 17, 1985, the United States ~~SECRETARY OF STATE~~ Representatives passed H.R. 3838 (hereinafter referred to as the "Bill"); and

WHEREAS, the Bill was received by the United States Senate on December 18, 1985, and was referred to the Committee on Finance; and

WHEREAS, the provisions of the Bill, if enacted, together with the Internal Revenue Code of 1954, as amended and as proposed to be further amended by the Bill, would be known as the "Internal Revenue Code of 1985" (the "1985 Code"); and

WHEREAS, Section 701(b) of the Bill includes a proposed section of the 1985 Code designated Section 145 ("Section 145"), which restricts the aggregate amount of certain bonds designated as "nonessential function bonds", the interest on which would be exempt from federal income taxation under Section 103 of the 1985 Code, which may be issued within any state of the United States during calendar year 1986 to \$175 per resident of a state (hereinafter referred to as the "State Ceiling"); and

WHEREAS, the proposed effective date of Section 701(b) of the Bill, if passed in its present form by the United States Senate and signed into law by the President of the United States, is January 1, 1986; and

WHEREAS, the State Ceiling would detrimentally affect the economic development of the State of Missouri; and

WHEREAS, notwithstanding the detrimental economic effects of the State Ceiling it is considered necessary that the State of Missouri provide for an orderly financing of projects subject to the State Ceiling pending final action, if any, on the Bill by the Congress of the United States; and

WHEREAS, Section 145 provides a formula for allocating the State Ceiling among the various state agencies, cities, counties and other issuing authorities in a state (hereinafter referred to as "Issuers"), which formula shall be effective unless the legislature of a state or the governor of a state provides for a different formula for allocating a ceiling within the state; and

WHEREAS, the provisions of Section 145 for allocating the State Ceiling within the State of Missouri during each calendar year are unworkable in the State; and

WHEREAS, the Governor of the State of Missouri has, pursuant to Executive Order 81-25, as amended, established a mechanism for allocating the state ceiling of "qualified mortgage bonds" in accordance with Section 103A of the Internal Revenue Code of 1954, as amended, and whereas Sections 108.500 through 108.519, RSMo, Supp. 1985, inclusive, provide a formula for allocating the state ceiling of "private activity bonds" in accordance with Section 103(n) of the Internal Revenue Code of 1954, as amended, but no formula is presently in effect in the State of Missouri for allocating other types of bonds subject to the State Ceiling; and

WHEREAS, in accordance with the provisions of Section 145, the Governor of the State of Missouri has found and determined that the best interests of the citizens of the State of Missouri would be served by the promulgation of an executive order that would permit an orderly and equitable allocation of the State Ceiling among Issuers in the State; and

WHEREAS, on April 11, 1986, the Governor of the State of Missouri promulgated Executive Order 86-7 ("Executive Order 86-7") which proclaimed a formula for allocating the State Ceiling of nonessential function bonds within the State of Missouri for calendar year 1986; and

WHEREAS, pursuant to Section 12 of Executive Order 86-7, the Director of the Department of Economic Development (the "Director") has recommended to the Governor of the State of Missouri that Executive Order 86-7 be revised.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Missouri and in accordance with Section 145, I do hereby proclaim and order that in lieu of the formula for allocating the State Ceiling specified in Section 145 and the formula proclaimed pursuant to Executive Order 86-7, the following formula shall be used for allocating the State Ceiling for the State of Missouri for calendar year 1986, unless and until the General Assembly of the State of Missouri enacts a law or any subsequent Executive Order is issued by the Governor providing for a different formula for allocation of such State Ceiling.

Section 1. The allocation system provided in Section 145 with respect to all Issuers, whether local or state, is hereby revoked. For calendar year 1986, the State Ceiling shall be allocated to Issuers, whether local or state, by the Director in accordance with the terms and conditions of this Executive Order.

Section 2. The State Ceiling shall be allocated by type of bond (as defined in the Bill) to be issued in accordance with the following ceilings:

<u>TYPE OF BONDS</u>	<u>AMOUNT OF CEILING</u>
Qualified 501(c)(3) Bonds	25/175th
Qualified Mortgage Bonds and Exempt Facility Bonds for Qualified Residential Rental Projects ("Housing Bonds")	75/175th
Other Qualified Bonds (excluding Qualified 501(c)(3) Bonds and Housing Bonds)	75/175th

The 75/175th of the State Ceiling reserved for Housing Bonds shall be subject to the following limits: (i) 25/175th (the "Qualified Mortgage Bond Pool") shall be reserved exclusively for Qualified Mortgage Bonds; (ii) 25/175th (the "Residential Rental Bond Pool") shall be reserved exclusively for Exempt Facility Bonds for Qualified Residential Rental Projects and (iii) 25/175th (the "Housing Bond Discretionary Pool") shall be reserved for allocation at the discretion of the Director for any Housing Bond. Any allocation for a Housing Bond which expires pursuant to the provisions of Sections 5 or 6 hereof shall be credited first to the Housing Bond Discretionary Pool (provided that the amount in such Housing Bond Discretionary Pool shall never exceed 25/175th of the State Ceiling); any amount not required to be credited to the Housing Bond Discretionary Pool shall be credited to the Qualified Mortgage Bond Pool (if such expiring allocation was for a Qualified Mortgage Bond) or the Residential Rental Bond Pool (if such expired allocation was for an Exempt Facility Bond for a Qualified Residential Rental Project).

Section 3. Prior to any issuance of nonessential function bonds that are subject to the State Ceiling, subsequent to the effective date of this Executive Order, all Issuers, whether state or local, shall first make a request for an allocation by filing a signed application for each project with the Director in the form attached hereto as Exhibit A (the "Application").

Section 4. The Director shall consider and approve each properly filed Application for an allocation of \$10,000,000 or less on the basis of the chronological order of receipt from Issuers, whether local or state, up to the amount of the ceiling for each type of bond specified in Section 2, except with respect to (i) any Application in excess of \$10,000,000 and (ii) any Application for an allocation from the Housing Bond Discretionary Pool. In these latter two instances, the Director may in his discretion approve the total amount, approve a partial amount or reject the Application.

Section 5. Following review of each properly completed Application, the Director shall, within five (5) working days after receipt of the Application, mail to the Issuer notification of the amount of the approved allocation. Approval of any allocation shall expire on the earlier of the dates which is forty-five (45) days from the date the allocation is mailed to the Issuer or the date upon which such allocation is voluntarily surrendered by the Issuer unless (a) a longer period is specified by the Director, (b) an extension has been approved by the Director as provided in Section 6, or (c) a waiver is approved by the Director pursuant to Section 7. Notwithstanding the provisions of the immediately preceding sentence, any allocation heretofore granted by the Director pursuant to Executive Order 86-7 shall expire on the date specified by the Director in the approval of such allocation.

Section 6. For good cause shown, an Issuer may request an extension of time by filing a written notice for extension with the Director which request must be received by the Director not less than five (5) days prior to the expiration of the initial period specified in Section 5. In such instances, the Director may, in his discretion, approve an extension not to exceed thirty (30) days beyond the initial expiration date specified in Section 5. The Director shall notify the Issuer within five (5) working days after receipt if the request for extension has been approved. In the event the bonds are not issued on or before the last day of the extension period, the approved allocation shall expire at the close of business on the last business day of the extension period.

Section 7. On or after October 1 of each calendar year, the Director may, in his discretion, issue a waiver of the expiration of an approved allocation or any extension thereof if the Issuer, in writing: (a) requests such action, (b) indicates that the bonds cannot be issued in the same calendar year in which the allocation was approved, and (c) agrees to exercise the elective carry forward provisions described in Section 145 for that project.

Section 8. In the event an approved allocation expires as provided in Section 5 or Section 6 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 for the same project.

Section 9. All Issuers, whether state or local, are hereby required to report the amount of all nonessential function bonds issued pursuant to approved allocation under this Executive Order to the Director or his designee 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 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 B attached hereto.

Section 10. Notwithstanding anything contained herein to the contrary, any application for calendar year 1986 for an allocation with respect to bonds granted by the Director pursuant to Sections 108.500 through 108.519, RSMo., Supp. 1985, after December 31, 1985, and prior to the effective date of Executive Order 86-7, shall be deemed to have been granted by the Director on the effective date of Executive Order 86-7, to the extent such allocation under Sections 108.500 through 108.519 is for a bond the interest on which would be exempt from federal income taxation pursuant to the Bill. Except as provided in the immediately preceding sentence, in order to request an allocation under this Executive Order, a separate Application for an allocation under this Executive Order must be submitted to the Director in the manner described in Section 3 hereof. All Issuers, whether state or local, are required to report in writing the date of issue and principal amount of all nonessential function bonds subject to this Executive Order which were issued between January 1, 1986, and the effective date of this Executive Order to the Director not later than thirty (30) calendar days following the effective date of this Executive Order.

Section 11. Failure by an Issuer to report in accordance with the provisions of Sections 9 and 10, or otherwise to abide by the terms of this Executive Order, may, at the discretion of the Director, result in the forfeiture of future allocations for nonessential function bonds.


Section 12. The Director, from time to time, shall review and evaluate the use and demand for nonessential function bonds in proportion to the unused or uncommitted portion of the State Ceiling. If, in the discretion of the Director, it appears that applications with respect to a ceiling specified in Section 2 will exceed the amount of such ceiling specified in Section 2 prior to the end of calendar year 1986, or that the allocation of the State Ceiling pursuant to Section 2 should be revised, then, notwithstanding the other sections of this Executive Order, the Director shall recommend to the Governor an alternative method by which to utilize the unused or uncommitted portion of the State Ceiling.

Section 13. Notwithstanding anything contained herein to the contrary, prior to the date of enactment of the Bill, this Executive Order shall not relieve any Issuer of its responsibilities pursuant to Executive Order 81-25, as amended, and Sections 108.500 through 108.519, inclusive, RSMo Supp, 1985.

Section 14. Except as provided in Sections 5 and 10 hereof, Executive Order 86-7 is hereby rescinded. This Executive Order shall take effect immediately and shall continue in full force and effect until the effective date of any subsequent Executive Order or the effective date of any law enacted by the General Assembly with respect to the subject matter hereof.

IN WITNESS WHEREOF:

I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri this 9th day of May, 1986.


John Ashcroft
Governor

Ray D. Hunt
Secretary of State