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STATE OF COLORADO

EXECUTIVE CHAMBERS

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Richard D. Lamm  
Governor

EXECUTIVE ORDER

ESTABLISHING AN ALLOCATION PROCESS

FOR THE STATE CEILING ON PRIVATE ACTIVITY BONDS

- WHEREAS, On July 18, 1984, the President of the United States signed H. R. 4170, the Deficit Reduction Act of 1984, also known as the Tax Reform Act of 1984 (the "Federal Act"); and
- WHEREAS, Section 621 of the Federal Act limits the total principal amount of certain Private Activity Bonds (as hereinafter defined), the interest on which is exempt from federal income taxation under Section 103 of the Internal Revenue Code of 1954, as amended, which may be issued by any state and its political subdivisions during each calendar year; and
- WHEREAS, Section 621 of the Federal Act provides a method of allocating among Issuing Authorities of a state the total principal amount of Private Activity Bonds that may be issued during each calendar year, unless the legislature or the governor, on an interim basis, provides for an alternative method of allocation; and
- WHEREAS, the Governor of the State of Colorado recognizes that the provisions of Section 621 of the Federal Act for allocating the amount of Private Activity Bonds among Issuing Authorities of the State of Colorado are inequitable and cumbersome, and could result in a decrease in industrial, agricultural and commercial development within the State of Colorado, a decrease in financing available for agricultural and business loans, and a decrease in financial aid provided to students to pursue higher-education; and
- WHEREAS, the Governor of the State of Colorado deems that the best interest of the citizens of the State of Colorado will be served by an executive order, pursuant to Section 621 of the Federal Act, that will permit, on an interim basis, an orderly and equitable allocation of Private Activity Bonds that may be issued by issuing authorities of the State of Colorado in calendar year 1985 (or until such time as the Federal Act is amended or state legislation is effective);

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NOW, THEREFORE, I, Richard D. Lamm, Governor of the State of Colorado, by virtue of the authority vested in me under the Constitution and the laws of the State of Colorado and under Section 621 of the Federal Act, hereby proclaim the following to be the process to allocate the total principal amount of Private Activity Bonds during 1985 that may be issued by issuing authorities of the State of Colorado in accordance with the Federal Act:

Section 1

Purpose

The purpose of this Executive Order is threefold: to facilitate maximum utilization of the State of Colorado's total Private Activity Bond issuance authority during calendar year 1985; to implement an orderly and equitable process of allocation of this authority among issuing authorities of the State of Colorado; and to provide the Department, which will administer the allocation of such authority, with information with respect to Private Activity Bond issuance within Colorado.

Section 2

Definitions

As used herein, these definitions shall apply:

- A. "Application" means the application, submitted by an Issuing Authority, to request from the Department an allocation from the Statewide Balance, along with any amendments to said application.
- B. "Business Day" means any normal day of business, excluding Saturdays, Sundays, and State holidays. Each business day begins at 8:00 A.M. and closes at 5:00 P.M.
- C. "Code" means the United States Internal Revenue Code of 1954, as amended, and the regulations issued pursuant to the Code.
- D. "Department" means the Colorado Department of Local Affairs.
- E. "Federal Act" means that public law enacted on July 18, 1984, known as the "Deficit Reduction Act of 1984" and any regulations issued pursuant thereto.
- F. "Initial Relinquishment Date" means the later of 91 days from the date of the Inducement Resolution or May 16, 1985.
- G. "Inducement Resolution" means a resolution, ordinance, or similar action adopted by an Issuing Authority for the purpose of taking "official action" (as required by Section 103 of the

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Code) with respect to the issuance of Private Activity Bonds (as defined in the Code) to finance a specific project or purpose, or for the purpose of stating the intent of the Issuing Authority to issue student loan bonds (as defined in the Federal Act).

- H. "Issuing Authority(ies)" means any city, town, or county of the State of Colorado and any authority of the State of Colorado listed in Section 3, Paragraph C, that is empowered to issue Private Activity Bonds.
- I. "Private Activity Bonds" means private activity bonds, as defined in Section 621 of the Federal Act, issued by an Issuing Authority that are not exempt from the State Ceiling under the provisions of the Federal Act.
- J. "Population Estimate," means the population estimate of any Issuing Authority in any calendar year that is in compliance with the Federal Act and regulations issued pursuant thereto and that is specified in the report issued by the Department pursuant to Section 3, Paragraph I of this Executive Order.
- K. "Purchase Commitment" means a firm commitment from a financial institution, underwriter or other buyer(s) to purchase Private Activity Bonds. Such firm commitment shall specify the terms upon which the Bonds shall be purchased, including, without limitation, the interest rate or rates, maturity date or dates, and the security for such Bonds.
- L. "State Ceiling" means that amount of Private Activity Bonds that may be issued by Issuing Authorities during 1985 in compliance with Section 621 of the Federal Act.
- M. "Statewide Balance" means any portion of the State Ceiling that (1) remains after the allocations made to certain Issuing Authorities in Section 3, Paragraphs C and I, of this Executive Order, plus (2) any allocation and/or relinquishments made to the Statewide Balance pursuant to Section 3, Paragraphs D through J, of this Executive Order.
- N. "Year" means calendar year.

Section 3

Allocation of State Ceiling

- A. The State Ceiling for 1985 shall be allocated as described in this Section 3.

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- B. The State of Colorado hereby allocates 100% of the State Ceiling for 1985 to the State of Colorado, which State Ceiling shall be allocated among Issuing Authorities in the manner set forth in this Executive Order.
- C. I, the Governor of the State of Colorado, hereby allocate forty percent (40%) of the State Ceiling among the Issuing Authorities listed below according to the following initial allocations:
- o Colorado Student Obligation Bond Authority: \$130,000,000.00
  - o Colorado Agricultural Development Authority: \$ 24,000,000.00
  - o Colorado Health Facilities Authority: \$ 10,340,000.00
  - o Colorado Housing Finance Authority: \$ 24,000,000.00
- D. The allocation of the State Ceiling or any portion thereof granted to the above listed Issuing Authorities shall automatically be relinquished to the Statewide Balance on the Initial Relinquishment Date, unless:
1. The Private Activity Bonds are issued by such Issuing Authority prior to the Initial Relinquishment Date; or
  2. The Issuing Authority furnishes to the Department prior to the Initial Relinquishment Date, a Purchase Commitment to purchase the Private Activity Bonds. (Such Purchase Commitment shall set a date of purchase of the Bonds that is on or before December 31, 1985); or
  3. The Issuing Authority notifies the Department in writing prior to the Initial Relinquishment Date that: (1) the allocation qualifies as a carryforward project, as defined in Section 621 of the Federal Act, and (2) that the Issuing Authority desires to elect to treat its allocation as an allocation for a carryforward project, or
  4. The Issuing Authority notifies the Department, pursuant to its Application to the Statewide Balance, that it wishes to use any portion of its authority to issue granted pursuant to Section 3, Paragraph C together with an allocation from the Statewide Balance in order to finance a project. In which case, that portion of authority granted pursuant to Section 3, Paragraph C, shall remain valid until 91 days after notification of a grant of issuance authority from the Statewide Balance for project, or until the Initial Relinquishment Date, whichever is later. At that time, said allocation of the State Ceiling if not issued, carried forward, or committed for purchase pursuant to a Purchase Commitment, shall be relinquished to the Statewide Balance.



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- F. Any amount of the allocation of the State Ceiling granted to the above-listed Issuing Authorities that is in excess of the amount of Private Activity Bonds that such Issuing Authority issued, committed to be purchased, elected as a carryforward project, or that are to be used in conjunction with an allocation from the Statewide Balance to finance a project, pursuant to Subparagraphs 1, 2, 3 and 4 above, shall be relinquished to the Statewide Balance on the Initial Relinquishment Date. Any of the above listed Issuing Authorities may voluntarily relinquish all or any part of their allocation to the Statewide Balance at any time by notifying the Department in writing.
- G. If the allocations granted by the Governor pursuant to Paragraph C of this Section 3 total less than 40% of the State Ceiling for 1985, the balance of unallocated issuance authority (of the above-mentioned 40% of the State Ceiling) shall automatically be relinquished to the Statewide Balance on January 1, 1985.
- H. Ten percent (10%) of the State Ceiling shall be allocated as of January 1, 1985, to the Statewide Balance.
- I. Fifty Percent (50%) of the State Ceiling shall be allocated as of January 1, 1985, to those Issuing Authorities that did not receive an allocation pursuant to Paragraph C of this Section 3 as follows:
  - 1. The Department shall provide a report which contains a Population Estimate for each city, town, and county in Colorado by December 31, 1984. Each Issuing Authority shall receive \$75.00 times the Population Estimate of said Issuing Authority.
  - 2. Said Issuing Authority(ies) may reallocate among themselves those entitlements of authority to issue Private Activity Bonds that such Issuing Authorities received pursuant to Paragraph I, Subparagraph 1. Such reallocations shall be valid upon receipt by the Department of written notification of said reallocation. Such reallocation documents must include the reassignment amount, name of assigner and name of assignee. A record of each reallocation must also be maintained by the assignee for each bond issued by the assignee for which the reallocation applies. These records must be kept on file by the assignee for the term of each relevant bond.
  - 3. The allocation of the State Ceiling or any portion thereof granted and/or reallocated to Issuing Authorities pursuant to this Paragraph I shall be relinquished to the Statewide Balance on the Initial Relinquishment Date, except:

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- a) For Private Activity Bonds that are issued by an Issuing Authority prior to Initial Relinquishment Date; or
- b) When the relevant Issuing Authority furnishes to the Department prior to the Initial Relinquishment Date a Purchase Commitment for the Private Activity Bonds. (Such Purchase Commitment shall set a date of purchase of the Bonds that is on or before December 31, 1985); or
- c) When the Issuing Authority notifies the Department, pursuant to its Application to the Statewide Balance, that it wishes to use any portion of its authority to issue granted pursuant to Section 3, Paragraph C together with an allocation from the Statewide Balance in order to finance a project. In which case, that portion of authority granted pursuant to Paragraph I, Subparagraph 1 shall remain valid until 91 days after notification of a grant of issuance authority from the Statewide Balance for said project, or until the Initial Relinquishment Date, whichever is later. At that time, said allocation of the State Ceiling, if not issued, carried forward, or committed for purchase pursuant to a Purchase Commitment shall be relinquished to the Statewide Balance; or
- d) When the Issuing Authority notifies the Department in writing prior to the Initial Relinquishment Date that the allocation is to be used for a carryforward project, as defined in Section 621 of the Federal Act, and that the issuing Authority desires to elect to treat its allocation as an allocation to be used for a carryforward project.

J. Statewide Balance

The Statewide Balance shall until June 1, 1985, be allocated (1) only among those Issuing Authorities of the State of Colorado that did not receive an allocation of the State Ceiling pursuant to Section 3, Paragraph C herein, and (2) for those projects that have not been treated as carryforward projects.

Allocations from the Statewide Balance shall be made on the basis of chronologic order of receipt by the Department of an Issuing Authority's completed Application for an allocation submitted pursuant to Section 5 hereof except as follows:

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1. No Issuing Authority may apply to the Statewide Balance until the aggregate amount of authority to issue received by the authority pursuant to Section 3, Paragraphs C or I has been issued, carried-forward, relinquished to other entities or to the Statewide Balance, is committed for use in conjunction with an allocation from the Statewide Balance, and/or has been committed for purchase pursuant to a Purchase Commitment.
2. No Issuing Authority may receive more than \$10,000,000 in aggregate allocations from the Statewide Balance until June 1, 1985.
3. No Issuing Authority may receive more than \$15,000,000 in aggregate allocations from the Statewide Balance until September 1, 1985, excepting the Colorado Student Obligation Bond Authority. The Colorado Student Obligation Bond Authority may request from the Statewide Balance up to an aggregate amount that does not exceed that amount which the Colorado Student Obligation Bond Authority has relinquished to the Statewide Balance by the application date. On or after December 24, 1985, the Colorado Student Obligation Bond Authority may request any amount from the Statewide Balance.
4. As of June 1, 1985, any Issuing Authority in Colorado may apply for and receive allocations from the Statewide Balance. These allocations shall be made on the basis of chronologic order of receipt by the Department of an Issuing Authority's completed Application for an allocation submitted pursuant to Section 5 herein.
5. Allocations from the Statewide Balance shall be effective for the time periods specified in Section 6 of this Executive Order.
6. If the amount of the Statewide Balance is insufficient for allocation to any completed and qualified Application that the Department has received, the Department shall hold on file those Applications that it receives while said situation exists. Any Issuing Authority may revise its Application amount downward at any time by notifying the Department in writing. As additional amounts become available for allocation through the Statewide Balance, those Applications that had been on file pursuant to this subparagraph 6 shall be reviewed for award of allocation, and notified of the results of such reviews, in chronologic order. The original time and date on which the Department received a completed Application shall be that used in maintaining chronologic review of and notification of award to Applications.

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Section 4

Reporting Requirements

- A. Each Issuing Authority shall provide to the Department by May 16, 1985, the following information, in writing:
1. The amount of Private Activity Bonds, on a project specific basis, that the Issuing Authority has either (1) issued, or (2) procured a Purchase Commitment to purchase the Private Activity Bonds by December 31, 1985; and (3) that are not to be used for carryforward projects;
  2. The amount of Private Activity Bonds, on a project-specific basis, that the Issuing Authority has induced and expects to issue between May 16, 1985, and December 31, 1985, (inclusive), but which is not to be used for carryforward projects;
  3. The amount (on a project specific-basis) of Private Activity Bonds that the Issuing Authority expects to carryforward (to the extent permitted by Section 621 of the Federal Act) into 1986 or later.

Section 5

Application for Allocation from Statewide Balance

- A. Issuing Authority(ies) may request an allocation from the Statewide Balance by filing an Application for each allocation with the Department. Such an Application shall be filed on a form provided by the Department. Each Application shall be accompanied by the following:
1. A written, preliminary opinion of bond counsel, addressed to the Department, that states that the obligations proposed to receive the allocation of the Statewide Balance constitute "Private Activity Bonds," as defined in the Federal Act.
  2. A copy of the Inducement Resolution adopted by the Issuing Authority with respect to the project that is the subject of the Application, signed by an officer of the Issuing Authority.

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- B. The Department shall stamp or otherwise designate the time and date on which it receives each completed Application. The time and date stamped or otherwise designated for any Application received after the close of business on a Business Day shall be 8:00 A.M. the next Business Day. The Application shall not be considered completed, and shall not be stamped and accepted for filing, unless and until each of the items required under subsection (A) above has been received by the Department. Receipt shall be deemed to occur only on a Business Day.

Section 6

Notification and Validity of Allocations from the Statewide Balance

- A. Upon receipt by the Department of the completed, qualified Application required by Section 5 herein, the Department shall within fifteen (15) days, notify the Issuing Authority in writing of the amount from the Statewide Balance allocated to the proposed project or purpose, except as provided in Section 3, Paragraph J, Subparagraph 6 of this Executive Order.
- B. Said notification shall:
1. be given to the Issuing Authority at the address specified in the Application; and
  2. specify the amount of Private Activity Bonds that the Issuing Authority may issue from the Statewide Balance, which amount may have been revised by the Issuing Authority downward from the original amount requested by the Issuing Authority; and
  3. specify the relevant expiration date of the amount awarded to the Issuing Authority from the Statewide Balance; and
  4. be of such format as conforms with the Federal Act; and
  5. be of such format as is determined by the Department from time to time.
- C. If requested in the relevant Application, a copy of the above-mentioned notice shall be mailed to one legal counsel of the Issuing Authority.
- D. Any initial allocation of the Statewide Balance shall be valid until the close of the Business Day, May 16, 1985, or 91 days from the date on which notice of the allocation is given to the

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Issuing Authority (the "Initial Balance Award Period"), whichever is later, unless one of the following conditions has occurred:

1. The Private Activity Bonds are issued and delivered within the Initial Balance Award Period, in which event the allocation shall be subtracted from the Statewide Balance on the date of issuance and delivery of the Private Activity Bonds; or
  2. The Department receives, prior to the expiration of the Initial Balance Award Period, a Purchase Commitment to purchase the Private Activity Bonds by December 31, 1985. If the Purchase Commitment is received with the application, the allocation shall be valid until the expiration date of the Purchase Commitment and any related amendments thereto, but in any case not later than noon, December 31, 1985. If the commitment is received by the Department after the Department receives the completed, qualified Application, but prior to the expiration of the Initial Balance Award Period, the validity of the allocation will be extended until the expiration date of the Purchase Commitment and any related amendments thereto, but in any case not later than noon, December 31, 1985.
  3. The Issuing Authority notifies the Department, in writing, prior to the expiration of the Initial Balance Award Period that: (1) the allocation qualifies as a carryforward project (as defined in Section 621 of the Federal Act), and (2) that the Issuing Authority desires to elect to treat its allocation as an allocation for a carryforward project.
- E. Allocations of the Statewide Balance for carryforward projects under Section 621 of the Federal Act shall be valid until expiration of validity to the extent permitted by the Federal Act.
- F. Except as provided above with respect to carryforward projects, if the Private Activity Bonds are not issued within the allocation period described in Section 6, Paragraph D, the Issuing Authority's allocation will expire at noon, December 31, 1985.
- G. In the event the last day of an allocation period is not a Business Day, then the time for expiration of the Initial Allocation Period shall be the close of the first Business Day thereafter.

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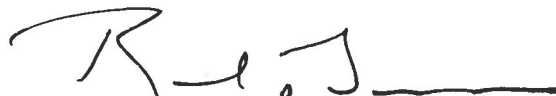
- H. Any Issuing Authority may voluntarily relinquish all or any part of its allocation to the Statewide Balance at any time by notifying the Department in writing.
- I. Each Issuing Authority shall file the relevant, completed copy of Internal Revenue Service Form 8038 with the Department immediately upon the issuance and delivery of each Private Activity Bond issue. All Forms 8038 must be filed with the Department not later than 5:00 P.M., December 24, 1985, including those for Private Authority Bonds to be issued and delivered for the period from December 24, 1985, to and including December 31, 1985. All allocations for which a Form 8038 has not been received by 5:00 P.M. on December 24, 1985, other than with respect to carryforward projects, shall expire and be relinquished to the Statewide Balance as of December 24, 1984.

Section 7

Modification of Allocation Method; Expiration Date

- A. The Governor reserves the right to modify the allocation method set forth in Section 3 of this Executive Order, so as to comply with any provision of the Federal Act and regulations issued pursuant thereto, which requires that certain project or purposes be given priority over other projects or purposes in the allocation of the State Ceiling; provided however, no allocation already made pursuant to the provisions of this Executive Order prior to any modifications hereof shall be affected by such modification unless the same is determined to have been made in violation of the Federal Act.
- B. This Executive Order shall expire on the earlier of January 1, 1986 or the effective date of any legislation enacted by the General Assembly of the State of Colorado with respect to the subject matter of this Executive Order.

GIVEN under my hand and the  
Executive Seal of the State  
of Colorado, this twenty-first  
day of December, A.D. 1984.



Richard D. Lamm  
Governor

