

EXECUTIVE ORDER NUMBER 22

WHEREAS, Section 146 of the Internal Revenue Code of 1986, as amended (the "Code"), limits the maximum principal amount of "private activity bonds" which may be issued by or on behalf of each state and its political subdivisions and instrumentalities during each calendar year; and

WHEREAS, the limitation applicable to the State of Alabama (the "State") in calendar year 1988 (the "Entire State Ceiling") is the greater of \$150,000,000, or \$50 multiplied by the population of the State of Alabama as shown by the most recent estimate of resident population released by the United States Bureau of Census; and

WHEREAS, based upon the most recent estimate of the Bureau of Census, the population of the State in calendar year 1988 for purposes of the State Ceiling is 4,021,000, and therefore the Entire State Ceiling for private activity bonds issued during calendar year 1988 is \$201,050,000, which constitutes a significant reduction from the amount available to the State in 1987; and

WHEREAS, the Legislature of the State failed to provide a different formula for allocating the Entire State Ceiling as permitted by Section 146(e) of the Code; and

WHEREAS, Section 146(b) of the Code provides that 50 percent of the Entire State Ceiling is allocated to agencies of the State authorized to issue tax-exempt private activity bonds; and

WHEREAS, temporary Treasury Regulations issued under the predecessor section to Section 146 of the Code empower the Governor of each state to allocate such 50 percent of the Entire State Ceiling to state agencies or assign a portion of such 50% of the Entire State Ceiling to governmental units within the state or a constituted authority on behalf of such governmental unit; and

WHEREAS, the undersigned, as Governor of the State, has found and determined that the provisions of this Executive Order will result in an equitable and efficient distribution of said 50 percent of the Entire State Ceiling, and therefore will promote the economic and industrial development of the State;

NOW, THEREFORE, I, Guy Hunt, as Governor of the State of Alabama, under and by virtue of the authority vested in me by the laws of the State and by the Code, DO HEREBY PROCLAIM AND ORDER AS FOLLOWS:

SECTION 1. Definitions. Unless the context requires otherwise, the terms defined in this section shall have the following meanings for purposes of this Executive Order:

"Affected Bond" means any obligation or portion thereof which is required under the terms of the Code, to receive an allocation of the Entire State Ceiling as a condition for the exclusion of interest on such obligation from the gross income of the recipient thereof for federal income tax purposes.

"Allocation" means an allocation or assignment of a portion of the State Ceiling issued by the Governor of the State upon recommendation by the Authority pursuant to the provisions of this Executive Order.

"Application" means an application for an Allocation, submitted by an Issuer under the provisions of this Executive Order.

"Application for Carryforward Allocation" means any application filed with the Authority seeking an elective carryforward of unused limitation for a "carryforward purpose" as defined in Section 146(f)(5) of the Code.

"Authority" means the State Industrial Development Authority, a public corporation of the State, organized and existing under Act No. 662, enacted by the 1965 Regular Session of the Legislature of Alabama.

"Carryforward Allocation" means an elective carryforward of State Ceiling for a "carryforward purpose" which may be granted by the Governor under the provisions of Section 5 of this Executive Order and Section 146(f) of the Code.

"Code" means the Internal Revenue Code of 1986, as amended, including any successor provisions to any Code sections or subsections referred to herein.

"Entire State Ceiling" means the maximum principal amount of Affected Bonds permitted to be issued in the State during a calendar year under the provisions of Section 146 of the Code. Under the provisions of the Code in effect on the date of this Executive Order, based upon the most recent estimate of the population of the State made by the Bureau of Census, the Entire State Ceiling for calendar year 1988 is expected to be \$201,050,000. In the event that the provisions of Section 146 of the Code are amended subsequent to the execution of this Executive Order, or upon the publication by the Bureau of Census of revised estimates of the population of the State from time to time, the amount of the Entire State Ceiling shall be revised in accordance with the provisions of Section 146 of the Code.

"Exempt Facility Bond" means any obligation described as such in Section 142(a) of the Code, other than bonds the proceeds of which are to be used to provide airports or docks and wharves within the meaning of Sections 142(a)(1) and 142(a)(2), respectively, and includes any obligation issued to finance air and water pollution control facilities under the provisions of Section 103(b)(4)(F) of the Internal Revenue Code of 1954, as amended, to the extent permitted under any transitional or effective date provision of the Code.

"Issuer" means the State, any agency or instrumentality of the State and any county, municipality or public corporation authorized by or pursuant to the Constitution or laws of the State to issue Affected Bonds.

"Local Issuer" means any issuer which is a county, municipality, or public corporation organized by or pursuant to approval by a county or municipality (or pursuant to approval by two or more counties or municipalities or both) and which is authorized by or pursuant to the Constitution or laws of the State to issue Affected Bonds.

"Manufacturing Facility" means any facility which is used in the manufacturing or production of tangible personal property (including processing resulting in a change in the condition of such property), and includes any facility devoted to an activity described in Standard Industrial Classification (SIC) Code Major Groups 20 through 39, or to agricultural activities, and further includes office facilities related to the foregoing so long as such office facilities are located on the premises of the Manufacturing Facility to which they are related.

"Private Activity Bond" has the same meaning as that specified for such term in Section 141(a) of the Code.

"Qualified Mortgage Bond" has the same meaning as that specified for such term in Section 143(a)(1)(A) of the Code.

"Qualified Redevelopment Bond" has the same meaning as that specified for such term in Section 144(c) of the Code.

"Qualified Residential Rental Project" has the same meaning as that specified for such term in Section 142(d) of the Code.

"Qualified Small Issue Bond" has the same meaning as that specified for such term in Section 144(a) of the Code.

"Qualified Student Loan Bond" has the same meaning as that specified for such term in Section 144(b) of the Code.

"State" means the State of Alabama.

"State Ceiling" means the maximum principal amount of Affected Bonds permitted to be issued in the State pursuant to an Allocation made by the Governor during a calendar year under the provisions of Section 146 of the Code. The State Ceiling for calendar year 1988 is expected to be \$100,525,000.

All references to time of day in this Executive Order refer to Central Standard Time.

SECTION 2. Allocation Procedure. Allocations of the State Ceiling for Affected Bonds (except for portions of the State Ceiling reserved in Sections 3(a) and 3(b) hereof) shall be granted by the Governor upon recommendation of the Authority in response to Applications filed with the President of the Authority by any Issuer in the following manner:

- (a) Each Application shall be made by an instrument in writing signed by an officer or agent of the Issuer and shall contain (i) the names and addresses of the Issuer, the proposed lessee, purchaser or user of the project to be financed (if applicable), the bond counsel, and the proposed underwriter or purchaser of the Affected Bonds proposed to be issued, (ii) the maximum principal amount of Affected Bonds proposed to be issued, (iii) a brief description of the project to be financed which specifically describes the number and type of jobs to be created and the projected economic benefit of the project to the State, and (iv) a brief description of the Affected Bonds proposed to be issued, identifying such bonds as "Exempt Facility Bonds," "Qualified Small Issue Bonds," (and if "Qualified Small Issue Bonds," further indicating whether the project to be financed constitutes a Manufacturing Facility), "Qualified Student Loan Bonds," or "Qualified Redevelopment Bonds." All Applications shall be accompanied by a certificate from the chief elected official of the municipality or county in which the proposed project is or will be located. Such certificate shall certify that the municipality (or county if the proposed project is not or will not be located in a municipality) is allocating to the proposed project all of its portion of the Entire State Ceiling which has not been previously used for issuance of Affected Bonds which have been issued prior to the Application and shall set forth the amount of the portion of the Entire State Ceiling of such municipality or county which is being allocated to the proposed project. All Applications shall be mailed or otherwise delivered to the Authority, addressed as follows:

President
State Industrial Development Authority
135 South Union Street, Suite 200
Montgomery, Alabama 36130
Attn: Application for Allocation of State Ceiling

- (b) Each Application and each request for an extension of an Allocation must be accompanied by an administrative fee in an amount equal to one-twentieth of one percent (1/20%) of the amount of the Allocation requested, limited, however, to a maximum fee of \$500.00. Checks should be made payable to the Authority.
- (c) All Applications shall be processed by the Authority and all Allocations shall be made in accordance with the provisions of Section 3 below.
- (d) Each Allocation of State Ceiling granted by the Authority prior to December 7, 1988, shall expire upon the earlier of (i) 5:00 p.m. on the day which is sixty (60) calendar days following the date of the Allocation, or (ii) 5:00 p.m. on December 14, 1988, unless a notification confirming issuance of the bonds has been received by the Authority as described in Section 2(e) below, subject to a single extension for a period of up to thirty (30) calendar days at the discretion of the Governor for good cause shown. Any Application which has expired may be renewed by resubmission of a new Application. Any Allocation granted by the Authority from December 7, 1988, to and including December 30, 1988, shall expire at 5:00 p.m. on December 30, 1988. Any Allocation granted by the Authority on December 31, 1988, shall expire at 5:00 p.m., on December 31, 1988. The foregoing provisions of this Section 2(d) shall not apply to Carryforward Allocations, which shall be effective for the period provided in Section 146(f)(3) of the Code.
- (e) Every Allocation shall be subject to the condition subsequent that a notification confirming the issuance of bonds pursuant to such Allocation must be received in the office of the President of the Authority within seven (7) business days (i.e., days not counting Saturdays, Sundays, national holidays or days that are holidays for State offices) after the date of issuance of the bonds; provided, however, that as to bonds issued on or after December 1, 1988, such notification must be received prior to 5:00 p.m. on the next business day following the date of issuance of the bonds, except for bonds issued on December 31, 1988, as to which such

notification must be received on prior to 5:00 p.m. on that date. The confirmation required hereby may be executed by any officer, representative or agent of the Issuer, and may be delivered by hand delivery, or by regular, certified or registered mail, and shall be effective upon receipt at the office of the President of the Authority. Failure to provide a confirmation shall cause a revocation of the Allocation for which the confirmation is required.

- (f) On December 14, 1988, any previously allocated portion of the State Ceiling for which a confirmation of issuance has not been received by the Authority as required by Section 2(e) above shall revert to the Governor, to be allocated, along with any other portion of the State Ceiling then available, to Issuers of Affected Bonds at the discretion of the Governor upon recommendation by the Authority. Applications for Allocations to be made during the month of December shall be submitted to the Authority in the manner required in Section 2(a) and 2(b) above.

SECTION 3. Allocation Formula. Applications for a portion of the State Ceiling for calendar year 1988 shall be considered by the Authority for recommendation to the Governor in the chronological order of receipt of completed Applications, subject to the limitations, reservations and further provisions of this Section 3. Notwithstanding the foregoing, all Applications actually received by the Authority before 5:00 p.m. on May 31, 1988 shall be deemed to have been received at 5:00 p.m. on May 31, 1988.

- (a) There is hereby reserved for Alabama Housing Finance Authority ("AHFA"), \$30,000,000 of State Ceiling for calendar year 1988, to be used for the issuance of Exempt Facility Bonds for Qualified Residential Rental Projects and for the issuance of Qualified Mortgage Bonds, in such relative principal amounts, not exceeding \$30,000,000, as shall be determined by the Board of Directors (the "Board") of AHFA. The reservation of State Ceiling hereby granted to AHFA shall extend until December 24, 1988. Any portion thereof which shall remain unused as of 5:00 p.m. on December 24, 1988, shall revert to the Governor and shall be available for reallocation under Section 3(e) below. The Board of AHFA may relinquish such reservation in part or in its entirety at any time that the Board determines, in its sole discretion, that such reservation will not be needed by AHFA during 1988 and such relinquished amount shall revert to the Governor.

- (b) There is hereby reserved for the Alabama Higher Education Loan Corporation ("AHELC") \$10,000,000 of State Ceiling for calendar year 1988, to be used for the issuance of Qualified Student Loan Bonds. The reservation of State Ceiling hereby granted to AHELC shall extend until December 24, 1988. Any portion thereof which shall remain unused as of 5:00 p.m. on December 24, 1988, shall revert to the Authority and shall be available for reallocation under Section 3(e) below. The Board of AHELC may relinquish such reservation in part or in its entirety at any time that the Board determines, in its sole discretion, that such reservation will not be needed by AHELC during 1988 and such relinquished amount shall revert to the Governor.
- (c) Subject to the provisions of Section 3(f) below, \$50,000,000 of State Ceiling for calendar year 1988 is hereby reserved for Issuers of Qualified Small Issue Bonds which are issued to finance Manufacturing Facilities.
- (d) Subject to the provisions of Section 3(f) below, \$10,000,000 of State Ceiling for calendar year 1988 is hereby reserved for Issuers of Exempt Facility Bonds.
- (e) The remainder of the State Ceiling for calendar year 1988 not provided for in paragraphs (a), (b), (c) and (d) above (i.e., \$525,000), together with any amounts which shall revert to the Governor under Section 2(f) or paragraphs (a) and (b) above, is hereby reserved for the Governor, to be allocated to Issuers of Affected Bonds in the discretion of the Governor upon recommendation by the Authority.
- (f) The reservations of State Ceiling provided for in paragraphs (a), (b), (c) and (d) above have been determined on the basis of the past experience of the issuers and projections of demand for Allocations in calendar year 1988. If, in its sole judgment, the Authority shall determine that inefficient use has been or is being made of the reservations contained in paragraphs (c) and (d) above, or if it shall determine for any other reason that such reservations are inappropriate, the Authority may, from time to time, make such recommendations as it deems appropriate to the Governor and the Governor may reallocate all or any part of such reservations in accordance with paragraph (e) above.

SECTION 4. Allocation Limitations. Every Allocation made pursuant to Section 3 shall be subject to the limitation that no county or municipality (including all Issuers organized by or pursuant to approval by such county or municipality) shall receive more than one Allocation pursuant to Section 3(c) during calendar year 1988.

SECTION 5. Carryforward Allocation Procedure. Applications for Carryforward Allocations may be submitted to the President of the Authority on or after December 1, 1988. The Governor, upon recommendation of the Authority, shall grant such Carryforward Allocations in his sole discretion, giving due regard to the likelihood of the use of the remaining State Ceiling prior to December 31, 1988, and shall use his best efforts to assure that any remaining and unallocated State Ceiling is used to satisfy Applications for Carryforward Allocations.

SECTION 6. Effective Date and Expiration Date. This Executive Order shall take effect as of its date, and shall continue in effect until 12:00 midnight on December 31, 1988; provided, however, that if the Legislature of the State of Alabama shall enact prior to December 31, 1988, any law which governs the allocation and distribution of the State Ceiling during calendar year 1988, then this Executive Order shall expire upon the effective date of such legislation. Carryforward Allocations granted under the provisions of this Executive Order shall continue effective subsequent to the expiration of this Executive Order for the period provided in Section 146(f)(5) of the Code.

SECTION 7. Forms, Regulations, and Interpretations. The Authority may do all other things necessary or desirable to carry out the purpose of this Executive Order, including the promulgation of forms to be used for Applications, Applications for Carryforward Allocations and confirmations of issuance of bonds, and the employment of agents or independent contractors to assist the Authority in the administration of its duties hereunder.

SECTION 8. Confirmation of Prior Allocations. All allocations of State Ceiling applicable to the State made prior to the date of this Executive Order pursuant to prior Executive Orders of the Governor of the State, are hereby ratified and confirmed.

DONE and ORDERED this the 16th day of May, 1988.

Guy Hunt

Guy Hunt
Governor of the State of Alabama

Attest:

Glenn Browder

Secretary of State

