

STATE OF DELAWARE



EXECUTIVE DEPARTMENT DOVER

EXECUTIVE ORDER
NUMBER TWENTY-FIVE

TO: HEADS OF ALL STATE DEPARTMENTS, AGENCIES AND AUTHORITIES,
AND ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF
THE STATE OF DELAWARE

RE: ALLOCATION OF UNIFIED VOLUME CAP FOR NONESSENTIAL FUNCTION
BONDS; METHOD OF REALLOCATION

WHEREAS, Section 103(n) of the Internal Revenue Code of 1954, as amended (hereinafter referred to as "the Code"), imposes a limit on the volume of "private activity bonds" which may be issued in the State of Delaware in any one year and which qualify for tax-exempt status under Section 103(a) of the Code; and

WHEREAS, pursuant to Section 103(n) of the Code and Section 5091, Title 29 of the Delaware Code the volume limit on tax-exempt "private activity bonds" annually issued in this State is allocated among various State and local governmental issuers of such bonds; and

WHEREAS, Section 103A(g) of the Code imposes a limit on the volume of "mortgage subsidy bonds" which may be issued in the State of Delaware and which qualify for tax exempt status under Section 103(a) of the Code; and

WHEREAS, pursuant to Section 103A(g) of the Code and Chapter 14, Volume 65 of the Delaware Laws the volume limit on tax-exempt "mortgage subsidy bonds" annually issued in this State is allocated among various State and local governmental issuers of such bonds; and

WHEREAS, H.R. 3838, "The Tax Reform Act of 1985", which passed the United States House of Representatives and currently is pending before the United States Senate, would repeal the existing volume limit provisions for private activity bonds and mortgage subsidy bonds and instead would impose, effective January 1, 1986, a single annual volume limit of \$200,000,000 on "Nonessential Function Bonds" and certain other tax-exempt obligations of State and local governmental issuers within the State of Delaware; and

WHEREAS, subject to an overriding State statute or, in the interim, an overriding gubernatorial proclamation, H.R. 3838 would allocate the proposed unified volume cap among State and local governmental issuers according to a certain formula; and

WHEREAS, the possibility of the unified volume cap under H.R. 3838 becoming retroactively effective, and the possibility of overriding State legislation or gubernatorial executive order allocating such a unified volume cap, have created uncertainty among State and local issuers of obligations which would be affected by H.R. 3838, which uncertainty has hampered

the ability of such issuers to proceed with plans to issue such obligations; and

WHEREAS, the continuing economic development initiatives and housing initiatives of the State of Delaware will be impeded if a system is not established for allocating the proposed unified volume cap under H.R. 3838 in a manner which will least impair the ability to issue governmental obligations and if procedures are not established to ensure that the proposed unified volume cap is available for use to the maximum extent permitted;

NOW, THEREFORE, I, Michael N. Castle, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. For purposes of this Executive Order the following words and phrases shall be defined as indicated:

(a) "Code" means the Internal Revenue Code of 1954, as amended;

(b) "Mortgage Subsidy Bonds", "Private Activity Bonds" and "Private Activity Bond Cap" shall have the meanings ascribed to those terms in the Code;

(c) "Chief Elected Official" means the highest elected official of any political subdivision of the State of Delaware, including, but not limited to, the County Executive of New Castle County, the President of the

Sussex County Council, the President of the Levy Court of Kent County and the Mayor of the City of Wilmington;

(e) "H.R. 3838" means H.R. 3838 as approved by the United States House of Representatives on December 18, 1985;

(f) "501(c)(3) Bonds", "Nonessential Function Bonds" and "Volume Cap" shall have the meanings ascribed to those terms in H.R. 3838; and

(g) "Housing Bonds" means qualified exempt facility bonds for qualified residential rental projects, qualified mortgage bonds and qualified veterans mortgage bonds, all as defined in H.R. 3838.

2. The \$200,000,000 annual Volume Cap established under Title VII of H.R. 3838 for each calendar year, beginning January 1, 1986, is hereby allocated as follows to the State of Delaware and local governmental issuers:

	<u>501(c)(3) Bonds</u>	<u>Housing Bonds</u>	<u>Any Bonds</u>
State of Delaware	\$ 30,000,000	\$ 45,950,000	\$ 39,696,500
New Castle County	0	21,555,600	20,651,500
City of Wilmington	0	4,607,900	10,625,000
Kent County	0	6,482,300	7,022,000
Sussex County	<u>0</u>	<u>6,404,200</u>	<u>7,005,000</u>
	\$ 30,000,000	\$ 85,000,000	\$ 85,000,000

3. The Housing Bond allocation to each issuer may be used by each issuer in any amount up to its total Housing Bond allocation for any Housing Bond. No specific amount need be reserved for any particular kind of Housing Bond.

4. The allocation of "Any Bonds" may be used for 501(c)(3) Bonds, Housing Bonds or any other obligation subject to the annual Volume Cap established under H.R. 3838.

5. The allocation to the State of Delaware for 501(c)(3) Bonds shall be further suballocated or reassigned by future executive order(s). In determining the suballocation of the 501(c)(3) Bond allocation, priority shall be given to obligations for the non-profit health facilities and educational institutions in the State of Delaware. The Secretary of Finance of the State of Delaware, with the advice of the Director of the Delaware Development Office, shall evaluate the capital financing needs of those bond issuers, including, but not limited to, the Delaware Health Facilities Authority, which may require a suballocation or reassignment of a portion of the State's 501(c)(3) Bonds allocation, and shall recommend to the Governor what suballocations or reassignments of this allocation should be made. The Secretary of Finance shall maintain a record of such suballocations and reassignments. No agency or instrumentality of the State of Delaware receiving a suballocation or reassignment of the State's 501(c)(3) Bonds allocation

may reassign further any such suballocated portion other than back to the State of Delaware.

6. The allocation to the State of Delaware for Housing Bonds is hereby suballocated as follows: Delaware State Housing Authority - \$37,640,118; Delaware Economic Development Authority - \$8,309,882.

7. The allocation of \$39,696,500 to the State of Delaware for "Any Bonds" is hereby suballocated in its entirety to the Delaware Economic Development Authority.

8. The Governor retains the right, by further executive order, to modify the suballocations and reassignments made under paragraphs 5, 6 and 7 of this Executive Order; provided, however, that no such modification shall cause any obligation issued prior to the date of such modification to lose its qualification for tax-exempt treatment under the Code. This modification authority retained by the Governor shall be exercised with due regard to any actions taken by any person in reliance upon any existing allocation to any issuer.

8. Any issuer (other than the State of Delaware or its agencies or instrumentalities) may reassign any or all of its allocation of the annual Volume Cap to any other issuer including the State of Delaware or any of its agencies or instrumentalities. Any such reassignment shall be made by a written instrument and may be made upon such terms and conditions as

may be specified in the written instrument. In the absence of any other procedure established by any political subdivision of the State of Delaware, such a reassignment shall be made by its Chief Elected Official. Any such assignment shall be effective upon receipt by the assignee and receipt of a copy of the written instrument by the Secretary of Finance of the State of Delaware. The Secretary of Finance of the State of Delaware shall maintain a record of all reassignments made pursuant to this paragraph.

9. The application and allocation of any annual Volume Cap to the obligations of any issuer shall be considered effective upon the issuer's delivery to the Secretary of Finance of the State of Delaware of a notice of the issuance of the obligations identifying the issuer, the amount of annual Volume Cap allocated to the obligations, the purpose of the financing, and, in the case of a 501(c)(3) Bond or a Housing Bond, an opinion of bond counsel to the effect that the obligations qualify as 501(c)(3) Bonds or Housing Bonds, as the case may be, and providing such other information as the Secretary of Finance of the State of Delaware might require. Upon the request of any issuer, the Governor will certify as to the satisfaction of the annual Volume Cap requirements of H.R. 3838 by any issuer's obligations.

10. On or before the last day of each month following the date of this Executive Order, each issuer allocated or

assigned a portion of the annual Volume Cap shall file with the Secretary of Finance of the State of Delaware and with each other issuer such reports as the Secretary may deem necessary to carry out the purposes of this Executive Order. Each such report shall contain at least the following information for the year with respect to all obligations issued or planned to be issued by the issuer:

(a) A brief description of the project financed or to be financed;

(b) The amount of such obligations subject to the annual Volume Cap, and, to the extent that any portion is claimed to be exempt from the annual Volume Cap, an opinion of bond counsel to that effect;

(c) The date of issuance or the date of preliminary approval if not yet issued; and


(d) A status report on the issuance, including the anticipated date of issue, if not yet issued.

11. This Executive Order shall be construed and applied consistently with the terms of H.R. 3838, in the form it was passed by the United States House of Representatives prior to the date of this Executive Order, with a view toward protecting the tax-exempt status of obligations issued in reliance upon this Executive Order and maximizing the use of the State of Delaware's total annual Volume Cap.

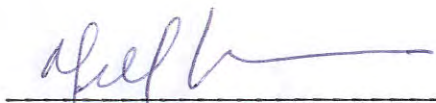
12. In the event of final enactment of H.R. 3838 or any other legislation affecting the proposed annual Volume Cap on obligations which may be issued by the State and local governmental issuers and which can qualify for tax-exempt treatment under the Code, a subsequent executive order will be issued addressing this subject which will, to the maximum extent possible, preserve the allocation of the annual Volume Cap necessary to maintain the tax-exempt status of any obligations issued in reliance upon any allocation made pursuant to this Executive Order.

13. This Executive Order is not intended to have any effect, and shall have no effect, upon the allocation of the Private Activity Bond Cap under 29 Del. C. § 5091.

APPROVED this 22nd day
of May, 1986.


Governor

ATTEST:


Secretary of State

