

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT  
STATE HOUSE, BOSTON 02133

BY HIS EXCELLENCY

MICHAEL S. DUKAKIS

EXECUTIVE ORDER NO. 263

Allocation of Nonessential  
Function Bond Volume Cap  
Pursuant to House Resolution 3838

WHEREAS, House Resolution 3838 ("H.R. 3838") as passed by the United States House of Representatives on December 17, 1985, if enacted into law in its present form, would establish, retroactive to January 1, 1986, a calendar year state ceiling on the volume of nonessential function bonds the interest on which is exempt from federal income taxes;

WHEREAS, under H.R. 3838, Massachusetts' 1986 state ceiling is \$1,018,850,000, which is \$175 per capita multiplied by 5,822,000, the population of the Commonwealth based on the most recent estimate of its resident population released by the Bureau of Census before the beginning of the calendar year, and of which \$145,550,000 would be reserved for bonds issued for the benefit of non-profit organizations ("qualified 501(c)(3) bonds"), \$436,650,000 would be reserved for housing related bonds and \$436,650,000 would be available for allocation to any qualifying nonessential function bonds; and

WHEREAS, H.R. 3838 specifies an assignment of state ceiling between state agencies and other issuing authorities but provides that, Subject to certain limitations, the Governor of any state may proclaim a different interim formula for assigning the state ceiling among the governmental units or other authorities in the state having authority to issue nonessential function bonds;

NOW, THEREFORE, I, Michael S. Dukakis, Governor of the Commonwealth, by virtue of the authority vested in me as Supreme Executive Magistrate, do make the following interim assignments of state ceiling for calendar year 1986, and provisions for such assignments in the following years if permitted by federal tax law, for the purpose of permitting bonds to be issued that will be deemed to be tax exempt nonessential function bonds in the event of the enactment of H.R. 3838:

1. Definitions. (a) Terms used herein shall have the meanings set forth in H.R. 3838.

(b) "Annual state ceiling" means the state ceiling for nonessential function bonds subject to allocation in 1986, or the

state ceiling subject to allocation in any successive calendar year.

(c) "501(c)(3) cap" means the \$145,550,000 of Massachusetts' 1986 state ceiling reserved by H.R. 3838 for qualified 501(c)(3) bonds, and for each successive year means the portion of annual state ceiling reserved by federal tax law for qualified 501(c)(3) bonds.

(d) "Housing cap" means the \$436,650,000 of Massachusetts' 1986 state ceiling reserved by H.R. 3838 for housing related bonds, and for each successive year means the portion of annual state ceiling reserved by federal tax law for housing related bonds.

(e) "IDB cap" means the \$175,000,000 of Massachusetts' 1986 state ceiling and for each successive year means the dollar amount designated as IDB cap by the Executive Office for Administration and Finance for The Commonwealth of Massachusetts ("A&F") from the annual state ceiling not reserved by federal tax law or H.R. 3838 for qualified 501(c)(3) bonds or for housing related bonds.

(f) Any reference to a date herein used without reference to a year shall mean that date in 1986 and in each successive calendar year.

2. Assignment to the Massachusetts Health and Educational Facilities Authority. Eighty percent of the 501(c)(3) cap will be assigned to the Massachusetts Health and Educational Facilities Authority ("HEFA"), which shall in its discretion allocate such cap from time to time to qualified 501(c)(3) bonds issued or to be issued by itself or other issuers within the state. Forty percent of the 501(c)(3) cap is assigned to HEFA as of January 1, an additional twenty percent is assigned to HEFA as of April 1, and the remaining twenty percent is assigned to HEFA as of July 1; provided, however, that A&F may in its discretion accelerate the schedule ) for assignment of the 501(c)(3) cap.

3. Assignment to the Department of Community Affairs.

Eighty percent of the housing cap will be assigned to the Department of Community Affairs of The Commonwealth of Massachusetts ("DCA"), which shall in its discretion allocate such cap from time to time to exempt facility bonds for qualified residential rental projects, qualified mortgage bonds or qualified veterans' mortgage bonds issued or to be issued by itself or other issuers within the state. DCA is authorized to use its discretion in determining the amounts of ceiling reserved to it which will be allocated to bonds for each of the three types of qualifying purposes. Forty percent of the housing cap is assigned to DCA as of January 1, an additional twenty percent is assigned to DCA as of April 1, and the remaining twenty percent is assigned to DCA as of July 1; provided, however, that A&F may in its discretion accelerate the schedule for assignment of the housing cap.

4. Assignment to the Massachusetts Industrial Finance Agency. Eighty percent of the IDB cap will be assigned to the Massachusetts Industrial Finance Agency ("MIFA"), which shall allocate IDB cap from time to time to small issue or exempt facility bonds, but not to qualified 501(c)(3) or housing related bonds, issued or to be issued by itself, any municipality acting through a local Industrial Development Financing Authority or any other issuer within the state. Inasmuch as the amount of the state ceiling assigned to MIFA is likely to be less than the demand for allocation of the ceiling, MIFA shall make allocations taking into account the considerations set forth in section 12 of chapter 40D of the Massachusetts General Laws and priorities set forth in any guidelines which MIFA shall adopt pursuant to section 11 of this order. Forty percent of the IDB cap is assigned to MIFA as of January 1, an additional twenty percent is assigned to MIFA as of April 1, and the remaining twenty percent is assigned to MIFA as of July 1; provided, however, that A&F may in its discretion accelerate the schedule for assignment of the IDB cap.

5. Oversight by the Executive Office for Administration and Finance. Allocations of annual state ceiling to a particular bond issue by HEFA, DCA or MIFA shall be effective in accordance with guidelines adopted by HEFA, DCA or MIFA, respectively, pursuant to section 11 of this order. Within ten business days following any such allocation, or within such other reasonable period as A&F shall approve, HEFA, DCA or MIFA shall provide A&F with the name and address of the issuer, the name and address of the borrower (except where the borrower has not been finally determined), the amount and duration of the allocation, the purposes of the issue, the justification for providing tax exempt financing to the project, including the extent to which the viability of the project depends upon such financing, the location of the project to be financed, if known, and such other information, if any, as A&F may require from time to time. Failure to submit such information to A&F shall not affect the effectiveness of an allocation, but may provide the basis for revocation or suspension of an entity's authority to continue to allocate, as set forth below.

Any portion of the annual state ceiling assigned to HEFA, DCA or MIFA pursuant to sections 2, 3 or 4 of this order which is not allocated before October 1, and any portion of the annual state ceiling assigned to HEFA, DCA or MIFA pursuant to sections 2, 3 or 4 which, although allocated, is not used for bonds issued before, November 1, shall, unless otherwise authorized by A&F, automatically be deemed reassigned to A&F for further allocation pursuant to section 6 of this order, or for carryforward pursuant to section 8 of this order.

In addition, A&F is hereby authorized to review from time to time the allocations made by HEFA, DCA and MIFA to ensure that each such entity is following its guidelines adopted under section 11 of this order. If A&F determines that any allocating entity is not following its guidelines or has failed to submit required

information concerning an allocation, A&F is authorized to revoke or suspend immediately the entity's authority to continue to allocate, and to reassign to A&F any portion of the annual state ceiling not allocated. Any allocations made prior to such revocation or suspension shall remain effective. A&F may at its discretion reinstate at any time any such entity's authority to allocate state ceiling.

IDB cap reassigned to A&F may be used for any purpose permitted in section 6, but 501(c)(3) cap and housing cap reassigned to A&F may be used only for qualified 501(c)(3) bonds and housing related bonds, respectively.

6. Assignment to the Executive Office for Administration and Finance. The amount of Massachusetts' annual state ceiling not assigned to HEFA, DCA or MIFA pursuant to sections 2, 3 and 4 of this order is assigned to A&F, which shall at its discretion reassign or allocate such amount of the state ceiling and amounts reassigned to A&F pursuant to section 5 to issuers within the state, including municipalities and issuers of student loan bonds, at such time as it shall determine, consistent with and pursuant to federal tax law and H.R. 3838. A&F shall allocate annual state ceiling only to those bonds which have received preliminary official action, if required by federal tax law, or as to which A&F has received a notice of intent to issue, from the proposed issuer. A&F may also reassign the annual state ceiling assigned to it pursuant to this section or reassigned to it pursuant to section 5 to HEFA, DCA or MIFA for further allocation or for carryforward, in accordance with the provisions of this order. At the time it reassigns any state ceiling to HEFA, DCA or MIFA, A&F shall specify when and if such reassignment shall expire.

7. Allocation Procedures. Each allocation of the annual state ceiling made by HEFA, DCA, MIFA or A&F shall be in writing, shall be made for a specific bond issue and shall specify the date on or before which the bonds must be issued in order for the allocation to be effective. No allocation, except for carryforwards described in section 8, shall have an expiration date later than December 31. Allocations by HEFA, DCA or MIFA from the amounts assigned to them in sections 2, 3 or 4 of this order shall be made no later than September 30, and shall expire no later than October 31, unless otherwise authorized by A&F.

8. Carryforwards. A&F may carry forward any unused portion of the remaining annual state ceiling assigned or reassigned to it pursuant to sections 5 or 6 of this order for any nonessential function bonds eligible for a carryforward of state ceiling under federal tax law and H.R. 3838. If A&F reassigns any of such amounts to HEFA, DCA or MIFA, those entities may allocate any unused portion of state ceiling to projects eligible for a carryforward, subject to such conditions as A&F may determine. No annual state ceiling may be allocated to carryforward projects prior to November 1.

9. Delegations. The following individuals are authorized to make all representations, file all documents and take all other actions in the name and on behalf of the entities listed below as may be required for compliance with federal tax law and to implement this order: (a) with respect to HEFA, any member or officer of HEFA expressly designated from time to time for the purpose by HEFA, (b) with respect to DCA, the Secretary of Communities and Development or his or her designee, (c) with respect to MIFA, the executive director or, with the express designation from time to time for the purposes by MIFA, any member of the board of directors or any officer, and (d) with respect to A&F, the Secretary of Administration or his or her designee. All designations made pursuant to this section shall be evidenced by a writing.

10. Recordkeeping. HEFA, DCA and MIFA shall make such reports to A&F from time to time as A&F may require. In addition, each of HEFA, DCA, MIFA and A&F shall make reasonably available to the public information as to the amount of its state ceiling not yet allocated and the expiration dates for all state ceiling allocated by it, and shall confirm upon request an allocation of state ceiling to a particular bond issue and the duration thereof.

11. Guidelines. Prior to making any allocations, each of HEFA, DCA, MIFA and A&F shall adopt guidelines governing allocation of state ceiling assigned to it, provided that any such guidelines adopted by HEFA, DCA or MIFA shall be approved by A&F before they become effective.

12. Transition Rules. Any bonds issued pursuant to an allocation by MIFA granted on or prior to February 20, 1986 shall be considered to have received an allocation of state ceiling pursuant to this order, which shall be counted against the state ceiling assigned to MIFA in section 4. All allocations of state ceiling made by MIFA pursuant to Executive Order No. 248 on or prior to February 20, 1986 shall remain effective for the purposes hereof only for the period provided for by Executive Order No. 248, as amended by Executive Order No. 261, as in existence prior to its amendment by Executive Order No. 262. No extensions will be permitted, but on, before or after the expiration of those allocations, the borrowers or issuers may reapply to MIFA for an initial allocation of state ceiling without regard to any waiting period set forth in Executive Order No. 248.

13. Consistency with Executive Order No. 262. Allocations, assignments and carryforwards made pursuant to this order shall not be deemed to be allocations, assignments or carryforwards of the state's private activity bond limit under Section 103(n) of the Internal Revenue Code of 1954, as in effect on the date of this order, which allocations, assignments and carryforwards are made solely pursuant to Executive Order No. 262. Any allocation, assignment or carryforward of the state's private activity bond limit must be made expressly in accordance with Executive Order No. 262 and with federal tax law.

14. Effective Date. This order shall be effective as of the date hereof and shall remain effective until the earlier of its termination as a matter of federal tax law or the effective date of any legislation enacted by the General Court with respect to the allocation of state ceiling under H.R. 3838.

Given at the Executive Chamber in Boston this 17th day of April in the year of our Lord, one thousand nine hundred and eighty-six, and of the Independence of the United States of America two hundred and eleven.

MICHAEL S. DUKAKIS  
GOVERNOR  
The Commonwealth of Massachusetts

MICHAEL JOSEPH CONNOLLY  
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS