

STATE OF MONTANA
Office of the Governor
Executive Order No. 8-84

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OF MONTANA

EXECUTIVE ORDER ALLOCATING BONDING AUTHORITY

WHEREAS, the Montana State Legislature has authorized state agencies and cities, towns and counties (the Local Political Subdivisions) (collectively, the Issuing Authorities) to issue bonds to support a wide variety of activities in furtherance of various public purposes; and

WHEREAS, the federal government has enacted "The Tax Reform Act of 1984" (the Act); and

WHEREAS, the Act restricts the total principal amount of private activity bonds which may be issued by the state during each calendar year to \$200 million (the Private Activity Bond Limit or the Limit); and

WHEREAS, the Act defines "private activity bond" as meaning certain obligations the interest on which is exempt from tax under Section 103b of the Internal Revenue Code of 1954, as amended, (the Code) and which is an industrial development bond, or a student loan bond; and

WHEREAS, the Act distributes one-half of the Limit to the state agencies which have authority to issue private activity bonds and allocates the other one-half of the Limit to Local Political Subdivisions which have authority to issue private activity bonds on the basis of the relative populations of the Local Political Subdivisions; and

WHEREAS, the provisions of the Act provide that the Governor, on an interim basis, is authorized to reallocate the Limit among the Issuing Authorities through an alternative method until the state legislature meets to decide on an allocation procedure; and

WHEREAS, the Act applies to private activity bonds issued after January 1, 1984 subject to certain exceptions provided therein; and

WHEREAS, the Governor deems it is in the best interest of the citizens of the State of Montana to issue an executive order establishing an alternative method for the orderly issuance of private activity bonds by Issuing Agencies during the calendar year 1984 in accordance with the provisions of the Act; and

WHEREAS, the procedures set forth herein are based on comments received from the affected Issuing Authorities, bond attorneys, and the Capital Finance Advisory Council;

NOW, THEREFORE, I, TED SCHWINDEN, Governor of the State of Montana, by the power and authority vested in me by the State Constitution, by the laws of the State of Montana and the Act do hereby order and decree that the following procedures be used to allocate the total principal amount of private activity bonds subject to the Act which may be issued by the Issuing Authorities during the calendar year 1984:

Section 1. Private Activity Bond Limit. The aggregate amount of private activity bonds subject to the Act which may be issued by the state, including the state agencies and the Local Political Subdivisions during the calendar year 1984, shall not exceed the total amount of private activity bonds allocated to the State of Montana by the Act.

Section 2. Initial allocation. The state of Montana's 1984 Private Activity Bond Limit shall be initially distributed as herein set forth.

A. 50% to the following state agencies issuing private activity bonds:

Department of Agriculture (Montana Agricultural Loan Authority)
Department of Commerce (Montana Economic Development Board)
Department of Natural Resources and Conservation
Montana Higher Education Student Assistance Corporation

The state agency allocations shall be made by the Director of the Department of Administration (the Department) on the basis of the chronological order of receipt of completed applications subject to approval by the Governor.

B. 50% to Local Political Subdivisions.

Local Political Subdivisions wishing to obtain an allocation for a project shall submit an application in the form prescribed and approved by the Department including the following information:

1. Name of Issuing Authority;
2. Proposed project description and location, and the name and address of the project owner and operator;
3. Certified copy of the inducement resolution adopted by the Issuing Authority pursuant to Section 103 of the Internal Revenue Code of 1954, as amended (the inducement resolution is a resolution of the Issuing Authority approving the project and preliminarily authorizing the issuance of the bonds therefore);

4. Bond counsel's preliminary opinion to the effect that the proposed project qualifies as a private activity bond project under applicable state law, and if the bonds are issued, the interest thereon will be exempt from federal income taxation under section 103 of the Internal Revenue Code of 1954, as amended;
5. Evidence that public hearing requirements have been met;
6. A copy of a letter from an underwriter, bank or other financial institution stating in effect that in its opinion the project is financially feasible and that bonds could be successfully sold under current market conditions. The letter shall also state that the underwriter, bank or financial institution has reviewed all information it deems necessary to form this opinion.
7. Amount of allocation requested.

Application forms may be obtained by contacting the Department of Administration, Director's Office, Room 155, Mitchell Building, Helena, Montana 59620 or calling (406)444-2032. Completed applications shall be submitted to the same address.

Prior to October 1, 1984, the maximum allocation available for any single project approved by any Local Political Subdivision shall be \$15 million, except as limited by the Act. Projects larger than \$15 million, however, shall be given a partial allocation, not to exceed \$15 million.

Allocations shall be made on the basis of the chronological order of the receipt from Local Political Subdivisions, but only if their applications are completed in accordance with the procedures and documentation requirements outlined above.

Section 3. Allocation Timing. Upon receipt of the completed application required by Section 2 hereof, the Department shall as soon as possible, notify the Issuing Authority of the approval of the allocation or the

expiration of the 90-day period that an agreement to purchase the subject bonds has been obtained from an entity with the legal ability to purchase. In the event the bonds are not issued within 90 days (or 120 days if an extension is granted) the allocation shall expire and shall become available for reallocation. All allocations shall expire on December 31, 1984. This section shall not limit the term of an allocation if the Issuing Authority elects, pursuant to the Act, to carry forward the allocation with respect to a carry forward project as defined in the Act. Allocations may not be transferred between projects.

Section 5. Reapplication. In the event that the allocation is rejected as provided in Section 3 or expires as provided in Section 4, the Issuing Authority may resubmit its application for an allocation. The completed application shall be reviewed in chronological order of receipt and no preference or priority shall be given to the Issuing Authority as a result of its prior application for the same project or purpose.

Section 6. Unused or Recaptured Allocations. On August 16, 1984, any unallocated Limit remaining under the initial allocation made in Section 2 herein shall be placed in a pool and will be available for allocation to state agencies or Local Political Subdivisions on the basis of the chronological order of receipt of completed applications. The \$15 million limit on individual project allocations shall continue in effect.

On October 1, 1984, any unallocated Limit remaining in the pool shall be available for allocation to state agencies and Local Political Subdivisions on the basis of the chronological order of receipt of completed applications with no limitation on the amount of allocation that can be made for an individual project other than the limitations imposed by the Act and the Code.

For purposes of this section, state agencies shall submit an applica-

GIVEN under my hand and the
GREAT SEAL of the State of
Montana, this 27th day of
July, in the year of our Lord,
One Thousand Nine Hundred and
Eighty-Four.


TED SCHWINDEN, Governor

ATTEST:


JIM WALTERMIRE, Secretary of State