

LCB File No. R039-02

**PROPOSED REGULATION OF THE DIRECTOR OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

NOTICE OF INTENT TO ACT UPON A REGULATION

**Notice of Hearing for the Amendment of Regulations of the
Department of Business and Industry, Office of Business Finance and Planning**

The Department of Business and Industry, Office of Business Finance and Planning, 788 Fairview, Suite 100, Carson City, Nevada 89701, 775-687-4246 will hold a public hearing at 10:00 a.m., on Wednesday, May 1, 2002, via videoconference in the Hearing Room, 788 Fairview, Carson City, Nevada 89701 and in the Conference Room, 2501 East Sahara Avenue, Manufactured Housing Division, Suite 204, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations that pertain to chapter 349 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment.

The amendments being proposed will create procedures for the use of bond facilitators to assist applicants for private activity revenue bond financing in order to ensure that services of bond facilitators are consistent and delivered in a fair and equitable manner. The amendments will also clarify provisions regarding the making of deposits and payment of fees in connection with the issuance of private activity revenue bonds. A copy of the proposed amendment is attached to this Notice.

2. Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.

See Item #1

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:

(a) Both adverse and beneficial effects

There should be no adverse economic effect of the amendments relating to bond facilitators, either immediate or long term, since applicants for private activity revenue bond financing who wish to use a bond facilitator are currently paying for those services. These amendments will have the immediate and long term beneficial effect of making services of bond facilitators more readily available on a consistent and equitable basis. There should be no adverse immediate or long term economic effect of these

amendments on businesses offering bond facilitator services. Although such businesses will have additional requirements for being listed as bond facilitators, the establishment of an official list of bond facilitators and guidelines for their services will have the immediate and long term beneficial effect of making their services more readily available to the public and ensuring that services are provided in a fair and equitable manner. There should be no immediate or long term adverse economic effect of the amendments relating to fees and deposits on applicants for private activity revenue bond financing since applicants are currently required to pay fees and deposits. Applicants will benefit in the immediate and long term by having fees and deposits determined on a consistent basis. There will be no immediate or long term adverse effect on the public from these proposed amendments. The public may see additional economic development and other benefits by an increase in private activity revenue bond financing that may result from these amendments.

(b) Both immediate and long-term effects.

See Item # 3(a)

4. The estimated cost to the agency for enforcement of the proposed regulation.

N/A

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

N/A

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

N/A

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

N/A

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

Pursuant to existing regulations and practice, fees for applicants for private activity revenue bond financing are established on a case-by-case basis. Therefore, although the proposed amendment does not establish a new fee or increase existing fees, it does for the first time specifically state the fees that will be charged directly in the regulation.

Persons wishing to comment upon the proposed action of the Department of Business and Industry, Office of Business Finance and Planning may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Doug Walther, Chief, Office of Business Finance and Planning, 788 Fairview, Suite 100, Carson City, Nevada 89701. Written submissions must be received by May 1, 2002. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Office of Business Finance and Planning may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at the Office of Business Finance and Planning, 788 Fairview, Suite 100, Carson City, Nevada 89701 and the Director's Office of the Department of Business and Industry, 555 East Washington Avenue, Suite 490, Las Vegas, Nevada 89106, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

See Attached Exhibit A

PROPOSED REGULATION OF THE DIRECTOR OF THE DEPARTMENT OF BUSINESS AND INDUSTRY

Revenue Bonds for Industrial Development

EXPLANATION--Matter in *italics* is new, matter in brackets [] is material to be omitted.

Purpose: To provide guidelines for the use of bond facilitators and to clarify provisions regarding payment of fees.

Authority: NRS 349.630, 232.520(6)

Address of Agency: The agency promulgating this regulation is the Director of the Department of Business and Industry (Director), whose address is 2500 W. Washington Suite 100, Las Vegas, Nevada 89106. The contact person for the Director is Doug Walther, Office of Business Finance and Planning, 788 Fairview, Suite 100, Carson City, Nevada 89701, phone (775) 687-4246; fax (775) 687-4266. The Director is being advised and assisted by the Nevada Attorney General's Office in the drafting of these regulations. The contact person is Sonia Taggart, Senior Deputy Attorney General, Attorney General's Office, Capital Complex, Carson City, Nevada 89710, phone (775) 684-1224; fax (775) 684-1108

Section 1. Add sections 2 and 3 of these regulations:

Sec. 2. *“Facilitator” means a person or firm with special education or experience in revenue bond financing hired by an applicant or prospective applicant to provide some or all of the services described in subsection (3)(a) of Section 3 of these regulations.*

Sec. 3. *(1) The Director may maintain and make available to applicants and prospective applicants a list of approved bond facilitators. A person or firm may apply to the Director to be placed on the list of approved bond facilitators. The Director will include a person or firm on the list of approved facilitators if the person or firm presents evidence satisfactory to the Director that the person or firm is qualified by education or experience to assist applicants and prospective applicants for financing pursuant to the provisions of NAC 349.010 to 349.080, inclusive, and agrees to observe the guidelines for bond facilitators set forth in this section.*

(2) The Director may remove a person or firm from the list of approved bond facilitators if, in the judgment of the Director, the person or firm has failed to follow the guidelines set forth in this section.

(3) Bond facilitators must observe the following guidelines in the provision of services to applicants and prospective applicants:

(a) The bond facilitator must offer all or some of the following services:

1. Consult with applicants or prospective applicants regarding the requirements for issuance of revenue bonds and make preliminary assessments regarding eligibility;

2. Manage the application process for the Applicant, including the preparation, distribution and review of the application;

3. Manage the process for completing a financing under the Program, including but not limited to communicating with members of the finance team, local agencies, underwriters,

bond counsel and trustee, review of financing documents and coordination of public meetings;

4. Coordinate the activity of all participants in each financing.

(b) The facilitator shall inform the applicant or prospective applicant, at the earliest practicable time, that the decision to use the services of a bond facilitator is solely that of the applicant or prospective applicant and that the applicant or prospective applicant is not required to use those services in order to apply for or obtain revenue bond financing.

(c) The facilitator shall inform the applicant or prospective applicant, at the earliest practicable time, that the facilitator acts as the agent of the applicant or prospective applicant, does not represent and cannot bind the Director in the exercise of his discretion to issue revenue bonds pursuant to the provisions of NAC 349.010 to 349.080, inclusive, and that the Director is not responsible or liable for the acts of the facilitator;

(d) The facilitator will inform the Director upon request of its financial arrangement with the applicant or prospective applicant and may be removed from the list if the Director believes the facilitator is charging excessive fees.

(4) An approved facilitator may recommend to the Director ways to improve administration of the bond program or develop new programs for the issuance of revenue bonds and may perform tasks pursuant thereto on such terms and at such compensation as may be agreed to by the Director. Such recommendations may include but are not limited to recommendations for adding or amending statutes or regulations, application materials, or marketing materials.

Sec. 4. NAC 349.040 is hereby amended to read as follows:

NAC 349.040 Application for financing: Contents and form; fees; action by director.

1. The application must include, but is not limited to:

(a) The purpose, objective and function of the proposed project;

(b) A summary of the costs of the project, including any incidental costs associated with the project;

(c) A description of the management of the project;

(d) Information on the site of the project and the proposed facilities, including all information related to the status of any required environmental permits;

(e) The location of the project, including the relationship of the project to any existing facilities adjacent to the site;

(f) A description of all proposed expenditures of bond receipts, including a detailed description of the machinery and equipment to be acquired by the financing;

(g) The economic feasibility of the project;

(h) A business history of the applicant; and

(i) Any other information required by the director.

2. The applicant must submit his application for financing on a form provided by the director.

The application must be accompanied by a nonrefundable application fee of:

(a) Five hundred dollars if the amount of the requested bonds is \$3,000,000 or less.

(b) Seven hundred and fifty dollars if the amount of the requested bonds is more than \$3,000,000 and less than \$6,000,000.

(c) One thousand dollars if the amount of the requested bonds is \$6,000,000 or more.

3. The director will, within 30 days of receipt of a completed application, notify the applicant whether or not his application is accepted.

4. If the application is not accepted, the director will provide the applicant an opportunity to

discuss the reasons for denial.

5. If the application is accepted, the director will:

(a) Direct the applicant to submit a ~~processing fee~~ *deposit* based on an estimate of the total costs of the department to process the application and finance the project. The ~~fee~~ *deposit* will not exceed 1 percent of the principal amount of the financing, payable before or at the time the bonds are issued.

(b) Send the applicant an inducement letter:

(1) Stating the intention of the director to issue bonds to finance the project subject to the continuing ability of the project to meet local, state, and federal requirements;

(2) Stating the principal amount of the financing;

(3) Directing the applicant to submit any supporting documentation as may be required by the director; and

(4) Stating that the term of the director's commitment is 1 year. At the expiration of the term, the director may extend the commitment for a similar term *upon receipt of an extension fee in the amount of \$1,500.*

6. Whether or not the bonds are issued, the ~~processing fee~~ *deposit* received on behalf of the director will be used to reimburse the department for the cost of a project incurred in processing the application and financing the project *and shall include the following non-refundable, administrative charge:*

(a) \$2,500 if the principal amount of the financing is equal to or less than \$5 million;

(b) .05% of the principal amount of the financing if the financing is greater than \$5 million.

The portion of the ~~processing fee~~ *deposit* that is not required to reimburse the department for its cost of a project will be refunded to the applicant. The cost of a project incurred by the director in excess of the ~~processing fee~~ *deposit* will be charged to the applicant and must be paid on or before the date of the issuance of the bonds.

7. If bonds are issued and the Director is required to provide on-going services in relation to the bonds including, but not limited to, supervising, monitoring or reviewing on a regular basis the activity of the obligor on the bonds or other party to the transaction, the Director may charge a reasonable fee for those services.

~~8.~~ The director may modify the principal amount and the other terms and conditions of the financing before the closing.

8. The director will establish the interest rate to be charged to the obligor for the financing and, if appropriate, or otherwise in accordance with the terms of the financing agreement, will adjust the interest rate from time to time.

9. The director will use the fees collected pursuant to this section exclusively to support the operations of his office that are in connection with the programs administered pursuant to the provisions of chapters 348A and 349 of NRS and any regulations adopted pursuant thereto.

10. The director will establish the appropriate accounts and procedures for the deposit and expenditure of money received pursuant to this section.

11. As used in this section, "cost of a project" has the meaning ascribed to it in NRS 349.430.