

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

LCB File No. R038-02

Effective June 26, 2002

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-5, NRS 348A.040.

Section 1. NAC 348A.010 is hereby amended to read as follows:

348A.010 As used in this chapter, *unless the context otherwise requires*, the words and terms defined in NAC 348A.020 to 348A.150, inclusive, have the meanings ascribed to them in those sections.

Sec. 2. NAC 348A.180 is hereby amended to read as follows:

348A.180 1. A local government may, by resolution, transfer to any other local government located within the same county, all or any portion of its volume cap or local population share for a specific project. ~~{if the}~~ *Any* portion *that is* transferred is subject to the provisions of NAC 348A.220 in the same manner as the local population share of the local government receiving the transfer.

2. A local government may transfer to the director, by resolution, all or any portion of its volume cap or local population share, subject to the director's approval. *The resolution must identify a representative of the local government with whom the director may communicate regarding the resolution and must provide a means of contacting that representative.*

3. Any transfer made pursuant to this section may be subject to such terms and conditions as may be established by the local government in its resolution ~~§~~ *if the resolution requires the beneficiary of the transfer to:*

(a) Inform the director in writing as soon as practicable of the occurrence or nonoccurrence of any term or condition that would affect the disposition of the subject volume cap;

(b) Identify a representative of the beneficiary of the transfer with whom the director may communicate regarding the resolution; and

(c) Provide a means of contacting that representative.

4. Any transfer is irrevocable upon the issuance of private activity bonds for the project which is the subject of the transfer to the extent of the principal amount of the bonds so issued.

5. The local government receiving the transfer may elect to treat all or any portion of the transfer as a carry forward, if permitted by the code, unless the resolution making the transfer provides otherwise. *If the local government receiving the transfer elects to treat all or any portion of the transfer as a carry forward, the local government receiving the transfer shall provide to the director a copy of the federal tax form filed to evidence its election within 30 days after the form is filed with the Internal Revenue Service.*

Sec. 3. NAC 348A.220 is hereby amended to read as follows:

348A.220 1. After September 1 of any calendar year, the volume cap for the director will, for the remainder of that calendar year, be augmented by an amount equal to any unused portion of the volume cap assigned for that calendar year to any local government pursuant to chapter 348A of NRS, and augmented pursuant to this chapter, unless the local government adopts a resolution on or before September 1 of that year indicating that it has used, intends to use or has

reserved its entire allocation , or a portion thereof , for a specified project or projects for the remainder of that calendar year.

2. Any portion of a local government's volume cap allocated for a calendar year which is not committed to a specified project by September 1, or is not sufficiently identified or not adequately described in a resolution adopted by the local government, reverts to the director.

3. A copy of the resolution required by subsection 1 must ~~be~~ :

(a) Identify a representative of the local government with whom the director may communicate regarding the resolution;

(b) Provide a means of contacting that representative;

(c) Be mailed to the director and secretary of the state board of finance ; and ~~must be~~

(d) Be received on or before September 15 of the calendar year to which it applies ~~[- If the resolution is not received on or before that date,]~~ , *or* the local government's local population share reverts to the director.

4. On October 1 of each calendar year, or as soon thereafter as is practicable, the director will file a certificate on a form designated by the secretary of the state board of finance, specifying the local governments affected by the provisions of this section and the amount by which the director's volume cap is augmented for the remainder of the calendar year.

5. If a local government has adopted and mailed a resolution pursuant to the provisions of this section, it shall determine not later than December 1 if the allocation reserved has been , or will be , used by December 31 through the issuance of bonds or a carry forward to a subsequent year and shall immediately certify in writing to the director the amount of the reserved allocation which will be used.

6. If the local government fails to certify on or before December 1 that any portion of a reserved allocation will be used or if the director does not receive written certification by December 10, the unused portion of the reserved allocation reverts to the director. As soon thereafter as is practicable, the director will file a certificate in the form and manner provided in subsection 4 ~~(h)~~ *and mail a copy of the certificate to the representative of the local government.*

Sec. 4. NAC 348A.280 is hereby amended to read as follows:

348A.280 1. The special committee to provide advice on private activity bonds is hereby created, consisting of the following members:

- (a) The director, who will act as chairman.
- (b) The executive director of the commission on economic development, or his designee.
- (c) The administrator of the housing division of the department, or his designee.
- (d) The ~~[deputy director]~~ *chief of the office of business finance and planning* of the department, who shall act as the ex officio secretary of the committee and as the chairman in the director's absence.

- ~~(e) [The director of the office of community services, or his designee.~~
- ~~(f) [The director of the Nevada Association of Counties, or his designee.~~

~~(g)~~ (f) The director of the Nevada League of Cities, or his designee.

2. The director may appoint an additional member to the committee who:

- (a) Is a member of the general public;
- (b) Is knowledgeable in matters referred to the committee; and
- (c) Has no financial or pecuniary interest in matters referred to the committee pursuant to ~~[NAC 348A.010 to 348A.270, inclusive.]~~ *this chapter.*

3. Four members of the committee must be present to conduct the business of the committee.

4. The committee shall consider any matter referred to it pursuant to ~~[NAC 348A.010 to 348A.270, inclusive,]~~ *this chapter* and may, if requested, advise the governor, the state board of finance and the director on any matter concerning private activity bonds.

Sec. 5. NAC 348A.290 is hereby amended to read as follows:

348A.290 Any person who wishes:

1. A clarification of the application of the provisions ~~[NAC 348A.010 to 348A.300, inclusive,]~~ *of this chapter;*

2. Relief from the strict application of any provision of ~~[NAC 348A.010 to 348A.300 inclusive,]~~ *this chapter;* or

3. Information concerning the procedures for submitting requests to the director or the special committee,

FLUSH may address a written request therefor as follows:

Attn: Director

Department of Business and Industry

~~[2500 W. Washington, Suite 100]~~ *555 East Washington Avenue, Suite 4900*

Las Vegas, Nevada ~~[89106]~~ *89101-1075*

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R038-02

The Department of Business and Industry, Director's Office, Office of Business Finance and Planning adopted regulations assigned LCB File No. R038-02 which pertain to chapter 348A of the Nevada Administrative Code on May 17, 2002.

Notice date: 3/18/2002
Hearing date: 5/1/2002

Date of adoption by agency: 5/17/2002
Filing date: 6/26/2002

INFORMATIONAL STATEMENT

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapters 348A and 349. All workshops, hearings and other proceedings for these regulations were combined.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail and email to persons who were known to have an interest in the subject of industrial development bonds as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Office of Business Finance and Planning (OBFP), www.dbi.state.nv.us/bfp/. Written comments were received from John Swendseid, an attorney representing Clark County, Nevada and several persons made comments at the workshop and public hearings. With one exception noted below, all suggested amendments to the proposed regulations were accepted and incorporated into the adopted regulation, as follows:

1. Provide that the transferee or ultimate beneficiary of a volume cap transfer from a local government inform the Director of the occurrence or nonoccurrence of any term or condition that would affect the disposition of the subject volume cap and provide contact information for that person. This amendment was suggested because the transferee or developer/obligor is in a better position than the county or city to know whether terms and conditions of the transfer have been satisfied (LCB FILES R038-02);
2. Limit applicability of provisions relating to the bond facilitator to bonds issued pursuant to the IDR program, NRS 349.400 to 349.670, inclusive. This amendment was suggested to clarify that the bond facilitator program is intended to apply only to IDRs and not other bonds issued pursuant to NRS Chapter 349 (LCB FILES R039-02);
3. Limit applicability of guidelines for bond facilitators to those facilitators who have sought and obtained "approved" status from the Director. This amendment was intended to clarify that the guidelines apply only to those persons who voluntarily participate in the facilitator program and would not apply, for example, to a private attorney hired to represent an obligor in relation to the transaction (LCB FILES R039-02);

4. Require bond applicants to submit an original and four copies of the application for IDR financing (LCB FILES R039-02);
5. Clarify that the inducement extension fee is nonrefundable (LCB FILES R039-02);
6. Clarify that the Director may recover both direct and indirect costs if she is required to expend additional resources or incur additional costs after bonds are issued, either by agreement or as the result of a default, bankruptcy or other circumstance (LCB FILES R039-02);

One person suggested not adopting a formula for fixing the administrative processing charge so that the amount could be adjusted without formal rulemaking procedures in the future if necessary. This suggestion was not adopted because the fee structure is deemed adequate at this time and because having the fees set out in the regulations gives prospective bond applicants and other interested parties a better understanding of the costs of obtaining revenue bond financing.

A copy of this summary of the public response to the proposed regulation may be obtained from the Office of Business Finance and Planning, 788 Fairview Drive, Suite 100, Carson City, Nevada 89701, 775-687-4246, or email to dwalther@dbi.state.nv.us.

2. **The number of persons who:**
 - (a) **Attended each hearing:** 5
 - (b) **Testified at each hearing:** 5
 - (c) **Submitted to the agency written comments:** Comments were submitted by attorney John Swendseid.
3. **A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary may be obtained as instructed in the response to question #1.

4. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The permanent regulation was adopted on May 17, 2002 and included all but one of the suggested changes. The explanation for not accepting one of the suggested changes is described in the response to question #1.

5. **The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**
 - (a) **Both adverse and beneficial effects: and**
 - (b) **Both immediate and long-term effects.**

(a) Both adverse and beneficial effects

NAC 348A: Local government will have additional, although minor, requirements for the allocation and use of state volume cap in the immediate and long-term which should not involve any additional expense. Local governments and other persons, who benefit from the use of state volume cap, including the public, will benefit in the immediate and long-term from provisions that will provide greater assurance that volume cap authority is not wasted.

NAC 349: 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 # 5(a)

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulation of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

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

N/A

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

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.