

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

LCB File No. R039-02

April 24, 2002

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

AUTHORITY: §§1-12 and 14, NRS 349.630; §13, NRS 232.520; §§15 and 16, NRS 349.946.

Section 1. Chapter 349 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. *“Bond facilitator” means a person or business entity with special education or experience in the financing of revenue bonds that is hired to provide any or all of the following services:*

1. Consultation with applicants or prospective applicants regarding the requirements for issuance of revenue bonds and the making of preliminary assessments regarding eligibility.

2. Management of the application process for the applicant, including the preparation, distribution and review of the application.

3. Management of the process for completing a financing pursuant to the program for the issuance of revenue bonds, including, without limitation, communicating with the finance team, local agencies, underwriters, bond counsel and trustee, reviewing financing documents and coordinating public meetings.

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

Sec. 3. *“Bonds” has the meaning ascribed to it in NRS 349.420.*

Sec. 4. *“Department” means the department of business and industry.*

Sec. 5. *“Director” means the director of the department.*

Sec. 6. *“Finance or financing” has the meaning ascribed to it in NRS 349.460.*

Sec. 7. *“Obligor” has the meaning ascribed to it in NRS 349.500.*

Sec. 8. *“Project” has the meaning ascribed to it in NRS 349.510.*

Sec. 9. 1. *The director may maintain and make available a list of approved bond facilitators to applicants and prospective applicants.*

2. *A person or business entity may apply to the director for placement on the list of approved bond facilitators.*

3. *The director will place a person or business entity on the list of approved bond facilitators if the person or business entity:*

(a) *Presents evidence satisfactory to the director that the person or business entity is qualified by education or experience to assist applicants and prospective applicants in the financing of revenue bonds pursuant to the provisions of NAC 349.010 to 349.080, inclusive, and sections 2 to 10, inclusive, of this regulation; and*

(b) *Agrees to follow the provisions for bond facilitators as set forth in section 10 of this regulation.*

4. *The director may remove a person or business entity from the list of approved bond facilitators if, in the judgment of the director, the person or business entity:*

(a) *Fails to follow the provisions set forth in section 10 of this regulation; or*

(b) *Charges excessive fees for the services provided to applicants and prospective applicants.*

5. *An approved bond facilitator may:*

(a) Provide recommendations to the director on ways to improve the administration of the bond program such as amending statutes, regulations, application materials or marketing materials;

(b) Develop new programs for the issuance of revenue bonds for the director; and

(c) Receive compensation, as set by the director, for providing such recommendations and developments.

Sec. 10. *A bond facilitator shall inform:*

1. The applicant or prospective applicant, at the earliest time practicable, 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 the financing of revenue bonds.

2. The applicant or prospective applicant, at the earliest time practicable, that the bond facilitator acts as the sole agent of the applicant or prospective applicant and does not represent or have any influence over the director in his decision to issue revenue bonds pursuant to the provisions of NAC 349.010 to 349.080, inclusive, and sections 2 to 10, inclusive, of this regulation.

3. The applicant or prospective applicant, at the earliest time practicable, that the director is not responsible or liable for the acts of the bond facilitator.

4. The director, upon his request, of the financial arrangement between the bond facilitator and the applicant or prospective applicant.

Sec. 11. NAC 349.010 is hereby amended to read as follows:

349.010 As used in NAC 349.010 to 349.080, inclusive, *and sections 2 to 10, inclusive, of this regulation*, unless the context otherwise requires ~~E~~

- ~~1. “Bonds” has the meaning ascribed to it in NRS 349.420.~~
- ~~2. “Department” means the department of business and industry.~~
- ~~3. “Director” means the director of the department.~~
- ~~4. “Finance or financing” has the meaning ascribed to it in NRS 349.460.~~
- ~~5. “Obligor” has the meaning ascribed to it in NRS 349.500.~~
- ~~6. “Project” has the meaning ascribed to it in NRS 349.510.],~~ *the words and terms defined in sections 2 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 12. NAC 349.020 is hereby amended to read as follows:

349.020 The provisions of NAC 349.010 to 349.080, inclusive, *and sections 2 to 10, inclusive, of this regulation* are established to effectuate and will be applied so as to accomplish the general purposes of chapter 349 of NRS and the specific objectives of NRS 349.560.

Sec. 13. NAC 349.040 is hereby amended to read as follows:

349.040 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~~ *after* 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~~ 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 will include the following nonrefundable, administrative charge:*

(a) If the principal amount of the financing is equal to or less than \$5,000,000, then a charge of \$2,500; or

(b) If the principal amount of the financing is greater than \$5,000,000, then a charge of 0.05 percent of the principal amount of the financing.

FLUSH 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 ongoing services in relation to the bonds, including, without limitation, supervising, monitoring or reviewing on a regular basis the activity of the obligor on the bonds or the 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.}~~ 9. 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.}~~ 10. 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.}~~ 11. The director will establish the appropriate accounts and procedures for the deposit and expenditure of money received pursuant to this section.

~~{11.}~~ 12. As used in this section, “cost of a project” has the meaning ascribed to it in NRS 349.430.

Sec. 14. NAC 349.080 is hereby amended to read as follows:

349.080 Any person desiring clarification of NAC 349.010 to 349.080, inclusive, *and sections 2 to 10, inclusive, of this regulation*, relief from the strict application of any of the terms of those sections, or information concerning procedures for dealing with the department may address a written request to the director ~~{of the department of business and industry}~~ at:

Department of Business and Industry

~~{2500 West Washington Street, Suite 100}~~ *555 East Washington Avenue, Suite 4900*

Las Vegas, Nevada ~~{89106}~~ *89101-1075*

Sec. 15. NAC 349.195 is hereby amended to read as follows:

349.195 Any person desiring clarification of any provision of NAC 349.100 to 349.415, inclusive, relief from the strict application of any provision of NAC 349.100 to 349.415, inclusive, or information concerning procedures for submitting any forms or information to the director may address a written request to the director at:

Department of Business and Industry

~~{Director's Office~~

~~—2500 West Washington Street, Suite 100} 555 East Washington Avenue, Suite 4900~~

Las Vegas, Nevada ~~{89106} 89101-1075~~

Sec. 16. NAC 349.220 is hereby amended to read as follows:

349.220 A letter of intent must be addressed to:

Board For Financing Water Projects

Division of ~~{Water Planning} Environmental Protection~~

~~{123} 333~~ West Nye Lane

Carson City, Nevada ~~{89710} 89706-0851~~