

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

LCB File No. R039-02

Effective June 26, 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. *An approved 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 ~~F~~

- ~~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 *an original and four copies of* 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 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 a nonrefundable 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 by agreement or as the result of a default in payment of the bonds, the bankruptcy of the obligor or any other reason, the director is required to provide ongoing services, expend additional resources or incur additional costs in relation to the*

bonds, including, without limitation, supervising, monitoring or reviewing on a regular basis the activity of the obligor or any other party to the transaction or the documentation relating to the transaction, the director may charge and recover from the obligor a reasonable fee for such services, resources or costs.

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*

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R039-02

The Department of Business and Industry, Director's Office, Office of Business Finance and Planning adopted regulations assigned LCB File No. R039-02 which pertain to chapter 349 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 IDRBs 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.