

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

**LCB File No. R095-05**

Effective October 31, 2005

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

AUTHORITY: §§1-9; NRS 348A.040.

A REGULATION relating to private activity bonds; revising provisions governing the filing of certain certificates and information relating to private activity bonds; and providing other matters properly relating thereto.

**Section 1.** Chapter 348A of NAC is hereby amended by adding thereto a new section to read as follows:

*“Office of Business Finance and Planning” means the Office of Business Finance and Planning created in the Department pursuant to NRS 232.522.*

**Sec. 2.** 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, *and section 1 of this regulation* have the meanings ascribed to them in those sections.

**Sec. 3.** 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. 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. *A copy of the resolution must:*

*(a) Be mailed to the Director and the Secretary of the State Board of Finance;*

*(b) Identify a representative of the local government with whom the Director may communicate regarding the resolution; and*

*(c) Provide a means of contacting the representative.*

2. A local government may transfer to the Director, by resolution, all or any portion of its volume cap or local population share ~~to~~ *for any specified project or use authorized by the Code for private activity bonds*, 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~~ *Notify* 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. 4.** 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~~ use 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:

(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

(d) Be received on or before September 15 of the calendar year to which it applies 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) *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 ~~[.]~~;

(b) *File a copy of the certificate with the Secretary of the State Board of Finance; and*

(c) *Post a copy of the certificate on the website of the Office of Business Finance and Planning.*

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 *used by February 15 of the following year through* 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) *File* a certificate in the form and manner provided in subsection 4 ~~[and mail]~~ ;

(b) *Mail* a copy of the certificate to the representative of the local government ~~[.]~~ ;

(c) *File a copy of the certificate with the Secretary of the State Board of Finance; and*

(d) *Post a copy of the certificate on the website of the Office of Business Finance and Planning.*

**Sec. 5.** NAC 348A.240 is hereby amended to read as follows:

348A.240 1. An application for the issuance of private activity bonds by the Director must be submitted on a form approved by the Director. Before any private activity bonds are issued,

the Director will execute, issue and file with the *Office of Business Finance and Planning and the* Secretary of the State Board of Finance an allocation certificate in a form approved by the Secretary in the amount of the bonds to be issued for the benefit of the applicant or the sponsor of the project, reserving a portion of the state ceiling for the project for 45 days after the date of the issuance of the certificate.

2. An allocation certificate issued pursuant to this section may only be extended by the Director, upon the advice of the Special Committee, for a term and under such conditions as he determines. An extension will not be granted if it would cause the amount of private activity bonds issued for the calendar year to exceed the state ceiling.

**Sec. 6.** NAC 348A.250 is hereby amended to read as follows:

348A.250 The Director will, at the beginning of each calendar year ~~[-determine-]~~ :

1. *Determine* the state ceiling for that year, based upon the state estimate of the population ~~[-]~~;

2. *Notify the appropriate representative of each local government of the state ceiling and the amount of the state ceiling allocated to that local government; and*

3. *Post the information concerning the allocation for each local government on the website of the Office of Business Finance and Planning.*

**Sec. 7.** NAC 348A.260 is hereby amended to read as follows:

348A.260 1. The Director, any state agency, any local government and any local agency which issues private activity bonds subject to the limitations established in the Code, shall file a certificate with the ~~[-Secretary of the State Board of Finance-]~~ *Office of Business Finance and Planning* describing the amount of the bonds and the purpose for which they were issued. The

certificate must be filed within 15 days after the date on which the bonds are issued . ~~[on a form approved by the Secretary.]~~

2. A local government shall or the Director will, within 5 days after transferring any portion of the volume cap of the local government or the allocation of the state ceiling under the control of the Director, file a certificate with the ~~[Secretary of the State Board of Finance]~~ *Office of Business Finance and Planning* indicating that the transfer was made. ~~[The certificate must be filed on a form approved by the Secretary.]~~ The transfer becomes effective on the date on which the certificate is filed with the ~~[Secretary.]~~ *Office of Business Finance and Planning*.

3. If good cause is shown, the Special Committee may grant upon referral from the Director a variance from the provisions of this section if the variance does not cause the amount of private activity bonds issued for the calendar year to exceed the state ceiling.

**Sec. 8.** NAC 348A.270 is hereby amended to read as follows:

348A.270 The official record of all certificates filed pursuant to NAC 348A.260 must be maintained in the ~~[office of the Secretary of the State Board of Finance.]~~ *Office of Business Finance and Planning. The Director will:*

*1. File a copy of each certificate executed pursuant to NAC 348A.260 with the Secretary of the State Board of Finance; and*

*2. Post a copy of each certificate on the website of the Office of Business Finance and Planning.*

**Sec. 9.** 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 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 Nevada Association of Counties, or his designee.

(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 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 this chapter and may, if requested, advise the Governor, the State Board of Finance and the Director on any matter concerning private activity bonds.

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R095-05**

The Director of the Department of Business and Industry adopted regulations assigned LCB File No. R095-05 which pertain to chapter 348A of the Nevada Administrative Code on September 1, 2005.

**Notice date:** 7/13/2005  
**Hearing date:** 9/1/2005

**Date of adoption by agency:** 9/1/2005  
**Filing date:** 10/31/2005

**INFORMATIONAL STATEMENT**

**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/](http://www.dbi.state.nv.us/bfp/), mailed to all county libraries in Nevada and posted at the following locations:

Department of Business and Industry 788 Fairview Dr. #100 Carson City, Nevada 89701	Grant Sawyer Building 555 E. Washington Blvd., Suite 4900 Las Vegas, Nevada 89101
Legislative Building 401 South Carson Street Carson City, Nevada 89710	Nevada Dept. Of Cultural Affairs 100 Stewart St. Carson City, Nevada 89701
The Bradley Building 2501 East Sahara Ave. Las Vegas, Nevada 89104	

A workshop was held in conjunction with a meeting of the special committee to provide advice on private activity bonds (Volume Cap Committee) established pursuant to NAC 348A.280 on March 25, 2005, and the minutes of that meeting, attached hereto, contain a summary of the discussion held regarding the proposed amendments. Thereafter, on or about July 12, 2005, the Director of the Department of Business and Industry (Director) issued a Notice of Intent to Act Upon a Regulation which incorporated in the proposed amendments the suggestions of the parties attending the March 25<sup>th</sup> workshop as well as the recommendations of the Volume Cap Committee.

An additional workshop and public hearing was held on September 1, 2005. At that workshop and hearing John Swendseid, an attorney representing Clark County, Nevada, testified in support of the proposed amendments.



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](mailto:dwalther@dbi.state.nv.us).

**2. The number persons who:**

- (a) **Attended each hearing:** March 25, 2005 – 10; September 1, 2005: 4
- (b) **Testified at each hearing:** March 25, 2005 – 10; September 1, 2005: 3
- (c) **Submitted to the agency written comments:** No written comments were submitted.

**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 September 1, 2005 and included all of the changes suggested at the workshop and Volume Cap Committee meeting held on March 25, 2005.

**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

Local governments 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.

(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 regulations 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.**

N/A

**10. Is the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

The Director has determined that the proposed regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination the Director considered the fact that the proposed amendment only applies to activity by local and state government officials and imposes no direct requirements on any private businesses.