

LCB File No. R095-05

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

Notice of Workshop to Solicit Comments on Proposed Regulation

The Director, Department of Business and Industry, 555 E. Washington Blvd, Suite 4900, 702-486-2750 is proposing the Amendment of regulations pertaining to chapter 348A of Nevada Administrative Code. A workshop has been set for 10:00 a.m., on Thursday, September 1, 2005, at the following videoconference locations:

Hearing Room
Department of Business and Industry,
788 Fairview Drive
Carson City, Nevada 89701

Conference Room
Department of Business and Industry, Manufactured Housing Division
2501 East Sahara Avenue, Suite 204
Las Vegas, Nevada 89104

The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations:

1. The inclusion of contingency/reversion provisions in local government resolutions that may act to require the reversion of cap after it has been accepted by the Director and transferred to the Housing Division;
2. The payment of cap transfer fees for state cap transferred to local governments for allocation to specified projects or uses;
3. The requirement that local governments transfer local government cap to the State only for specified projects;
4. The requirement that the Secretary of the Board of Finance receive original volume cap transfer certificates and other official volume cap documents;
5. The requirement that federal tax forms for the reporting of volume cap carry forward be filed by February 15th of each year;
6. A possible new requirement that the OBFP and/or the State Board of Finance receive copies of documents in which one local government transfers volume cap to another local government.

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting Doug Walther, Manager, Office of Business Finance and Planning, 788 Fairview Drive, Suite 100, Carson City, Nevada, 775-687-4246, dwalther@dbi.state.nv.us.

This Notice of Workshop to Solicit Comments on Proposed Regulation has been sent to all persons on the agency’s mailing list for administrative regulations 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 89701	Nevada Dept. Of Cultural Affairs 100 N. Stewart St. Carson City, Nevada 89701
The Bradley Building 2501 East Sahara Ave. Las Vegas, Nevada 89104	

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 Thursday, September 1, 2005, 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 348A 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 accomplish the following:

(A) Allow the Director of the Department of Business and Industry (“Director”) to better account for volume cap used by local governments by requiring local governments to report to the Director and State Board of Finance transfers of volume cap to another local government;

(B) Provide more flexibility to local governments in the use of volume cap by allowing local governments to reserve and carry forward, as appropriate, volume cap for a specified “type” of project or use without having to allocate it to a specific project;

(C) Provide better dissemination of information on the use of volume cap by requiring that the certificates required by NAC 348A.220 (4) and (6) be filed with the State Board of Finance and posted on the web site of the Office of Business Finance and Planning (“OBFP”);

(D) Allow the Director to better account for volume cap used by the Director, other state agencies and local governments, and provide better dissemination of information on the use of volume cap, by requiring certificates allocating such volume cap be filed with and posted on the web site of the OBFP, requiring the OBFP to maintain the official record of such certificates, and requiring the filing of copies of such certificates with the State Board of Finance;

(E) Provide better dissemination of information regarding the state volume cap ceiling by requiring the Director to determine the amount of available volume cap at the beginning of each year, posting that information on the web site of the OBFP, and notifying a representative of each local government receiving an allocation of volume cap;

(F) Provide greater flexibility to local governments by allowing them to designate an authorized use for the reservation and carry forward of volume cap up to the maximum period (February 15 of the year following the year to which the volume cap relates) authorized by the Internal Revenue Code.

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

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 # 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.

N/A

9. A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608.

The Director has considered the general nature of private activity bonds and the language of NRS Chapter 348A and the proposed regulations in determining that this proposed regulation will not impose a direct and significant economic burden upon a small business.

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 September 9, 2005. 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 4900 Las Vegas, Nevada 89102 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:

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 89701

Nevada Dept. Of Cultural Affairs
100 N. Stewart St.
Carson City, Nevada 89701

The Bradley Building
2501 East Sahara Ave.
Las Vegas, Nevada 89104

LCB File No. R095-05

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

Issuance of Private Activity Bonds

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

Purpose: To clarify procedures for allocation of state volume cap.

Authority: NRS 348A.040

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 George Taylor, Senior Deputy Attorney General, Attorney General's Office, Capital Complex, Carson City, Nevada 89710, phone (775) 684-1230; fax (775) 684-1108

Section 1. NAC 348A.180 is hereby amended to read as follows:

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 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 that representative.*

2. A local government may transfer to the director, by resolution, all or any portion of its volume cap or local population share *for any specified project or use authorized by the Internal Revenue 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 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. 2. NAC 348A.220 is hereby amended to read as follows:

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, ~~for~~ projects, *use or uses* 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 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. *The Director will file a copy of the certificate with the secretary of the state board of finance and post a copy on the web site 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.

7. 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 and mail a copy of the certificate to the representative of the local government, *file a copy with the secretary of the state board of finance and post a copy on the web site of the Office of Business Finance and Planning.*

Sec. 3. NAC 348A.240 is hereby amended to read as follows:

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. 4. NAC 348A.250 is hereby amended to read as follows:

The director will, at the beginning of each calendar year, determine the state ceiling for that year, based upon the state estimate of the population, *notify an appropriate representative of each local government of that allocation and post the information on the website of the Office of Business Finance and Planning.*

Sec. 5. NAC 348A.260 is hereby amended to read as follows:

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 *Office of Business Finance and Planning* ~~[secretary of the state board of finance]~~ 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 *Office of Business Finance and Planning* ~~[secretary of the state board of finance]~~ 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.

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. 6. NAC 348A.270 is hereby amended to read as follows:

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 and copies of such certificates shall be made available on its website. The Director shall file a copy of each certificate executed pursuant to NAC 348A.260 with the secretary of the state board of finance.*