

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

Overall Authority: NRS 349.630

These proposed changes to Chapter 349 of the Nevada Administrative Code are offered by the Director of the State of Nevada, Department of Business and Industry pursuant to the authority provided in NRS 349.630. The intention of these regulations is to further explain the criteria that will be used by the Director's Office when determining whether or not to approve an industrial development revenue bond application as stated in NRS 349.580.

NAC 349.020 Purpose and objectives. (NRS 349.630) The provisions of NAC 349.010 to 349.080, inclusive, 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 ~~and~~ *and to ensure that any debt instrument or instruments issued by the Director are at the lowest cost of capital to the borrower or obligor as measured by the standard True Interest Cost calculation and are deemed safe and secure to the fullest extent possible given the level of risks to the purchasers of such debt, and that all bond structures are approved by the State Board of Finance.*

NAC 349.030 Financing. The department will finance:

1. Construction loans for the interim financing of the new construction, improvement, rehabilitation or redevelopment of a project.
2. Loans for the permanent financing of projects, including their acquisition.
3. *Bonds of either tax-exempt or taxable character for either construction or permanent financing of a project provided:*
 - a. *All bond instruments regardless of tax character are credit enhanced and publicly sold into the bond market if issuance size is greater than \$5,000,000;*
 - b. *Any bond issuance of less than \$5,000,000 may be privately placed with sophisticated investors. Additionally, that all bond purchase agreements ensure that sufficient protections are incorporated into the transaction documents to prevent sale or transfer of the bonds only to other sophisticated investors;*
 - c. *Any variable rate bonds must have sufficient hedging or sophisticated interest rate protection mechanisms in place at time of issuance to ensure that the financial goals of the project are protected and that the cost of such interest rate protection mechanisms are fully accounted for in determining the lowest costs of capital alternatives to bond structures;*
 - d. *The Director will determine the percentage of tax-exempt to taxable bonds a project may receive based upon the amount of tax-exempt private activity bonding authority available for use amongst competing applicants. The Director will assign an investment banking company for all publicly sold bond issues based on a competitive selection process, and all proposed costs of bond issuance must be pre-approved by the Director prior to the release of any bond marketing or preliminary official statement.*

NAC 349.040 Application for financing: Contents and form; fees; deposit; administrative charge; action by director. (NRS 232.520)

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 *broken down in sufficient detail and timing to allow for legal and tax-exemption analysis*, including any ~~[incidental]~~ *expected transaction costs and any costs expected to be reimbursed to the project's developer* associated with the project;
 - (c) A description of the management of the project *including (1) copies of any Partnership Agreement or Articles of Incorporation for the sponsoring organization, (2) for bond amounts greater than \$5,000,000, audited financial statements and three years Internal Revenue Service tax returns of the company, if incorporated, or of the principals; if a partnership, or for bond amounts less than \$5,000,000, a five-year financial operating history and three years Internal Revenue Service tax returns of the proposing organization, (3) Certificate of Registration from the Nevada Secretary of State pursuant to NRS 88.8580 or 86.551, as appropriate, for the sponsor's corporation or partnership, and (4) Articles of Organization and any resolutions or operating agreements which establish signing authority for persons who will be executing legal documents associated with the proposed financing;*
 - (d) Information on the site of the project and the proposed facilities, including all information related to the status of any required environmental permits *from all jurisdictions with authority of such businesses, including (1) a copy of a Phase I Environmental Report on the project site that is less than twelve months old; (2) geotechnical reports on the project site that are less than twelve months old; (3) a certified "as-built" survey of the subject property, ALTA qualified, showing the project and related equipment properly placed on the subject site; (4) a Parcel Map for the project site; (5) a copy of the zoning authorization from the local jurisdiction appropriate for end-use; and (6) if the property is located on a FEMA flood zone, a copy of the zone with subject property sited upon it;*
 - (e) The location of the project, including the relationship of the project to any existing facilities adjacent to the site; *any Contract of Purchase for the land upon which the proposed project is to be sited or lease agreement; identification of any or all related parties from the selling and purchasing entities or leasee and lessor entities; identification of all sources of funds for the purchase or lease; title report on the project site, including a list of all exceptions and a pro forma ALTA policy to be issued;*
 - (f) A description of all ~~[proposed expenditures of]~~ *sources and uses of funds, including* bond receipts, *equity sources at not less than twenty-five percent of total sources, which must be in the form of cash or other fungible assets, as well as a detailed timing or draw schedule that utilizes all available sources, and* ~~[including]~~ a detailed description of the machinery and equipment to be acquired by the financing;
 - (g) The economic feasibility of the project *as demonstrated by certified appraisals, not less than twelve months old, market studies prepared by a Director-approved-market-analysis firm or by an approved credit enhancer's appraisal and a copy of the loan underwriting package;*
 - (h) A business history of the applicant *including a copy of any development agreement and any general contract agreement between project applicant and any contracting party, and, if the project operator is different than the project applicant, a copy of any management agreement; [and]*

(i) *Energy/weatherization audit findings and acceptance by the project applicant incorporating energy efficiency characteristics on all equipment and buildings; and*

(j) 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~~ *\$500* if the amount of the requested bonds is \$~~3~~*5*,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~~ *\$1,250 for amounts above \$5,000,000.*

~~[(c) One thousand dollars if the amount of the requested bonds is \$6,000,000 or more.]~~

3. The director will, within 30 days after receipt of a completed application, notify the applicant whether or not his application is accepted.

4. If the *complete* application is not accepted, the director will provide the applicant an opportunity to discuss the reasons for denial *and may allow up to an additional 30 days for applicant to provide additional supporting materials in order to resubmit his application for consideration.*

5. If the application is accepted, the ~~the~~ Director will:

(a) Direct the applicant to submit a deposit *of \$75,000 toward* ~~based on~~ an estimate of the total costs of the ~~the~~ Department to process the application and finance the project *or issue the bonds. The balance of any costs above the deposit amount will be due and payable at transaction closing. Any balances leftover from the deposit will be remitted to the applicant at the transaction closing.* The deposit will not exceed ~~1 percent~~ *the lower of two percent* of the principal amount of the financing *or the IRS limit, whichever is lower*, payable before or at the time the bonds are issued.

(b) Send the applicant an inducement letter:

(1) Stating the intention of the ~~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 *or bonds that will be submitted into the Findings for local and state approval;*

(3) Directing the applicant to submit any *missing or additional* supporting documentation as may be required by the ~~the~~ Director; and

(4) Stating that the term of the director's commitment is ~~1~~ *one* year. At the expiration of the term, the ~~the~~ Director may extend the commitment for a similar term *if there has been a demonstration of good faith by the applicant in preparing or submitting additional supporting documentation. An extension fee of \$1,250 will be charged for any one-time extension and re-drafted Inducement Certificate* ~~[upon receipt of a nonrefundable extension fee in the amount of \$1,500].~~

6. Whether or not the bonds are issued, the deposit received on behalf of the ~~the~~ Director *as described above in subsection (5)(a)* will be used to reimburse the ~~the~~ Department for the cost of a project incurred in processing the application and financing the project *and any costs incurred by the Department for the financial, legal, and banking services engaged for 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.]~~

The portion of the deposit that is not required to reimburse the ~~the~~ Department for its costs ~~of a~~ relating to the project will be refunded to the applicant. The cost of a project incurred by the ~~the~~ Director in excess of the deposit will be charged to the applicant and must be paid ~~on or before the date of the issuance of the bonds~~ whether or not the financing goes to completion.

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 ~~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 ~~the~~ Director may charge and recover from the obligor a reasonable fee for such services, resources or costs.

8. The ~~the~~ Director may modify the principal amount of the bonds downward, and the other terms and conditions of the financing before the closing so long as any material changes are consistent with the Board of Finance's approval of the project.

9. The ~~the~~ Director will establish the interest rate based annual inspection and compliance fee to be charged to the obligor for the financing and, if appropriate, or otherwise in accordance with the terms of the financing agreement, ~~will~~ may adjust the interest rate based fee ~~from time to time~~.

10. All bond financings shall have complete records of market conditions leading up to and immediately post-bond issuance maintained with the bond transaction files. Material variances for like credit risks shall be analyzed by the Director.

11~~10~~. The ~~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.

12~~10~~. The ~~the~~ Director will establish the appropriate accounts and procedures for the deposit and expenditure of money received from the sale of bonds with an appropriate fiduciary bank of the Director's choosing. The Director will conduct a request for proposal process periodically for fiduciary services needed for the Director's bond programs. The criteria utilized in the selection of fiduciary services will be consonant with market conditions at the time of selection and particular attention will be placed on criteria of Trustee competency and institutional safety and experience ~~pursuant to this section~~.

13~~10~~. As used in this section, "cost of a project" has the meaning ascribed to it in NRS 349.430.

~~[NAC 349.060 Trustee: Selection; qualifications; resignation; discharge.~~

~~—1. The applicant may select, with the approval of the director, a bank or trust company to serve as trustee under the bond certificate, indenture, or resolution for the applicable bond issue if a trustee is required. The director will appoint a trustee if no trustee is selected by the applicant.~~

~~—2. In determining the qualification of the trustee, the director will take into consideration:~~

~~—(a) The experience of the bank or trust company in acting as a trustee for public issuers.~~

~~—(b) The amount of its capital stock, surplus and undivided profits.~~

~~—(c) Its investment capabilities.~~

~~—(d) The size and experience of its professional staff.~~

~~—(e) The cost of the services to be provided in relation to the number of services to be offered, and the quality and experience of the professional staff which will provide the services.~~
~~—3. Unless otherwise provided for in the applicable bond certificate, indenture, or resolution, the trustee may at any time resign or be discharged from his duties if he gives the department at least 60 days' written notice and provides any notice that is required by the respective bond certificate, indenture, or resolution.]~~

NAC 349.080 Requests for clarification, relief or information. (NRS 349.630) Any person desiring clarification of NAC 349.010 to 349.080, inclusive, relief from the strict application of any of the terms of those sections, or information concerning procedures for dealing with the ~~{d}~~Department may address a written request to the ~~{d}~~Director at:

Director, Department of Business and Industry
~~{555 East Washington Avenue, Suite 4900}~~ *901 South Stewart Street, Suite 1003*
~~{Las Vegas, Nevada 89101-1075}~~ *Carson City, NV 89701*