

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

**LCB File No. R099-13**

Effective June 23, 2014

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

AUTHORITY: §§1-4 and 11, NRS 386.649; §§5 and 6, NRS 386.633 and 386.649; §7, NRS 386.628 and 386.649; §§8-10, NRS 386.634 and 386.649.

A REGULATION relating to charter schools; establishing a procedure for requesting the issuance of bonds by the Director of the Department of Business and Industry to finance a project for the benefit of a charter school; requiring that such a project comply with applicable state and federal statutes and regulations; specifying certain mandatory and optional terms to be included in a financing agreement between the Director and an obligor; imposing certain requirements governing the sale of bonds, the investment of the proceeds of bonds and bonds which provide for a variable rate of interest; and providing other matters properly relating thereto.

**Legislative Counsel's Digest**

NRS 386.630 authorizes the Director of the Department of Business and Industry to issue revenue bonds to finance projects for the benefit of charter schools. **Section 5** of this regulation sets forth the required contents of a request for the issuance of such bonds. **Section 6** of this regulation provides that a project must comply with all applicable state and federal statutes and regulations to qualify for bond financing. After a request for bond financing is approved by the Director, **section 7** of this regulation requires the proposed obligor to enter into a financing agreement with the Director, and also enumerates certain mandatory and optional provisions of such an agreement. If the State Board of Finance approves a request for bond financing, **section 8** of this regulation provides that the Director may adopt a resolution setting forth the final terms of the bonds. **Section 9** of this regulation provides that the proposed costs of issuing bonds must be approved by the Director before any preliminary official statement or marketing materials are released. **Section 10** of this regulation provides for the sale of the bonds and the investment of the proceeds of the bonds, and requires the use of certain mechanisms to maintain the interest rate of variable-interest bonds within a range determined by the Director. **Section 11** of this regulation establishes a procedure to obtain additional information from the Director about the interpretation of the provisions of this regulation or the procedure for submitting a request for bond financing.

**Section 1.** Chapter 386 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 11, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Bond financing” means the financing of a project through the issuance of bonds pursuant to NRS 386.612 to 386.649, inclusive.*

**Sec. 4.** *“Charter school” means the charter school for whose benefit a project is being financed.*

**Sec. 5.** *A request by an obligor for bond financing pursuant to NRS 386.630 and 386.632 must be made by the submission of a written application to the Director, on a form prescribed by the Director. In addition to any other information required by NRS 386.612 to 386.649, inclusive, the application must include or be accompanied by:*

*1. The name of the obligor and any other name under which the obligor does business or expects to do business;*

*2. The business and residential addresses of the obligor, as applicable, including the street name and number of each address;*

*3. If the obligor is a corporation, association or other entity described in NRS 386.621, other than a governmental entity, the name and residential address of each director, officer, partner and manager of the obligor, as applicable;*

*4. Information relating to each bond credit rating received by the obligor within the 12 months immediately preceding the date of the application;*

*5. A description of the project;*

6. *The address of the project, including the street name and number of that address;*
  7. *The number of pupils attending the charter school;*
  8. *A statement by the sponsor of the charter school that the charter school is not in default under its current written charter or charter contract;*
  9. *If the written charter or charter contract of the charter school requires a review of the project by the sponsor of the charter school, documentary evidence that the review has been completed;*
  10. *A statement of all local, state and federal requirements which must be complied with to complete the project and the status of any process of approval applicable to each such requirement;*
  11. *The expected date of maturity and the amount of the bonds; and*
  12. *Any other information which the Director determines is necessary in a particular case and which is reasonably related to the obligor's qualifications for the bond financing.*
- Sec. 6.** *To qualify for bond financing, a project must comply with all applicable state and federal statutes and regulations, including, without limitation, statutes and regulations relating to environmental protection and energy efficiency.*
- Sec. 7.** *If a request for bond financing is approved by the Director:*
1. *The obligor shall enter into a written financing agreement with the Director, contingent upon action by the State Board of Finance pursuant to NRS 386.632 and 386.633, setting forth the respective rights and duties of the Director and the obligor.*
  2. *In addition to the provisions required by NRS 386.619, the financing agreement:*
    - (a) *Must set forth any fees of the Department of Business and Industry applicable to the bond financing.*

*(b) May require the obligor to disclose such records and information and be subject to such audit requirements as the Director deems appropriate.*

*(c) Must require the obligor to pay in advance the estimated costs of processing and implementing the request for bond financing and the financing agreement, in such amounts and at such times as determined by the Director.*

*3. The Director will submit his or her findings to the State Board of Finance for approval pursuant to NRS 386.632 and 386.633.*

*Sec. 8. If the State Board of Finance approves a request for bond financing, the Director may adopt a resolution setting forth the final terms of the bonds.*

*Sec. 9. The proposed costs of issuing the bonds must be approved by the Director before any preliminary official statement or marketing materials are released.*

*Sec. 10. 1. Bonds may be sold in the public bond market or privately placed.*

*2. While they remain outstanding, any bonds providing for a variable rate of interest must use hedging or another mechanism to maintain the interest rate of the bonds within a range determined by the Director. The cost of any such protections must be accounted for in calculating the cost of such bonds in comparison to the cost of bonds not providing for a variable rate of interest.*

*3. Any investment of the proceeds of bonds must first be approved by the Director and must comply with the requirements of chapter 386 of NRS.*

*Sec. 11. Any person who wishes to obtain:*

*1. Clarification of any provision of sections 2 to 11, inclusive, of this regulation; or*  
*2. Additional information about the procedure for submitting an application pursuant to section 5 of this regulation,*

*↳ may mail a written request addressed to the attention of the Director at the Department of Business and Industry, 555 East Washington Avenue, Suite 4900, Las Vegas, Nevada 89101-1075.*

**INFORMATION STATEMENT FOR ADOPTION OF REGULATION FOR NRS386.612  
TO 386.649 – CHARTER SCHOOL FINANCING LAW**

**DATE:** June 18, 2014

**TO:** All Interested Parties

**FROM:** Nevada Department of Business and Industries, Director's Office

**1. A clear and concise explanation of the need for the adopted regulation.**

The proposed regulations promulgated under NRS 386.612 to 386.649 facilitate and helps meet the critical need for access to capital for Charter Schools in Nevada Businesses by providing them the ability to get tax-free bonds. These regulations establish a procedure for requesting the issuance of bonds by the Director of the Department of Business and Industry to finance a project for the benefit of a charter school.

**2. 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 regulations were sent by U.S. mail and email to persons who were known to have an interest in the subject of Charter School Financing Law as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Department of Business and Industry, [www.business.nv.gov](http://www.business.nv.gov), mailed to all county libraries in Nevada and posted at the following locations:

- Nevada State Library & Archives, 100 North Stewart Street, Carson City, NV 89701
- Legislative Building, 401 South Carson Street, Carson City, NV 89701
- Grant Sawyer State Building, 555 East Washington Avenue, Las Vegas, NV 89101
- Department of Administration, 209 East Musser Street, Room 200, Carson City, Nevada 89701-4298
- Department of Business & Industry, 555 East Washington Avenue, Suite 4900, Las Vegas, NV. 89101
- Department of Business & Industry, 1830 College Pkwy, Suite 100, Carson City, NV. 89706

A workshop was held pursuant to NRS 233B.061 on January 14, 2014 and the minutes of that meeting, attached hereto, contain a summary of the discussion held regarding the proposed amendments. Thereafter, on or about January 22, 2014, the Director of the Department of Business and Industry issued a Notice of Intent to Act Upon a Regulation which incorporated the proposed regulations reviewed by the parties attending the January 14th workshop.

A public hearing was held on February 25, 2014. At that hearing no comments were given on the proposed regulations. A copy of this summary of the public response to the proposed regulation

may be obtained from the Department of Business and Industry, 555 East Washington Avenue, Suite 4900, Las Vegas, NV 89101 or telephone Kent Steadman at (702) 486-3755 or email at [ksteadman@business.nv.gov](mailto:ksteadman@business.nv.gov).

**3. The number of persons who:**

**(a) Attended each hearing:** January 14, 2014: 10; February 25, 2014: 5

**(b) Testified at each hearing:** January 14, 2014: 0; February 25, 2014: 0

**(c) Submitted to the agency written comments:** Attached written comments were received from Ballard Spahr LLP and GreenbergTraurig Law firm. Email comments from a Mr. Bill Evans are also included. Mr. Evans felt that the statute was unfair in the way it treated start up charter schools.

**4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing: Name, Telephone number, Business address, Business telephone number, Electronic mail address, Name of entity or organization represented:**

Name	Company	Email	Address	Phone Number
Arthur Ziev	ACADEMICA NEVADA	aziev@yahoo.com	9 Osprey Drive, Ocean Ridge, FL 33435	561-736-1687
Clayton Howell	ACADEMICA NEVADA	chowell@academicanv.com	8235 S. Eastern Ave Ste 150, Las Vegas, NV 89123	(702) 431-6260
Robert Howell	ACADEMICA NEVADA	bhowell54@yahoo.com	8235 S. Eastern Ave Ste 150, Las Vegas, NV 89123	(702) 431-6260
Ryan Seeves	ACADEMICA NEVADA	rreeves@academicanv.com	8235 S. Eastern Ave Ste 150, Las Vegas, NV 89123	(702) 431-6260
Bill Evans	Atalyst Capital Markets	bill@atalyst.com	3883 Howard Hughes Pkwy., Suite 800, Las Vegas, NV 89169	(702) 504-6362
Jackie Delaney	Atalyst Commercial Mortgage	jackie@atalystcommercial.com	3883 Howard Hughes Pkwy., Suite 800, Las Vegas, NV 89169	702-529-0200
Jacob Carlton	Ballard Spahr LLP	carltonj@ballardspahr.com	One Utah Center, Suite 800, 201 South	801.517.6821

			<b>Main St., SLC, UT 84111</b>	
<b>Ryan Warburton</b>	<b>Ballard Spahr LLP</b>	<b>warburton@ballardspahr.com</b>	<b>One Utah Center, Suite 800, 201 South Main St., SLC, UT 84111</b>	<b>801.531.3072</b>
<b>Abbe Mattson</b>	<b>Explore Knowledge Academy</b>	<b>amattson@ekacademy.org</b>	<b>5871 Mountain Vista St., Las Vegas, NV 89120</b>	<b>702.870.5032</b>
<b>Collin Seale</b>	<b>Greenberg Traurig Law</b>	<b>sealec@gtlaw.com</b>	<b>3773 Howard Hughes Parkway, Suite 400, North Las Vegas, NV 89169</b>	<b>702.599.8074</b>
<b>Allyson Kellogg</b>	<b>State Public Charter School Authority</b>	<b>akellogg@spsca.nv.gov</b>	<b>1749 North Stewart Street Suite 40, Carson City, NV 89706</b>	<b>775-687- 9178</b>
<b>Brian Flanner</b>	<b>State Public Charter School Authority</b>	<b>bflanner@spsca.nv.gov</b>	<b>1749 North Stewart Street Suite 40, Carson City, NV 89706</b>	<b>775-687- 9170</b>
<b>Steve Canavero</b>	<b>State Public Charter School Authority</b>	<b>scanavero@spsca.nv.gov</b>	<b>1749 North Stewart Street Suite 40, Carson City, NV 89706</b>	<b>775-687- 9160</b>
<b>Tom McCormack</b>	<b>State Public Charter School Authority</b>	<b>tmccormack@spsca.nv.gov</b>	<b>1749 North Stewart Street Suite 40, Carson City, NV 89706</b>	<b>775-687- 9149</b>
<b>Russell Caldwell</b>	<b>The Russell Caldwell Company</b>	<b>caldwell1@me.com</b>	<b>5444 Stoneybrook Dr, Broomfield, CO 80020</b>	<b>303.726.1791</b>
<b>Colleen Platt</b>	<b>Office of Attorney General Office</b>	<b>cplatt@ag.nv.gov</b>	<b>100 N. Carson Street, Carson City, NV 89701</b>	<b>775-684- 1222</b>
<b>Keith Marcher</b>	<b>Office of Attorney General Office</b>	<b>kmarcher@ag.nv.gov</b>	<b>100 N. Carson Street, Carson City, NV 89701</b>	<b>775-684- 1201</b>



**5. A description of how comments were 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.

**6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

In response to concerns expressed at the Legislative Commission meeting on March 28, 2014, the revised adopted version of the regulation eliminates language in section 11 referring to a grant of relief from the other provisions of the regulation.

These regulations promulgated under NRS 386.612 to 386.649 facilitate and helps meet the critical need for access to capital for Charter Schools in Nevada businesses by providing them the ability to get tax-free bonds.

**7. 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.**

1. The estimated economic effect of the regulation on the businesses, which it is to regulate:
  - a. Adverse effect:
    - i. Immediate effect - No adverse effect due to the promulgation of this regulation.
    - ii. Long-term effect - No adverse effect due to the promulgation of this regulation.
  - b. Beneficial effect:
    - i. Immediate effect – Charter schools will be able to apply for and potentially receive low interest bond financing, which will enable them to construct and own their own buildings rather than leasing their buildings. This may enable them to offer a broader range of services because they will not be spending most of their money on the lease of the building.
    - ii. Long-term effect - Charter schools will have more stability and potentially lower costs because they will own their buildings and will not be subject to the whims of a landlord who could raise the rental prices unnecessarily.
2. The estimated economic effect of the regulation on the public:
  - a. Adverse effect:
    - i. Immediate effect - No adverse effect due to the promulgation of this regulation.
    - ii. Long-term effect - No adverse effect due to the promulgation of this regulation.

b. Beneficial effect:

- i. Immediate effect – The public may become aware of low-interest bond financing for charter schools and encourage a charter school to be built in their neighborhood.
- ii. Long-term effect – With charter school in a potentially more stable situation with regards to their buildings, the public will likely feel better about those schools and perhaps enroll their children there.

**8. 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.

**9. A description of any regulations of other state or government agencies of 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.

**10. 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

**11. 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