

**PROPOSED REGULATION OF THE
BOARD OF DIRECTORS OF THE NEVADA STATE
INFRASTRUCTURE BANK**

LCB File No. R017-22

February 25, 2022

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

AUTHORITY: §§ 1-4, 6-13 and 17-20, NRS 408.55071; §§ 5, and 14-16, NRS 408.55071 and 408.55074, as amended by section 17 of Senate Bill No. 430, chapter 553, Statutes of Nevada 2021, at page 3814.

A REGULATION relating to the Nevada State Infrastructure Bank; establishing procedures for the review of applications for a loan or other financial assistance submitted to the Bank; establishing considerations of the Board of Directors of the Bank in reviewing applications; establishing requirements for obtaining a loan or other financial assistance from the Bank and the terms of such loans or other financial assistance; establishing requirements for work hours performed on construction projects funded in whole or in part by the Bank; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law creates the Nevada State Infrastructure Bank within the Department of Transportation, the purpose of which is to provide loans and other financial assistance to qualified borrowers for the development, construction, repair, improvement, operation, maintenance, decommissioning and ownership of certain facilities and infrastructure as necessary for public purposes. (NRS 408.55069, as amended by section 15 of Senate Bill No. 430, chapter 553, Statutes of Nevada 2021, at page 3812)

Section 5 of this regulation establishes requirements for information which must be included in an application for a loan or other financial assistance from the Bank.

Sections 6-9 of this regulation require the staff of the Bank to review, analyze and obtain certain information regarding each application for a loan or other financial assistance that is submitted to the Bank. **Section 10** of this regulation requires the staff of the Bank to prepare a report containing the result of the analysis and to make a recommendation regarding whether to approve or reject the application and the amount and terms of the loan or other financial assistance to offer to the qualified borrower, if the application is approved.

Section 11 of this regulation requires the Board of Directors of the Bank, in evaluating applications, to consider whether approval of an application is consistent with the report prepared by the staff of the Bank, certain environmental standards and goals of the State and the goal of the Bank to dedicate at least 40 percent of the principal amount of the loans and other financial

assistance provided by the Bank to projects located in certain areas of the State. **Section 11** also requires the Bank to collect data regarding where qualified projects are located and the impact of those projects.

Section 12 of this regulation prohibits the Board of Directors from approving an application by an applicant which fails to meet certain standards and authorizes the Board of Directors to reject an application by an applicant who previously defaulted on a debt.

Section 13 of this regulation requires a qualified borrower to pay an origination fee as a condition of closing on a loan or other financial assistance from the Bank.

Section 14 of this regulation establishes provisions governing requirements which may be placed in a financing agreement by the Board of Directors to provide sufficient security to the Bank and to address the unique credit features of a qualified borrower or qualified project.

Sections 15 and 16 of this regulation establish provisions governing how the term of a loan or other financial assistance and the interest rate on a loan or other financial assistance with the Bank will be determined. **Section 16** also requires the inclusion of certain provisions regarding loan repayments in a financing agreement with the Bank and authorizes a qualified borrower to make prepayments on a loan or other financial assistance subject to the payment of certain premiums.

Section 17 of this regulation requires that a certain percentage of work hours performed on a qualified project be performed by residents of Nevada, including disadvantaged workers and apprentices, including first year apprentices. **Section 17** also authorizes a qualified borrower who is unable to comply with these requirements to seek an exemption from the Executive Director of the Bank.

Sections 18-20 of this regulation create in the Nevada State Infrastructure Bank Fund the Affordable Housing Investment Trust, the Charter School Capital Needs Revolving Account and the Federal Infrastructure Matching Account and authorize the Board of Directors of the Bank to approve an application for a loan or other financial assistance from those accounts. **Sections 18-20** establish the monetary limits for loans and other financial assistance provided through these accounts and requires construction performed on a qualified project paid for in whole or in part from these accounts to be performed under a project labor agreement.

Section 1. Chapter 408 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 20, 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. *“Project labor agreement” means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. § 158(f).*

Sec. 4. *“Staff of the Bank” means the Executive Director and any employee of the Bank hired pursuant to NRS 408.55072.*

Sec. 5. 1. *A qualified borrower who wishes to receive a loan or other financial assistance from the Bank must submit an application to the Bank in the form prescribed by the Board of Directors.*

2. *An applicant for a loan or other financial assistance from the Bank must include in the application an explanation of the potential environmental impacts of the qualified project and demonstrate in the application for the loan or other financial assistance that construction of the eligible project may feasibly be completed not later than 2 years after the Board of Directors approves the application. For the purposes of this section, it is feasible for an eligible project to be completed not later than 2 years after the Board of Directors approves the application if, not later than 2 years after such approval, the portion of the eligible project for which the Bank provides a loan or other financial assistance will satisfy the standards for completeness or ability to begin operation set forth in the contract for the construction of the project. To demonstrate that an eligible project may feasibly be completed not later than 2 years after the Board of Directors approves the application, the applicant must:*

(a) Provide evidence that the applicant has applied for and received all permits or approvals necessary for construction of the project.

(b) Identify a source of revenue to repay the Bank that is acceptable to the Board of Directors. Forms of revenue which the Board of Directors may deem to be acceptable include:

(1) Revenue from a water or sewer enterprise or special fund if the qualified project will be part of a revenue-producing water or sewer system.

(2) Revenue from other enterprise or special funds if the qualified project will be part of a revenue-producing enterprise, including, without limitation, a port, airport, solid waste system, bridge, toll or parking facility.

(3) Payments on a lease of the assets of an applicant that are used to secure the loan or other financial assistance.

(4) Assessments or taxes levied on the projects located in the jurisdiction of the applicant.

(5) Tax revenue.

(6) Other sources of revenue, including, without limitation, tax increment financing, housing revenue, rental payments and state or local funds that are provided to operators of charter schools.

(7) Other sources of repayment or alternative financing structures acceptable to the Board of Directors.

(c) Identify all sources of funding for the project and demonstrate that the applicant has obtained commitments to provide such financing that are acceptable to the Board of Directors.

(d) Provide such other information as the Board of Directors may require to demonstrate that it is feasible for the qualified project to be completed not later than 2 years after the Board of Directors approves the application.

Sec. 6. *For each application for a loan or other financial assistance submitted to the Bank, the staff of the Bank shall:*

1. Review the application for completeness, including, without limitation, any attachments or exhibits.

2. Confirm that the governing body of the applicant has approved the application.

3. *Confirm that the applicant is a qualified borrower and the project is an eligible project.*
4. *Confirm that the proposed source of repayment is appropriate for the loan or other financial assistance from the Bank and that the applicant has the ability to repay the loan or other financial assistance from the proposed source of repayment.*
5. *Determine the impact of the loan or other financial assistance on the finances and operations of the applicant.*
6. *Determine whether the applicant has unmet capital needs that could be detrimentally affected by the loan or other financial assistance or that could detrimentally affect the ability of the applicant to repay the loan or other financial assistance.*
7. *Review the audited financial statements of the applicant for the immediately preceding 5 years or, if the applicant is a new entity with less than 5 years of financial statements, review the existing audited financial statements and a feasibility study for the eligible project provided by the applicant.*
8. *Conduct a financial analysis of the applicant's general credit, including, without limitation:*
 - (a) *An analysis of the financial statements of the applicant using criteria appropriate for an analysis of municipal credits or private credits, as applicable;*
 - (b) *A review of any official statements or prospectus used by the applicant in conjunction with the issuance of bonds;*
 - (c) *Conducting discussions with the financial advisor and underwriter of the applicant to assist in evaluating the applicant's financial condition;*
 - (d) *A review of reports of bond rating agencies, where applicable;*

(e) For applicants who are governmental units, a review of existing property tax rates and general obligation bonding capacity;

(f) An analysis of the existing indebtedness of the applicant, both secured and unsecured; and

(g) An analysis of cash flow projections.

9. Examine population trends.

10. Examine assessed value trends.

11. Evaluate the relevant legal authority applicable to the applicant, including, without limitation, state law, federal tax law and local ordinances and resolutions.

12. Evaluate the extent to which the management of the applicant understands the obligations, terms and conditions of the loans and other financial assistance provided by the Bank.

13. Determine the readiness of the management of the applicant to assume responsibility for the timely repayment of the loan or other financial assistance.

Sec. 7. In addition to the requirements set forth in section 6 of this regulation, for each application for a loan or other financial assistance submitted to the Bank that, if approved, will be secured solely or primarily by a revenue pledge, the staff of the Bank shall:

1. Determine the amount of revenue available for pledging from the revenue source.

2. Verify that the purpose of the financing can be secured by the proposed revenue source.

3. Evaluate the historical receipt of revenues from the proposed revenue source.

4. Evaluate the historical expenses and transfers paid from the proposed revenue source.

5. *Determine the amount and pledge status of any outstanding debt or other proposed debt secured or to be secured by the proposed revenue source.*
6. *Calculate the amount of cash flow available for debt service and the debt service coverage ratio.*
7. *If the amount of cash flow available for debt service is insufficient to demonstrate that the applicant is able to repay the requested loan or other financial assistance and any existing and other proposed debt, determine if the applicant has cash available in an amount sufficient to establish a rate stabilization fund or debt service reserve fund.*
8. *Measure the revenue from the pledged source against the total operating budget of the applicant.*
9. *Determine the effect on the operating budget if the specific revenue is used for financing purposes.*
10. *Determine the impact of the loan or other financial assistance from the Bank on the fund balances and projected cash flow of the applicant.*

Sec. 8. *In addition to the requirements set forth in section 6 of this regulation, for each application for a loan or other financial assistance submitted to the Bank that will, if approved, have a general fund financing structure, the staff of the Bank shall:*

1. *Determine the sources of and the likely recurrence of the general fund revenues of the applicant.*
2. *Verify that the purpose of the financing is consistent with a general obligation pledge.*
3. *Determine if the eligible project, if undertaken, will result in an increase in annual operating costs to the applicant.*

4. Determine the impact of the loan or other financial assistance from the Bank on the general fund balances and projected cash flow of the applicant.

Sec. 9. In addition to the requirements set forth in section 6 of this regulation, for each application for a loan or other financial assistance submitted to the Bank where the applicant consists of multiple governmental units cooperating under a joint or intergovernmental agreement, the staff of the Bank shall:

1. Review the agreements between the governmental units for consistency with the proposed eligible project and the requested financing.

2. Determine the life of the joint or intergovernmental agreement and assess whether the life of the agreement is consistent with the requested financing term.

3. Confirm that the joint or intergovernmental agreement permits the applicant to enter into a financing agreement with the Bank.

4. Evaluate whether there is official public support for the applicant to enter into a financing agreement with the Bank, which support may consist of a vote of approval by a government body, voter authorization or some other indication of official public support.

Sec. 10. For each application for a loan or other financial assistance submitted to the Bank, the staff of the Bank shall prepare a report containing the analysis of the staff developed in accordance with sections 6 to 9, inclusive, of this regulation, as applicable, including, without limitation, the credit analysis, and make a recommendation to the Board of Directors regarding:

1. Whether to approve or reject the application and, if the recommendation is to reject the application, the reason for the recommendation.

2. *The amount of the loan or financial assistance to offer to the applicant, if the application is approved.*

3. *The terms and conditions to be included in the financing agreement between the Bank and the applicant, if the application is approved.*

Sec. 11. *1. In evaluating and determining whether to approve an application for a loan or other financial assistance from the Bank, the Board of Directors will consider the report prepared by the staff of the Bank pursuant to section 10 of this regulation, whether the qualified project is consistent with the standards and goals set forth in Nevada's Climate Strategy for the year 2020 and the goals for the reduction of greenhouse gas emissions set forth in NRS 445B.380 and 704.7820, and whether approval of an application is consistent with the goal of the Bank to have at least 40 percent of the principal amount of the loans or other financial assistance provided by the Bank be provided to qualified borrowers for qualified projects that are located:*

(a) In a census tract designated as a qualified census tract by the United States Secretary of Housing and Urban Development pursuant to 26 U.S.C. § 42(d)(5)(B)(ii);

(b) In a census tract which has a high level of social vulnerability as determined according to the Social Vulnerability Index developed by the United States Centers for Disease Control;

(c) In a community which the Board of Directors determines to have a relatively large percentage of the population having limited English proficiency;

(d) On tribal lands or in communities where tribal members commonly reside; or

(e) In areas that have been subject to historical instances of redlining, segregation or other discriminatory practices.

2. *The Bank shall collect data regarding:*

(a) The location of qualified projects financed in whole or in part by the Bank including, without limitation, whether a qualified project is located in one of the areas listed in paragraphs (a) to (e), inclusive of subsection 1; and

(b) The impact of such projects on the surrounding area.

Sec. 12. 1. *The Board of Directors will not approve an application for a loan or other financial assistance from the Bank if:*

(a) The applicant is in default on any other debt owed by the applicant unless the default is cured;

(b) The qualified project is not consistent with the standards set forth in Nevada's Climate Strategy for the year 2020 and the goals for the reduction of greenhouse gas emissions set forth in NRS 445B.380 and 704.7820;

(c) The applicant is not a qualified borrower or the project is not a qualified project; or

(d) Based on the report prepared pursuant to section 10 of this regulation, the loan or other financial assistance is not in the best interest of this State.

2. *The Board of Directors may reject an application for a loan or other financial assistance from the Bank by an applicant who has previously defaulted on a debt owed by the applicant but has cured such a default if the Board of Directors determines that the circumstances warrant rejection of the application.*

Sec. 13. 1. *A qualified borrower shall pay a one-time origination fee of \$10,000 or 1 percent of the principal amount of the loan or other financial assistance, whichever is greater, as a condition of closing. The origination fee may be reduced or waived by the Board of Directors if the principal amount of the loan or other financial assistance is less than \$250,000. The origination fee may be financed as part of the loan or other financial*

assistance. The qualified borrower shall pay an annual servicing fee of 0.3 percent of the outstanding balance of the origination fee until the origination fee is fully paid.

2. The Board of Directors may include in the financing agreement a requirement that the qualified borrower pay an amendment fee for each amendment to the financing agreement and documents.

Sec. 14. *1. To address the unique credit features of a qualified borrower or qualified project and to provide sufficient security to the Bank, the Bank, at the direction of the Board of Directors, may include in a financing agreement requirements for additional covenants, credit enhancements or security, including, without limitation:*

(a) A covenant for a debt service reserve fund at the borrower level;

(b) A provision for additional security during the construction or start-up phase of a qualified project; or

(c) Stricter financial covenants for qualified borrowers with limited historical coverage or dependence on a concentrated source of revenues.

2. Staff of the Bank shall discuss the need for the covenants described in this section with the qualified borrower during the underwriting process.

Sec. 15. *1. The Bank shall, in the financing agreement, set the term of a loan or other financial assistance from the Bank, which must be set according to the methodology approved by the Board of Directors and must not exceed the lesser of 35 years or the useful life of the project. A qualified borrower may elect for the loan or other financial assistance to have a maturity date that is sooner than the maximum life of the loan or other financial assistance which may be approved pursuant to the methodology approved by the Board of Directors.*

2. The interest rate of a loan or other financial assistance from the Bank must be set according to the rate-setting methodology established by the Board of Directors pursuant to section 16 of this regulation.

Sec. 16. *1. The Board of Directors will establish a methodology for determining the interest rate on a loan or other financial assistance provided by the Bank. The interest rate on a loan or other financial assistance provided by the Bank must be based on the interest rate benchmark established pursuant to subsection 2 and interest rate adjustments determined pursuant to subsection 3.*

2. The rate-setting methodology must establish an interest rate benchmark based on the Refinitiv Municipal Market Monitor and other nationally recognized benchmarks.

3. The Board of Directors will determine interest rate adjustments based on the following factors, as applicable, depending on the source of revenue to repay a loan or other financial assistance provided by the Bank:

(a) The structure and organization of the applicant;

(b) The local fiscal capacity, as measured by the median household income, debt per user or household and applicable taxes, charges and fees as a percentage of the median household income;

(c) The security for repayment and repayment pledge, as measured by the credit rating and credit review of the applicant and lien position of the Bank's financing as senior, parity or subordinated;

(d) The term of the financing offered by the Bank;

(e) Other terms and conditions of the Bank's financing, including, without limitation, the frequency of repayment, repayment provisions and, as applicable, reserves and coverage;

(f) The review and analysis conducted by the staff of the Bank; and

(g) The interest rate setting methodology approved by the Board of Directors, including, without limitation, the interest rate benchmark determination.

4. The Board of Directors will design any financing agreement such that repayment on any loan or other financial assistance will begin within 1 year after the origination of the loan. A qualified borrower may make interest payments from capitalized interest included in the amount of the loan or other financial assistance or from other sources identified by the qualified borrower in the financing agreement.

5. The financing agreement must establish the amortization structure for the loan or other financial assistance. The loan or other financial assistance must be amortized on a level repayment basis unless the Board of Directors determines that a different amortization structure is appropriate.

6. A qualified borrower may make prepayments on a loan or other financial assistance from the Bank with the prior written consent of the Bank and subject to such prepayment premiums and other restrictions as provided in the financing agreement.

Sec. 17. 1. A qualified borrower shall ensure, with respect to each contractor who is awarded a contract or enters into an agreement to perform construction work on a qualified project for which all or part of the costs of the qualified project are paid using a loan or other financial assistance from the Bank, and each subcontractor who performs any portion of the construction work on such a qualified project, that:

(a) Not less than 50 percent of the total project work hours performed within each construction trade by employees of the contractor or subcontractor are performed by residents of Nevada, with not less than 15 percent of those project work hours performed within each

construction trade by employees of the contractor or subcontractor being performed by disadvantaged workers.

(b) Not less than 15 percent of the total project work hours performed within each construction trade by employees of the contractor or subcontractor are performed by apprentices, with not less than 5 percent of those project work hours per trade being performed by first-year apprentices.

2. For the purpose of calculating project work hours pursuant subsection 1:

(a) A first-year apprentice who is hired to perform work on the qualified project shall be counted as a first-year apprentice for as long as he or she is employed to perform work on the qualified project;

(b) An apprentice who graduates from his or her apprenticeship program while employed to perform work on the qualified project shall be counted as an apprentice for as long as he or she is employed to perform work on the qualified project; and

(c) If an apprentice employed to perform work on the qualified project is terminated because of a reduction in force by a contractor or subcontractor and that apprentice is later dispatched by a union or recalled to perform work for another contractor or subcontractor on the qualified project, the apprentice shall be counted as an apprentice or first-year apprentice to the same extent as if the apprentice was continuously employed to perform work on the qualified project.

3. A qualified borrower that is unable to comply with the project work hour requirements set forth in this section may petition the Executive Director for an exemption from the requirements of this section. Upon receipt of such a petition, the Executive Director may exempt the qualified borrower from the requirements of this section if the Executive Director

finds that the inability of the qualified borrower to comply with the requirements of this section is due to circumstances beyond the control of the qualified borrower.

4. As used in this section:

(a) “Apprentice” means a person enrolled in an apprenticeship program recognized by the State Apprenticeship Council.

(b) “Disadvantaged worker” means a resident of Nevada who:

(1) Resides in a census tract within this State that, in the immediately preceding census, had a rate of unemployment that was greater than 150 percent of the State average, as reported by the Department of Employment, Training and Rehabilitation;

(2) At the time of commencing work on the qualified project has a household income of not more than 80 percent of the area median income based on the guidelines published by the United States Department of Housing and Urban Development; or

(3) Faces or has overcome at least one of the following barriers to employment:

(I) Homelessness;

(II) Being a parent with sole physical and legal custody of a child;

(III) Receiving public assistance, as defined in NRS 422A.065;

(IV) Lacking a general educational development certificate or an equivalent document or a high school diploma;

(V) Speaking English as a second language as demonstrated by participation in a vocational English as a second language program; or

(VI) Having a prior criminal record or other involvement with the criminal justice system.

(c) “Project work” means construction work performed on a qualified project.

(d) “Project work hours” means the total hours of project work by all apprentices and journey-level workers, whether employed by the contractor or any subcontractor.

(e) “Resident of Nevada” means a person who has established residence in Nevada and has actually resided in this State for at least 30 days.

Sec. 18. 1. *The Affordable Housing Investment Trust is hereby created as a revolving account in the Nevada State Infrastructure Bank Fund.*

2. *The Board of Directors may approve an application for a loan or other financial assistance from the Affordable Housing Investment Trust if, in addition to satisfying the requirements of this chapter and chapter 408 of NRS:*

(a) The loan or other financial assistance will be used solely to finance all or part of the eligible costs of an eligible project for the development, construction, repair, improvement, maintenance or acquisition of a multifamily housing project which:

(1) May include space dedicated to non-residential uses provided that the rentable area of the project dedicated to residential housing is not less than 80 percent of the total rentable area of the project; and

(2) Is affordable housing as defined in NRS 278.0105;

(b) The amount of the loan or other financial assistance will be matched by an equal amount of a loan or other financial assistance provided by a pension fund investor or a commingled fund of pension fund investments with a demonstrated track record of successful investment in affordable housing; and

(c) The developer selected for the eligible project demonstrates a long-term commitment to hiring local residents and using apprentices in apprenticeship programs registered with the State Apprenticeship Council.

3. Construction on a qualified project for which all or part of the costs of the qualified project are paid for using a loan or other financial assistance from the Affordable Housing Investment Trust must be performed under a project labor agreement.

4. Loans and other financial assistance through the Affordable Housing Investment Trust must not exceed \$20 million dollars per applicant unless the Board of Directors determines that lending capacity and other factors, including, without limitation, collateral and credit quality, justify providing a larger loan or other financial assistance.

5. The loan or other financial assistance provided through the Affordable Housing Investment Trust must be structured as subordinate debt to pension fund investors making a significant investment in the project.

Sec. 19. 1. *The Board of Directors may approve an application for a loan or other financial assistance from the Charter School Capital Needs Revolving Account, which is hereby established in the Nevada State Infrastructure Bank Fund, if, in addition to satisfying the requirements of this chapter and chapter 408 of NRS:*

(a) The loan or other financial assistance will be used solely to finance all or part of the eligible costs of an eligible project for the development, construction, repair, improvement, maintenance or acquisition of a charter school facility for a new or existing charter school which is or, once the charter school begins operation, will be a Title I school, as defined in NRS 385A.040;

(b) The developer selected for the eligible project demonstrates a long-term commitment to hiring local residents and using apprentices in apprenticeship programs registered with the State Apprenticeship Council; and

(c) The applicant has provided written authorization for the project from the sponsor of the charter school.

2. Construction on a qualified project for which all or part of the costs of the qualified project are paid for using a loan or other financial assistance from the Charter School Capital Needs Revolving Account must be performed under a project labor agreement.

3. Loans and other financial assistance through the Charter School Capital Needs Revolving Account must not exceed \$5 million dollars per applicant unless the Board of Directors determines that lending capacity and other factors, including, without limitation, collateral and credit quality, justify providing a larger loan or other financial assistance.

Sec. 20. *1. The Board of Directors may approve an application for a loan or other financial assistance from the Federal Infrastructure Matching Account, which is hereby created in the Nevada State Infrastructure Bank Fund, if, in addition to satisfying the other requirements of this chapter and chapter 408 of NRS:*

(a) The loan or other financial assistance will be used solely to finance all or part of the eligible costs of an eligible project;

(b) The federal investment in the project exceeds the amount of the loan or other financial assistance; and

(c) The developer selected for the eligible project demonstrates a long-term commitment to hiring local residents and using apprentices in apprenticeship programs registered with the State Apprenticeship Council.

2. Construction on a qualified project for which all or part of the costs of the qualified project are paid for using a loan or other financial assistance from the Federal Infrastructure Matching Account must be performed under a project labor agreement.

3. Loans and other financial assistance through the Federal Infrastructure Matching Account must not exceed \$40 million dollars per applicant unless the Board of Directors determines that lending capacity and other factors, including, without limitation, collateral and credit quality, justify providing a larger loan or other financial assistance.