

STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE  
LOAN APPLICATION AND REVIEW PROCEDURES  
FOR  
NOT-FOR-PROFIT PRIVATE NONSECTARIAN AND SECTARIAN ELEMENTARY  
SCHOOLS, SECONDARY SCHOOLS, COLLEGES, AND UNIVERSITIES  
ISSUANCE OF SPECIAL PURPOSE REVENUE BONDS

PS-605  
4-11-05

## TABLE OF CONTENTS

	<u>Page</u>
General Information Relating to Financing of Not-For-Profit Private Nonsectarian and Sectarian Elementary Schools, Secondary Schools, Colleges, and Universities	1
Background	1
Eligible Applicants	2
Eligible Facilities	2
Loan Application Procedures	3
Letter of Intent	3
Formal Application	3
Loan Review Procedures	4
Acknowledgment of Receipt of Documents	4
Initial Conference	4
Department Determinations	5
Development of the Documentation for the Bond Financing	5
Sale of Bonds	6
Preparation of the Estimate of Benefits	7
Periodic Reporting	7

GENERAL INFORMATION RELATING TO  
FINANCING OF NOT-FOR-PROFIT PRIVATE NONSECTARIAN AND  
SECTARIAN ELEMENTARY SCHOOLS, SECONDARY SCHOOLS,  
COLLEGES, AND UNIVERSITIES

Background

Part VIII of Chapter 39A of the Hawaii Revised Statutes was enacted by the State legislature in 2002 in order to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities in the financing or refinancing of such facilities through the issuance of tax-exempt revenue bonds issued in the name of the Department of Budget and Finance. The legislature, in enacting the statute, determined that the interest on borrowings necessary to provide educational services to the general public through private, non-for-profit schools, colleges, and universities is a significant factor in the costs of providing educational services to the general public and that the interest cost, and consequently the cost of providing the services, would be less if tax-exempt bonds could be issued for financing such facilities.

The statute requires that, prior to the issuance of bonds to finance eligible facilities, the Department of Budget and Finance make a determination that the not-for-profit entity is a financially responsible party experienced in providing educational services, or that the obligations of the entity under the agreement with the Department of Budget and Finance to provide the financing be guaranteed by a financially responsible party.

In addition, the statute requires as a condition precedent to the issuance of special purpose revenue bonds that the not-for-profit entity and the Department enter into a project agreement under which the entity agrees to pay, among other things, the principal and interest on the special purpose revenue bonds issued to finance the project.

The not-for-profit corporation is also required to reimburse the State for any and all costs and expenses (direct or indirect) incurred by it in implementing and administering the statute, as determined by the Department, regardless of whether or not a project agreement is entered into or bonds issued for the facility.

### Eligible Applicants

Any not-for-profit private nonsectarian and sectarian elementary school, secondary school, college, and university providing educational services to the general public for which the State legislature by affirmative vote of two-thirds of the members of each house has authorized the issuance of special purpose revenue bonds is eligible to apply to the Department for financing.

### Eligible Facilities

Any property used primarily for private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities serving the general public is eligible for funding, provided that it does not include any property used primarily for sectarian instruction or study, or as a place for devotional activities or religious worship, or used primarily in connection with any part of a program of a school or department of divinity of any religious denomination.

In addition to construction and equipment costs, the proceeds of special purpose revenue bonds may be used to pay the costs incurred in the issuance of the bonds including legal fees and consulting fees and charges for financial feasibility studies and the fees of investment bankers and underwriters in providing services in connection with the issuance of the bonds.

## LOAN APPLICATION PROCEDURES

### Letter of Intent

In order to provide a means for the Department to coordinate all financings for which it has responsibility and to allocate its resources most efficiently, the Department requires all applicants, as the initial step in the application process, to furnish the Department with a letter of intent. The letter of intent shall consist of a letter, addressed to the Director of the Department that briefly sets forth the following:

1. The approximate principal amount of the loan to be requested. This amount should be exclusive of bond issuance costs and should include only the amount of net proceeds of the bonds required for the financing of the cost of the facility.
2. A general description of the elementary school, secondary school, college, or university to be financed.
3. The proposed security for the loan to be requested.
4. If the elementary school, secondary school, college, or university facility has not been completed, the estimated timetable for its construction and equipment.
5. The proposed timetable for the bond issue.

### Formal Application

A formal application for financing shall be made on the Department's application form supplied to the applicant. The Department will only review completed applications. A completed application consists of:

1. An application form with all applicable items completed together with all items required by the application form to be enclosed.
2. Two executed copies of the Department's form of Fee Agreement.
3. A certified or cashier's check made out to the Department of Budget and Finance in the amount of \$1,000.00 representing the non-refundable application fee.

## LOAN REVIEW PROCEDURES

### Acknowledgment of Receipt of Documents

Within 10 days of receipt of a Letter of Intent, the Department shall send the applicant written acknowledgment of the receipt of the Letter of Intent and shall inform the applicant whether, based upon the information included in the Letter of Intent but subject to the information contributed in the formal application, the applicant is an eligible applicant and the proposed elementary school, secondary school, college, or university facility is a facility eligible for financing.

Within 30 days of receipt of the formal application, the Department shall send the applicant written acknowledgment of the receipt of the application and shall inform the applicant as to whether the application received constitutes a completed application and shall specify any missing items.

### Initial Conference

Following review by the Department of all documentation submitted as part of the formal application, the Department may schedule a conference with the applicant. It is recommended that the not-for-profit corporation's legal counsel and investment banker and underwriter attend such conference. The topics to be discussed at the conference may include but not be limited to the following:

1. The Department's need for any additional information in making its statutorily required determinations.
2. The need for the undertaking of a financial feasibility study and the selection of a financial feasibility consultant.
3. A proposed timetable for the bond financing.
4. The format of the project agreement, including the security to be provided for the obligations of the not-for-profit corporation there under. The project agreement will be prepared by the Department's bond counsel based upon the concepts agreed upon at this conference.

In the event that the Department determines that the initial conference is not required prior to making its statutorily required determinations, a conference may be held subsequent to such determinations.

#### Department Determinations

Following the initial conference (if required) and the furnishing by the applicant of any additional information required by the Department to make its statutorily required determinations, and following the review by the Department of such additional information, the Department shall inform the applicant in writing as to whether:

1. The applicant is a Project Party, as such term is defined in the statute;
2. The elementary school, secondary school, college, or university facility described in the application is a Project, as such term is defined in the statute;
3. The applicant (or the guarantor of its obligations under the project agreement, if applicable) is a responsible party as required by the statute.

The Department shall furnish the applicant with such written notification within 60 days following receipt of the completed formal application or the initial conference and receipt of any required additional information, including a financial feasibility study, if required by the Department, if such conference or additional information is required.

If the applicant has received an adverse determination from the Department, which adverse determination shall include the reasons therefor, the applicant shall have 30 days to furnish the Department with a written appeal of such determination. The Department shall respond to such written appeal within 120 days of its receipt thereof.

#### Development of the Documentation for the Bond Financing

Following the initial conference and the making of the required determinations by the Department, work will commence on the documentation required for the bond issue. Such documentation may include the following:

<u>Document</u>	<u>Party Primarily Responsible For Preparation</u>
Trust Indenture Securing Bonds	Department's Bond Counsel
Project Agreement	Department's Bond Counsel
Guaranty Agreement*	Department's Bond Counsel
Mortgage*	Project Party's Counsel
Financial Feasibility Study*	Financial Feasibility Consultant
Official Statement or Private Placement Memorandum for Bonds	Investment Banker
Contract Between Investment Banker and Department for Purchase of Bonds	Investment Banker

(Note: \* If required.)

Following the preparation of drafts of the required documentation, meetings will be scheduled periodically to review such drafts and the progress of the financing. Parties attending such meetings, as required, may include: representatives of the Department, the Department's bond counsel, representatives of the Project Party and its counsel, representatives of the investment banker and underwriter for the financing and its counsel, representatives of the financial feasibility consultant and such other parties as may be required for a full and complete discussion of items relevant to the bond financing.

#### Sale of Bonds

The timing of any sale of special purpose revenue bonds shall be in the sole discretion of the Department. The Department will agree to the sale of special purpose revenue bonds only if, prior to the sale of the bonds for a Project that has not been constructed, construction bids have been received or a negotiated construction cost has been agreed upon. In all cases, no sale of bonds shall occur unless the form of all documentation to support the bond issue has been agreed upon by the appropriate parties and all appropriate official action has been taken by the Project Party. Prior to or simultaneously with the bond sale, the Project Party shall execute the project agreement.



### Preparation of the Estimate of Benefits

Following the execution of the project agreement, the Project Party shall prepare the estimate of benefits utilizing the format supplied by the Department. The financial feasibility consultant or other party approved by the Department shall review the prepared estimate of benefits. Such review shall include a review of the methodology, assumptions and statistical and other data employed in making the estimate. Such financial feasibility consultant or other party shall determine that the information and assumptions used constitute reasonable bases for the preparation of the estimate of benefits. A copy of such determination shall be furnished to the Department with the estimate of benefits.

### Periodic Reporting

The project agreement shall require the Project Party to furnish the Department or the Trustee with the information relating to the operation of the Project specified in the project agreement on at least an annual basis, such as annual audits, which shall be available to the general public.