



# Wake County Tax Exempt Private Activity Bonds Approval Policy

Supersedes: n/a	Effective: January 19, 2016
Approving Authority: Wake County Board of Commissioners	
Originating Department(s): Finance and County Attorney	

- I. **Purpose:** It is the policy of Wake County to comply with all federal tax laws and regulations applicable to public approval for tax-exempt private activity bonds. The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (found in Section 147(f) of the Internal Revenue Code) requires, as a condition for private activity bonds to be tax exempt, that the financing of a facility through a bond issue be approved by the highest elected government official for the jurisdiction where the financed facilities will be located, following a public hearing. This policy is designed to outline a process and requirements for such approval, including approvals required by TEFRA, North Carolina statutes such as NCGS 159C-7 for industrial development bonds issued by the Wake County Industrial Facilities and Pollution Control Financing Authority, and other public finance authorities serving as conduit issuers of tax-exempt private activity bonds.
- II. **Applicability:** Any project to be funded by tax-exempt private activity bonds, where the issuer seeks approval from the Wake County Board of Commissioners, is subject to this policy. The Board of Commissioners may approve the issuance of private activity tax-exempt bonds that have a general public purpose and are consistent with the County's overall service and policy objectives, but reserves the right to approve or reject issues and projects on a case-by-case basis. Approval by the Board of Commissioners does not constitute a debt of the County or a pledge of the faith and credit of the County and the County will have no responsibility whatsoever for the bonds. Approval by the Board of Commissioners also does not imply or supplant any other required governmental approvals such as zoning, land use, permitting or other approvals. Unless County approval is specifically required by applicable statute, It is the Board's preference that TEFRA hearings and approvals relating to bond issuances for projects located entirely within the jurisdiction of a municipality be held and given by the appropriate governing body, of that municipality. Applications submitted to the Board of Commissioners for projects located in whole or in part within the corporate limits of a municipality shall include evidence of support of the project from the municipality, and, if applicable, information as to why TEFRA approval cannot be sought from the governing board of the municipality.
- III. **Policy Responsibility and Management:** The County Manager and County Attorney, and their designees, shall be primarily responsible for administering and monitoring compliance with the requirements of this policy.

#### **IV. Components of Policy:**

##### **A. Application for Approval**

1. Submittal of Request. All requests for approval by the Board of Commissioners for scheduling of a public hearing and approval of the issuance of tax-exempt private activity bonds shall be received by the County's Debt Manager who will work in consultation with the County Manager and County Attorney. Requests should be submitted at a minimum of 45 days prior to the applicant's intended date of public hearing and consideration by the Board of Commissioners.
2. The following information shall be included in the request made to the County Debt Manager:
  - a. Proposed calendar to include proposed date of publication for the public notice and proposed meeting date of Board of Commissioners for which the public hearing and consideration of approval is requested
  - b. Detailed project description, including the identity of the private entity that will own and operate the facility to be financed (the "Borrower"), a description of the project to be financed, including its location within the County, and a statement on the general public purpose of the project. The project description should also indicate the section of the Internal Revenue Code under which the bond issue qualifies as a tax-exempt private activity bond as detailed below:
    - i. Section 142: exempt facilities such as airports, docks and wharves, mass commuting facilities, facilities for the furnishing of water, sewage facilities, solid waste disposal facilities, qualified residential rental projects, facilities for the furnishing of local electric energy or gas, local district heating or cooling facilities, qualified hazardous waste facilities, high-speed intercity rail facilities, environmental enhancements of hydro-electric generating facilities, and qualified educational facilities, qualified green building and sustainable design projects, or qualified highway or surface freight transfer facilities
    - ii. Section 144: qualified small issue manufacturing facilities, qualified small issue farm property, and qualified redevelopment projects

- iii. Section 145: Bonds issued to finance facilities to be used by a non-profit Section 501(c)(3) organization in carrying out its Section 501(c)(3) purpose
- c. Description of proposed debt structure and anticipated cost of financing
- d. A description of the plan to obtain all necessary TEFRA approvals. Included in this information should be an explanation of the reason for the choice of issuer, and the need for Board of Commissioners approval. To the extent there are other alternative issuers available in North Carolina (such as the NC Medical Care Commission or the North Carolina Capital Facilities Finance Agency), include an explanation as to why the Borrower has elected the issuer requiring County approval.
- e. A draft of the public notice to be published
- f. A draft of the resolution. While the draft resolution will include other information about the bonds to be issued and the project, all drafts must include language stating the following:
  - i. WHEREAS, The Borrower will agree to repay the principal, premium, if any, and interest on the Bonds and the County will have no liability whatsoever for the payment of principal or interest on the Bonds, and the Bonds will not affect the County's debt ratios or legal debt limit and the County will not incur any liability for repayment of the Bonds by approving the Bonds for purposes of Section 147(f) of the Code; and
  - ii. WHEREAS, because no taxes or other revenues of the County are pledged to pay the Bonds, the staff of the County has made no financial analysis of the Bonds, the Borrower or the Project; and
  - iii. WHEREAS, , the Bonds shall not be deemed to constitute a debt of the County or a pledge of the faith and credit of the County, but shall be limited obligations of the [name of issuing entity] payable solely from the loan repayments to be made by the Borrower to the Issuer, and shall contain on the face thereof a statement to the effect that neither the faith and credit nor the taxing power of the County is pledged to the payment of the principal of or the interest on such Bonds

- g. A draft of the agenda item which should include information outlined in the request submitted to the County Debt Manager
- h. Applications submitted to the Board of Commissioners for projects located in whole or in part within the corporate limits of a municipality shall include evidence of support of the project from the municipality, and, if applicable, information as to why TEFRA approval cannot be sought from the governing board of the municipality. Unless County approval is specifically required by applicable law, the County remains free to determine that other governmental bodies are more appropriate bodies to hold the public hearing and issue TEFRA approval with respect to the proposed bond financing.
- i. The County reserves the ability to require the applicant to pay any out of pocket costs incurred by the County related to the application for approval.
- j. The applicant will be notified within 25 days from the date the application is submitted as to whether the application will be calendared for public hearing and consideration of approval by the Board of Commissioners. If the application is denied, the applicant will be informed of the reason for such denial.

B. Notice of Public Hearing

- a. It is the intent of the Board of Commissioners to directly hear public comment related to the proposed issuance of bonds for a project. Therefore, the public hearing required by Section 147(f) of the Internal Revenue Code will be held at a regularly scheduled meeting of the Board of Commissioners.
- b. The Notice of Public Hearing, once content is approved by the Debt Manager, in consultation with the County Attorney, shall be submitted for publication by the applicant, with a copy of submittal sent to the Debt Manager. All costs relative to publishing the notice are not the responsibility of Wake County and are to be borne by the applicant. No notice shall be published without prior approval by the Debt Manager and the County Attorney. Upon submittal of public notice to the newspaper, the Clerk to the Board of Commissioners shall also be notified by the applicant.

C. Board of Commissioners Meeting

- a. The Borrower, and its counsel, shall be responsible for presenting the item at the scheduled board meeting of the County Commission. The Debt Manager, in consultation with the County Manager and County Attorney, will provide edits

and feedback to the Borrower and its counsel regarding meeting materials and will be responsible for distributing final meeting materials to the Board of Commissioners via the County's agenda process.

**D. Board of Commissioners Consideration of Approval**

- a. All issuances of private activity tax-exempt bonds approved by the Board of Commissioners are approved solely for purposes of satisfying Section 147(f) of the Internal Revenue Service Code and any state statutory requirements. Approval shall not constitute an endorsement of the bonds or creditworthiness of the Borrower, or approval of any aspect of the project being financed.
- b. The County will make no financial analysis of the bonds, the Borrower or the project.
- c. Approval may take into account any information presented by the public through the public hearing process required by TEFRA.
- d. The County will have no responsibility whatsoever for the bonds.
- e. Approval does not constitute a debt of the County, nor require a tax levy or a pledge of the faith and credit of the County; nor will it affect the County's debt ratios or legal debt limit.
- f. Approval requires that the bonds contain a statement to the effect that neither the faith and credit nor the taxing power of the County is pledged to the payment of the principal of or the interest on such bonds.
- g. Approval of bonds to be issued by conduit issuers is intended to be consistent with the criteria for approval outlined by the conduit issuer.

**V. Compliance with Applicable Policies and Procedures.**

Approval of bond issuance is to satisfy requirements under Section 147(f) of the Internal Revenue Service Code and state statutes. The obligated Borrower, and not the County, is responsible for complying with all post issuance requirements and reporting under relevant guidelines issued by the Securities and Exchange Commission (SEC) and the Internal Revenue Service (IRS) including the disclosure requirements of rating agencies, underwriters, investors, and taxpayers. The County has no obligation whatsoever for the bonds and related requirements of the bonds.

**VI. Related Policies, Procedures, and Publications:**

Additional information regarding compliance may be found in the Tax Exempt Private Activity Bonds Compliance Guide published from the US Treasury Office of Tax Exempt Bonds: <http://www.irs.gov/pub/irs-pdf/p4078.pdf>

Industrial Facilities/Pollution Control Financing Authorities:  
<http://www.ncga.state.nc.us/gascripts/statutes/StatutesTOC.pl?Chapter=0159C>

Information about the Public Finance Authority: <http://www.pfauthority.org/>