



**INDUSTRIAL DEVELOPMENT
REVENUE BOND
GUIDELINES AND PROCEDURES**



INDUSTRIAL DEVELOPMENT REVENUE BOND (IDRB) FINANCING GUIDELINES AND PROCEDURES

INTRODUCTION

The Clay County Development Authority (CCDA or the Authority) recognizes the importance of Industrial Development Revenue Bonds (IDRBs), also known as “private activity bonds”, as a viable method of financing industrial relocation and expansion for the purpose of enhancing the economic well being of Clay County. IDRBs are securities issued by a local governmental agency, such as the Clay County Development Authority, for the purposes of financing capital projects.

The CCDA encourages companies interested in locating in Clay County and companies presently located in Clay County to explore the use of IDRBs to finance projects. Generally, either the project to be financed or the applicant must be located in Clay County, Florida, to qualify for IDRB financing through the Authority, or there must otherwise be another Clay County legal nexus to the project, applicant or financing, to support the Authority’s issuance of bonds.

When the CCDA assists with the issuance of bonds, it is accomplished in the form of an inducement Resolution between the CCDA and the company requesting the use of IDRB’s. It is recommended for the company (applicant) to seek approval of the Inducement Resolution prior to commencing work on the project or acquiring land, materials or equipment, otherwise, the cost of such work may not be reimbursable from the proceeds of the IDRB.

These procedures and guidelines are effective as of July 12, 2006, and thereafter, and supersede any previous procedures and guidelines issued by the Authority.

The information in these Guidelines and Procedures is intended to assist businesses in determining whether their project may be appropriate for Clay County related IDRB financing by the Authority. These Guidelines and Procedures are not intended to be a statement of the current law on the subject. Applicants should retain financial consultants and bond attorneys to ensure that they have knowledge of the most current laws, rules, and regulations related to their particular project at the time at which they engage in financing.

LEGISLATION AND REGULATION

Industrial Development Revenue Bonds are subject to several state and federal laws and regulations, including:

- (1) General Statutes of Florida, Chapter 159, Parts II, III and VI as amended.
- (2) Constitution of the State of Florida, Article VII, Sections 10 and 12.
- (3) General Statutes of Florida, Chapter 75, Bond Validation and Chapter 189, Special Districts.
- (4) Sections 141 -1 50 of the Internal Revenue Code of 1986, as amended (the “Code”), and applicable regulations of the Department of the Treasury.
- (5) Section 3(a)(2) of the Securities Act of 1933, as amended, and Rules 10b-5 and 15(c)2-12 promulgated thereunder.

ADVANTAGES

Industrial Development Revenue Bonds offer several advantages over conventional financing methods.

- (1) Since IDRBs are considered limited and special obligations of governmental units, the interest on the bond may not be subject to federal income tax and certain State and local taxes, including intangible taxes and documentary stamp taxes. If the interest is excluded from gross income for purposes of federal income taxation, the purchaser of the bond does not need to charge the same net rate of return as if it were making a loan on a conventional basis. The lower interest cost is passed on to the borrower and generally expressed as an interest differential available to the company through IDRB financing as opposed to a conventional financing.
- (2) Some capital costs associated with the acquisition of an industrial project and incurred within the 60-day period prior to the date on which the Authority has adopted an Inducement Resolution for the project may be financed. These may include:
 1. Up to 25% of bond proceeds may be used to acquire land (including the cost of surveys and title insurance).
 2. The cost of construction.
 3. The cost of demolishing, removing, or relocating any buildings or structures on lands so acquired.
 4. The cost of new machinery and equipment.
 5. The cost of interest during construction and for a reasonable period thereafter.

6. The cost of engineering and architectural surveys, plans and specifications.
 7. The cost of consultant and legal services directly related to the issuance of bonds (up to 2% of the proceeds of the bonds).
 8. The cost of reimbursements to any state or other governmental agency for expenditures directly related to the project.
 9. The cost of other expenses necessary or incidental in determining the feasibility or practicability of such construction, acquisition, demolishing, removing or relocating (subject to the same 2% limitation).
 10. The cost of bond insurance, letter of credit fees and similar costs.
- (3) Industrial Development Revenue Bonds may be exempt from registration under the Securities Act of 1933 and the 1939 Trust Indenture Act. Industrial Development Revenue Bonds are, however, subject to the fraud provisions of the Securities Act of 1934 and other applicable securities laws requiring full and complete and/or continuing (or secondary market) disclosure.
 - (4) The company using the financing may be treated as the owner of the project for federal income tax purposes. As the owner, the accounting treatment of projects financed with Industrial Development Revenue Bonds may allow the company to receive the applicable investment tax credits, the depreciation of the depreciable assets, and of that portion of the rental or purchase payments which equals interest on the bonds and the capitalization of the project costs.
 - (5) Interest rates and terms are generally negotiated by the company and the bond purchaser or investment banker and are usually quite flexible in order to fit both the company and investor/purchaser's objectives. Payment schedules may include level debt service payments, interest only during construction or until maturity, balloon payments and others.
 - (6) Typically, smaller issues (less than \$2 million) are privately placed directly with a single financial institution, while larger issues may be sold through private placement or at public sale with the services of an underwriter. Florida Statutes requires that bonds which are to be privately placed be rated in one of the four highest rating categories, credit enhanced by a rated financial institution or accompanied by an independent financial study demonstrating the ability of the company to meet the debt service payments.

Since the repayment is guaranteed solely by the company's ability to generate the revenues required to make debt service payments, the terms of the loan and the interest rate on the bonds will be a combination of the assessment of risk to which the investor/purchaser may be exposed, the financial strength of the company, the nature of the assets being financed, and existing money market conditions, including the investor/purchaser's appetite for the tax exempt income.

QUALIFICATIONS

The qualifications for Industrial Revenue Bond Financing are established by Federal and State regulations and by the policies adopted by the issuing agency of local government. While the maximum issue is set by Federal regulations, the minimum issue size is a function of market conditions. Generally, the break-even point, below which conventional forms of financing may prove to be less expensive overall, is considered to be \$3,000,000. This is primarily a result of the fact that the issuance costs associated with this type of financing are greater than those associated with a conventional financing. There are numerous types of projects which may be eligible for tax exempt financing. Some of these are discussed below. However, the list is not, and is not intended to be, all inclusive. Applicants should check with their bond counsel to determine what alternatives are available:

(1) Manufacturing Facilities

Several sections of the Internal Revenue Code deal with the size of Industrial Development Revenue Bond issues for manufacturing facilities. The Code, in general, states that interest on certain small issues of private activity bonds is excluded from income if at least 95 percent of the bond proceeds is used to finance manufacturing facilities ("qualified small-issue bonds"). Qualified small-issue bonds are those for which the aggregate face amount of the issue, together with the aggregate amount of certain related capital expenditures within the same jurisdiction during the six-year period beginning three years before the date of the issue and ending three years after that date, does not exceed \$10 million.

(2) Exempt Facilities Financings

Section 142 of the Code provides for the issuance of private activity tax exempt bonds for certain projects including, without limitation, water and sewer facilities, solid waste disposal facilities and qualified residential rental projects. There is no limitation (other than volume cap allocation, discussed below), on the amount of such bonds which can be issued.

(3) Qualified 501(c)(3) Financings

Section 145 of the Code provides for the issuance of private activity tax exempt bonds to finance facilities owned and operated by organizations exempt from federal income tax pursuant to Section 501(a) of the Code by reason of being an organization described in Section 501 (c)(3) of the Code. Such projects include, but are not limited to, health care facilities such as nursing homes, hospices, hospitals and assisted living and residential units.

(4) Industrial Development Revenue Bond financing has been limited in several ways by recent federal tax legislation. Some of these include:

a) Limit on Land Acquisition

b) Pursuant §147(c)(1)(A) of the Code, Industrial Development Bond proceeds for manufacturing facilities can be applied to the purchase of

land for a project only if the cost is less than 25% of total bond proceeds.

- c) Restrictions of Purchase of Existing Buildings and Equipment.
 - d) Pursuant to §147(d)(2) of the Code, existing buildings can be purchased only if at least 15% of the total cost of acquiring the facility is used for renovation expenditures. This restriction is not applicable to 501 (c)(3) financings.
 - e) Per-User Limit
 - f) Pursuant to 144(a)(10) of the Code, principal users of Industrial Development Revenue Bond-financed projects cannot have more than \$40 million of tax exempt facility related bonds, which includes IDRBs, outstanding at any time. This rule does not apply to 501 (c)(3) financings.
 - g) Non-Qualified Projects
 - h) Pursuant to §147(e) of the Code, airplanes, stadium skyboxes, gambling facilities, health clubs and liquor stores cannot be financed with IDRB's.
 - i) Arbitrage Restrictions
 - j) Pursuant to IRC §148, arbitrage profits must be rebated to the U.S. Treasury Department, with certain exceptions related to the expenditure of construction funds.
 - k) State Volume Caps
 - l) Pursuant to IRC §146 and F.S. §159.804, an annual volume limitation is imposed for each state's issuance of IDRB's. Each applicant is required to obtain an allocation for its issue from the volume cap pool which is administered through the State Division of Bond Finance. However, this rule does not apply to 501 (c)(3) financings.
- (5) Florida Statute §159.27(5) broadly define qualified projects as including, without limitation, the following:
- Manufacturing or industrial plants
 - Research and development parks
 - Warehousing and distribution facilities
 - Corporate headquarters facilities
 - Tourism facilities

Convention or trade show facilities

Urban parking facilities

Trade center facilities

Health care facilities

A motion picture production facility

A preservation or rehabilitation of certified historic structure

Airport or port facilities

Educational Facilities

Commercial projects in designated enterprise zones

Pollution control, hazardous or solid waste facilities

(6) Clay County Development Authority Requirements

The Clay County Development Authority requires the proposed projects be capable of producing tangible economic benefits in the form of new employment, the preservation of existing employment, new capital investment, or combinations thereof.

(7) Bond Validation

The Clay County Development Authority permits, but does not require, the bonds to be validated in the Florida courts, pursuant to Florida Statutes Chapter 75, before issuance. Bond validation assures the company, the bond investor/purchaser, the Authority and bond counsel that a proposed project or its financing structure fit squarely within the definition of a qualified project under the Florida Statutes. The applicant will be responsible for all legal fees, costs and expenses in connection with the optional validation proceedings, including any appeal.

(8) Form of Industrial Development Revenue Bond Financing Arrangements

Under Florida law, the two principal forms of IDRB financing instruments are loan agreements and installment purchase agreements. The payments required under either must be sufficient to pay the interest and principal when due on the bonds and all costs of owning, operating, and maintaining the financed facilities. Regardless of which form of financing is used, the length of the term of payment cannot be less than the term of the bonds which, in turn, cannot be greater than 120% of the useful life of the facilities being financed. Other documents generally required include a mortgage and security agreement, a trust indenture or assignment of issuer's rights, a bond purchase agreement, and where appropriate, a credit enhancement facility.

CLAY COUNTY CHAMBER OF COMMERCE AND CHOOSE CLAY

The Authority works closely with the Clay County Chamber of Commerce, a private not-for-profit corporation established to promote economic development in Clay County, and its subsidiary, CHOOSE CLAY, which is charged with the overall governmental responsibility, oversight and coordination of economic development in Clay County, Florida. The Chamber assists private businesses considering location or expansion in the County and coordinates with the Authority, the County, Municipalities in the County, state government departments and agencies, and private industry groups. CHOOSE CLAY is comprised of leaders of the Authority, the Chamber, the County Manager, and Economic Development Partners of the Chamber and CHOOSE CLAY.

BOND COUNSEL AND INVESTMENT BANKERS

The Authority will not give legal, tax or financial advice to any applicant and cannot find bond investors or act as a placement agent or underwriter for bonds.

An applicant must select qualified bond counsel, who must be acceptable to the Authority and its legal counsel. The Authority will not recommend bond counsel. Applicants should engage bond counsel as early as possible, to explain federal income tax and state law requirements, and to assist in planning. A letter of bond counsel is required to accompany any application to the Authority and bond counsel must prepare or approve any resolutions or other action requested by the applicant.

Applicants will frequently need or want to select an investment banking firm as financial advisor, placement agent or underwriter for the proposed bond issue. The Authority will not recommend investment bankers. However, the applicant's investment banking firm must be appropriately licensed and in good standing under applicable federal and state laws and must be acceptable to the Authority and its legal counsel. If the applicant believes that an investment banking firm is necessary or desirable, the firm should be engaged as early as possible.

CONFIDENTIALITY

Under Florida "Government in the Sunshine" and "Public Records" laws, all proceedings of the Authority's members and its records are open to the public.

A limited exemption from the open public records laws is provided by Section 288.075, Florida Statutes. Upon written request of an applicant, information and documents which would provide information concerning plans, intentions, or interests of the applicant to locate, relocate or expand its business activities in the state will become confidential and exempt from the open public records laws for a period of 24 months from the date of filing or until disclosed by the applicant or the Authority, whichever comes first. As provided by the statute, a county may require disclosure of exempt information. Information revealed at a meeting of Authority members or other public forum, filed with other governmental bodies, or publicly disclosed pursuant to court order, will no longer be exempt. The Authority will use reasonable efforts to cooperate and coordinate with applicants requesting confidentiality in accordance with the statute, provided that the Authority reserves the right in its discretion to disclose any information

at any time and assumes no responsibility or liability for any disclosure made, including any accidental or negligent disclosure.

PROCEDURES

The first contact for an industrial bond issue will be with the Executive Director of Authority. The Executive Director will request the completion of the Project Eligibility Application. This form and all discussion with the Executive Director can remain confidential until the company is ready to make a formal application to the Authority for the bond issue.

The Executive Director will make a brief assessment of the soundness of both the proposed project and the company's financial condition. If it appears that the project and the company meet the criteria for a bond issue, the Executive Director will then arrange a meeting with the Finance Committee or the IDRB Committee and the Authority's Attorney to discuss the project and to formulate a recommendation to the full Authority. A representative of the company should be available for this meeting as well as the subsequent Clay County Development Authority meeting at which the application for the IRDB project is to be discussed.

The Authority suggests that the applicant submit all copies of the completed application for review by the Authority, substantially in advance of the requested date of Authority action. In determining when to make submission, an applicant should keep in mind the Authority meets on a quarterly basis and the availability of a quorum for a particular date will have to be confirmed.

PUBLIC NOTICE

In order to comply with certain legal requirements, the Authority must give public notice of its intent to discuss an application for IDRB issue at least 7 days before the meeting at which the application is to be discussed.

INDUCEMENT LETTER

The Authority is required by law, to investigate the company's financial soundness, ability to retire the bonds, and to assess the environmental and economic impact of the project on the county before proceeding with the bond issue.

If the Authority agrees to issue the bonds, an agreement can then be made with the company. This Inducement Agreement provides that the Authority, as an inducement to the company to locate a facility in Clay County, will issue Industrial Revenue Bonds to finance the proposed facility. This agreement may also contain the maximum amount of the bond issue, the maximum maturity, and a reference to a commitment by a bank, or an investment banker, to purchase the bonds. It is essential that this agreement be signed before any funds are expended on the project.

COMMISSION REVIEW

Congress enacted the Tax Equity and Fiscal Responsibility Act (TEFRA) which requires all Industrial Development Revenue Bond issues to be reviewed by an elected official.

This would require the approval of the Clay County Commission or Cabinet of the State of Florida at a public hearing. The approving resolution must be prepared or approved by bond counsel and must be acceptable to the County or Cabinet and its attorneys. Legal notice of a TEFRA hearing must be published in the local newspaper at least fourteen (14) days in advance. The notice must be submitted to the newspaper at least four (4) business days before the requested publication date. The Authority recommends that a representative of the company attend the TEFRA hearing to be conducted at the meeting of the Board of County Commissioners or Cabinet, as the case may be.

ALLOCATION OF STATE VOLUME LIMITATION

All allocation of the private activity bond limitation will be required pursuant to the Code and Regulations and the Florida Private Activity Bond Allocation Act, Chapter 159, Part VI, Florida Statutes, if the bonds are to be issued as tax-exempt qualified small issue bonds or certain other types of qualified bonds.

The declaration of official intent, the approving resolutions, and the inducement agreement do not constitute a commitment to request an allocation of the state volume limitation for the bonds, or a commitment to give the bonds any priority as to a request for an allocation over any other issue of bonds (including a subsequently approved issue), except, in the discretion of the Authority, as otherwise may be expressly provided in the memorandum of agreement.

The applicant must request application for confirmation of an allocation at a specific time and in a specific amount. At the time of its request for allocation, the applicant must certify to the Authority that it is prepared to and will proceed with timely completion of the issue in the amount requested. In addition, the applicant shall furnish to the Authority a signed, written commitment or undertaking, satisfactory to the Authority and its legal counsel, for purchase of the bonds by an institutional investor or for a firm commitment underwriting by a responsible underwriter.

AUTHORIZATION - CLOSING

Prior to issuance or sale of the bonds, the Authority must adopt a "Bond Resolution" authorizing the issuance of the bonds and approving and authorizing the basic bond financing documents. In addition, the Authority must adopt a "Sale Resolution" or "Award Resolution" authorizing the sale of the bonds to one or more designated purchasers or underwriters and approving any official statement that may be required in connection with the offering or sale of the bonds. The bond resolution and basic bond financing documents, and the sale or award resolution, must be prepared or approved by bond counsel and must be acceptable to the Authority and its legal counsel.

No disclosure purporting to be made by or on behalf of the Authority shall be made except by means of an "Official Statement" approved by the Authority. Any disclosure document, including any proposed preliminary or final official statement, must be prepared by the applicant and its legal counsel, in conjunction with any placement agent or underwriter and its or their legal counsel. Proposed preliminary and final official statements must be submitted to the Authority and shall not be used except as authorized by an Authority resolution. At closing, the applicant shall cause an opinion of securities counsel to be furnished to the Authority, which shall be acceptable to the

Authority and its legal counsel. The applicant and its legal counsel, in conjunction with any placement agent or underwriter and its or their legal counsel, will be responsible for making any reports or filings under federal or state securities laws and with any repositories.

Bond counsel will be responsible for preparation or approval of all closing documents, which must be acceptable to the Authority and its legal counsel, and for the closing of the issue. At the closing, bond counsel must furnish to the Authority its bond approving opinion as to the validity and tax-exempt status of the bonds, which must be acceptable to the Authority and its legal counsel. Bond counsel will also be responsible for filing all notices, reports and other filings with state governmental departments and agencies and the Internal Revenue Service required in connection with the issuance of the bonds.

BOND TRUSTEE

Ordinarily, an indenture of trust will be required. The applicant will be responsible for the selection of a qualified bond trustee acceptable to the Authority. The trustee must be a bank with trust powers or a trust company having the power and authority to enter into and act as trustee under the indenture of trust.

MARKETING AND SALE OF BONDS

The Authority has no resources to market or sell private activity bonds and will not participate in marketing or any negotiations for the sale of bonds. Unless otherwise approved by resolution of the Authority, an issue of bonds will be authorized for sale only in a private placement with one or a limited number of qualified institutional investors. The Authority will not approve a “best efforts” underwriting.

SECURITIES LAWS - DISCLOSURE

The applicant and its financial advisor, placement agent or underwriter shall be responsible for compliance with applicable federal and state securities laws, including requirements for exemption for registration and qualification and including all disclosure and filing requirements. Applicant will cause an opinion as to securities matters to be furnished to the Authority by qualified legal counsel acceptable to the Authority, which opinion must be acceptable in form, scope and content to the Authority and its legal counsel.

COSTS

- (a) The applicant must pay the non-refundable application fee to the Authority; all out-of-pocket costs and expenses (including costs of publication of notices) reasonable incurred by the Authority in connection with reviewing, processing, considering and acting upon the application and in connection with any proceedings relating to approval, authorization, or issuance of the bonds; and reasonable fees, expenses and disbursements of the Authority’s legal counsel.

- (b) The applicant will be responsible for all fees and charges of bond counsel; any financial advisor, placement agent or underwriter, fees and charges of the trustee and its legal counsel; fees and charges of any other professionals including, without limitation, applicant's legal counsel, accountants, financial consultants, engineers, architects, planners and environmental consultants; compensation due to any brokers or agents; and amounts due to contractors, subcontractors and suppliers.
- (c) If the bonds are issued, the applicant will be required to pay a financing fee of ½% of the face amount of the bonds. The financing fee will be due and payable from bond proceeds upon closing of the bond issue and paid to the Clay County Development Authority.
- (d) The foregoing costs may be paid or reimbursed to applicant out of the proceeds of the bonds, subject to any applicable limitations of the Code and Regulations or under state law.

INDEMNIFICATION

Applicant will be required to indemnify and hold harmless the Authority, its members, officers, employees, agents and representatives, with respect to all matters related to the application, the bonds and the financing, acquisition, construction, equipping and operation of the project, including but not limited to disclosure and other securities law matters. Provisions for indemnification must be satisfactory in form, scope and content to the Authority and its legal counsel.

MODIFICATION OF GUIDELINES

These guidelines are not formal rules and are not binding on the Authority. The Authority reserves the right at any time, in its discretion, in all cases or in any particular case, to modify any of these guidelines, to supplement these guidelines or adopt additional guidelines or requirements, or to waive or approve departure from any of these guidelines.

ECONOMIC DEVELOPMENT ASSISTANCE

Additional information regarding Industrial Development Revenue Bond financing and complete economic development expansion and relocation assistance may be obtained by contacting the Clay County Development Authority office:

1734 Kingsley Avenue
Orange Park, Florida 32073
PHONE 904-264-7373 FAX 904-269-0363