

Washington Health Care Facilities Authority Summary of Proposed WAC Changes

The Washington Health Care Facilities Authority (the “Authority”) is seeking comment on potential revisions to its rules regarding issues such as meeting participation, application content, processing of applications for financial assistance, and administration of public records.

The proposed rule changes are designed to promote a more effective and efficient means of participation at Authority meetings, as well as more effective and efficient processing of applications for financial assistance. They also replace in their entirety the sections relating to handling of public records new sections that comply with the state’s model rules for administration of public records.

This summary describes the potential changes and modifications.

Background

In the early 1970’s the Washington State Legislature was concerned with rising health care costs and created two state agencies designed to help alleviate the problem, each from a different perspective. The Hospital Rate Setting Commission was created to control and regulate hospital costs by reviewing and approving hospital budgets and setting limits on revenues that could be collected. At the same time, the Washington Health Care Facilities Authority was created “to assist and encourage the building, providing and utilization of modern, well equipped and reasonably priced health care facilities, and the improvement, expansion and modernization of health care facilities in a manner that will minimize the capital costs of construction, financing and use thereof and thereby the costs to the public of the use of such facilities...” The Authority was to accomplish this statutory purpose through the issuance of tax-exempt bonds to finance such modern, well equipped health care facilities and minimize the financing costs thereof. Prior to that time hospitals had to borrow funds for financing projects at more costly taxable interest rates.

The current Authority rules under consideration for review were primarily drafted in 1982 and have not been significantly modified or revised since that time.

Proposed Changes

Proposed rule changes are attached for review and comment. The following describes the key potential changes.

WAC 247-02

Authority Board Members WAC 247-02-040

The composition of the Authority is set forth in the Authority’s organic act, chapter 70.37 RCW (the “Act”), so the listing of Board members is not necessary in the rules and is proposed to be deleted. Other minor changes update the location of the Authority’s office.

Calling an Authority Board Meeting WAC 247-02-050

The current rules require a number of inefficient and unnecessary steps to calling an Authority meeting. Under the existing Rules, all Authority meetings are to be held as special meetings. The state Open Public Meetings Act guides agencies on the types of meetings which can be held and the process for notification of such meetings. The proposed rule change would eliminate the inefficient and additional steps to calling a meeting and simply have the Authority hold meetings in accordance with the standards of the Open Public Meetings law.

Public Participation at Board Meetings WAC 247-02-050

Current Authority rules place a barrier to public participation at Board meetings by requiring individuals to notify the staff 48 hours prior to a Board meeting of a desire to speak at the Board meeting. The state Open Public Meetings Act requires no such artificial barrier and generally supports public comment.

In order to remove barriers and eliminate unnecessary confusion, and streamline the process for individuals to participate and address the Authority Board, the proposed rule would eliminate the need to contact Authority staff 48 hours prior to a Board meeting to request to speak at an Authority Board meeting. This change would bring the proposed rules into conformance with current Open Public Meeting laws regarding participation at public meetings.

WAC 247-12 – Public Records

Sections WAC 247-12-010, -020, -030, -040, -050, -060, -070, -080, -090, -100, and -101 are being repealed and replaced with new sections WAC 247-12-015, -025, -035, -045, -055, -065, -075, and -085 in order to comply with the state's model rules that govern the administration of public records.

WAC 247-16

Application Formats/Forms WAC 247-16-030

In the early 1980's, almost all Authority bond issues were issued for acute care hospitals with varying needs and circumstances, and the Authority chose not to require the use of a specific application form by rule. However, the Authority found it useful to provide, by rule, a list of the information that the Authority considered relevant and appropriate in processing a borrower's application for financial assistance.

In recent years the Authority has provided financial assistance to a large number of non-hospital health care providers including community clinics, community mental health facilities, etc. The bond issues for these borrowers are typically sold as direct placements to banks through the nationally recognized Authority Quick Loan Program. The application information needed from these organizations with direct placements is different than from the hospitals.

In the 1980's and early 1990's, the Authority issued bonds for pooled equipment purchases involving many borrowers at the same time. The rules established a different list of information that the Authority considered relevant and appropriate for those bond issues. Very few of these equipment pools have been conducted around the country and the last Authority equipment pool was issued in 1992. Since no such pool has been conducted in many years, and since it is unlikely such a pool will be conducted in the future, the application contents for such programs are not necessary. In the unlikely event such a pool does materialize in the future, the Authority can develop application content information at that time.

In order to promote more efficiency in application content, the Authority is seeking comment on the proposal to design application forms that are intended to meet the unique needs of different types of borrowers, and/or unique financing programs rather than have a one size fits all approach as embodied in the current rules. Such applications would be developed by the Authority from time to time as necessary to respond to changing industry and loan program needs. At a minimum, each application would contain identification and background information of the applicant including location and services being provided, a description of the project to be financed and/or refinanced through the Authority, the amount of the requested borrowing and contact information of the borrower.

Forms of the applications are and will be available on the Authority web site or by contacting the Authority.

Authority Fees WAC 247-16-040

The proposed rules clarify the section on Authority application fees, annual fees and any potential fee waivers.

Staff Review of Applications WAC 247-16-050

The proposed rules clarify that the staff review of applications centers on the completeness of the application and whether or not the borrower and project meet statutory definitions of "health care facility", "participant" and "project".

Actions on Applications for Financial Assistance and Resolutions WAC 247-16-065

When the current Authority rules were adopted in 1980, the rules anticipated that the application for the bond issue and the Resolution for the bond issue would be reviewed and approved at the same meeting. Such practice placed the Board in the position of being requested to approve an application for financing and approve the Resolution to issue the bonds at the same meeting. This offered little, if any, opportunity for the Board to offer suggested improvements or to comment on the bond issue. To accommodate the current practice of the Board considering an application separately from the Resolution for issuance of the bonds, the Authority practice has been to review and accept the application at one Board meeting, and to approve the application and adopt a Resolution for bond issue at a subsequent Board meeting. This practice is inefficient. Acceptance of the application should be the only action necessary to begin the process of developing the

necessary legal documents. When such documents are completed, the bond issue is then brought to the Board for review and possible resolution approval. The proposed rule change will separate the application acceptance action from the Resolution approval action, making it two distinct steps.

Authority Action on Resolutions 247-16-070

The proposed rule also modifies the current determinations to be made by the Board when issuing bonds to more accurately reflect the conditions set forth in the Act. Such conditions, among others, include that the project and applicant are eligible to borrow through the Authority, the applicant can reasonably be expected to complete the project, any required Certificate of Need has been received, and the estimated financial benefits resulting from financing its project with Authority bonds, as opposed to obtaining financing other than through Authority bonds, will be used as described in the intent language of the Act.

Selection of Investment Bankers WAC 247-16-090

The proposed rule streamlines the selection process of investment banker by the applicant and makes increases in the amount of bond size needed for co-managing underwriters.

Feasibility Studies and Selection of a Feasibility Consultant WAC 247-16-100

The proposed rule eliminates the requirement of the Authority to maintain a list of feasibility consultants and allows the applicant to select its own consultant, subject to approval by the Authority, in the event one is necessary.