

# Title 253 WAC

## HIGHER EDUCATION FACILITIES AUTHORITY

### Chapters

- 253-02 Organization, operations and procedures.
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### Chapter 253-02 WAC

#### ORGANIZATION, OPERATIONS AND PROCEDURES

#### WAC

- 253-02-010 Purpose.
- 253-02-020 Rules of interpretation.
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- 253-02-040 Description of organization.
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**WAC 253-02-010 Purpose.** The purpose of this chapter shall be to ensure compliance by the Washington higher education facilities authority with the provisions of chapter 42.17 RCW (Initiative 276), and chapter 34.04 RCW.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-02-010, filed 11/27/84.]

**WAC 253-02-020 Rules of interpretation.** (1) All adjectives and adverbs, including but not limited to the words "adequate," "approved," "qualified," "reasonable," "reputable," "satisfactory," "sufficiently," and "suitable," as used in this title to qualify a person, procedure, process or otherwise shall be as determined by the authority or its designee.

(2) Where the word "shall" is used in this title, the subject rule or action to which the word relates is mandatory.

(3) Where the word "should" is used in this title, it indicates suggestion or recommendation but not a requirement.

(4) Where the word "may" is used in this title, the action or rule to which the word relates is permissive or discretionary.

(5) Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular; and words importing the masculine gender or relating to a man may also be extended to the feminine gender and be considered to relate equally to a woman.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-02-020, filed 11/27/84.]

**WAC 253-02-030 Definitions.** (1) "Act" means chapter 169, Laws of 1983, and chapter 28B.07 RCW.

(1992 Ed.)

(2) "Washington higher education facilities authority" and "authority" each mean the corporate and politic public body created by the act and also refer to the staff and employees of the authority.

The terms defined in the act shall have the same meaning when used in this title.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-02-030, filed 11/27/84.]

**WAC 253-02-040 Description of organization.** (1) The authority is a public entity established under the provisions of chapter 28B.07 RCW, which exercises essential governmental functions.

(2) **Members.** The authority shall consist of seven members as follows: The governor, lieutenant governor, executive coordinator of the state council for postsecondary education, and four public members, one of whom shall be the president of a higher education institution at the time of appointment. The public members shall be residents of the state and appointed by the governor, subject to confirmation by the senate, on the basis of their interest or expertise in the provision of higher education and the financing of higher education. The public members of the authority shall serve for terms of four years. The initial terms of the public members shall be staggered in a manner determined by the governor. In the event of a vacancy on the authority due to death, resignation, or removal of one of the public members, and upon the expiration of the term of any public member, the governor shall appoint a successor for a term expiring on the fourth anniversary of the successor's date of the appointment. If any of the state offices are abolished, the resulting vacancy on the authority shall be filled by the state officer who shall succeed substantially to the power and duties of the abolished office. Any public member of the authority may be removed by the governor for misfeasance, malfeasance, wilful neglect of duty, or any other cause after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing.

(3) **Officers.** The governor shall serve as chairperson of the authority. The authority shall elect annually one of its members as secretary. If the governor shall be absent from a meeting of the authority, the secretary shall preside. However, the governor may designate an employee of the governor's office to act on the governor's behalf in all other respects during the absence of the governor at any meeting of the authority. If the designation is in writing and is presented to the person presiding at the meetings of the authority who is included in the designation, the vote of the designee has the same effect as if cast by the governor.

(4) **Authority staff:** The staff of the authority shall consist of an executive director and such other employees as are determined by the authority as necessary to fulfill its responsibilities and duties. The executive director shall be

the chief administrative officer of the authority and subject to its direction. All other staff shall be under his or her supervision and direction. The executive director shall keep a record of the proceedings of the authority and, when required by the authority, shall sign notes, contracts and other instruments. The executive director shall have custody of and be responsible for all moneys and securities of the authority and shall deposit all such moneys forthwith in such banks as the authority may designate from time to time.

(5) Administrative office: The administrative office of the authority shall be located at 504 E. 14th, Suite 130, Mailstop PK-11, Olympia, WA 98504 which office shall be open each day for the transaction of business from 8:00 a.m. to 5:00 p.m. (Saturdays, Sundays and legal holidays excepted, and except for business relating to public records, which is governed by WAC 253-12-050).

(6) Address for communications: All communications with the authority, including but not limited to the submission of materials pertaining to its operations and these rules, requests for copies of the authority's decisions and other matters, shall be addressed as follows: Washington Higher Education Facilities Authority, 504 E. 14th, Suite 130, Mailstop PK-11, Olympia, WA 98504.

[Statutory Authority: RCW 28B.07.040, 84-24-012 (Order 3), § 253-02-040, filed 11/27/84.]

**WAC 253-02-050 Operations and procedures.** (1) Uniform procedure rules: Practice and procedure in and before the authority are governed by the uniform procedural rules codified in the Washington Administrative Code, WAC 1-08-005 through 1-08-590, as now or hereafter amended, which rules the authority adopts as its own, subject to any additional rules the authority may add from time to time. The authority reserves the right to make whatever determination is fair and equitable should any question not covered by its rules come before the authority, said determination to be in accordance with the spirit and intent of the law.

(2) Authority meetings: The meetings of the authority shall all be "regular" or "special meetings" as those designations are applied in chapter 42.30 RCW. They may be called at any time and place by the chairman or a majority of the members of the authority. Notice of all special meetings shall be given by delivering personally or by mail to each member a written notice specifying the time and place of the meeting and a copy of the agenda prepared by the executive director in consultation with the chairman, and by giving such notice to the public as may be required by law. If an emergency is deemed to exist, the chairman may shorten the notice period to not less than twenty-four hours. An executive session may be called by the chairman or by a majority of all members of the authority to consider the appointment, employment or dismissal of an officer or employee, and such other matters as are permitted by RCW 42.30.110.

(3) Quorum: Four members shall constitute a quorum, and the act of a majority of the members present at any meeting, if there is a quorum, shall be deemed the act of the authority except as specified hereafter in subsection (7) of this section.

(4) Chairperson's or secretary's voting rights: The chairperson or the chairperson's designee and the secretary

shall have the right to vote on all matters before the authority, just as any other authority member.

(5) Minutes of meetings: Minutes shall be kept of the proceedings of the authority.

(6) Rules of order: The authority shall generally follow *Robert's Rules of Order*, newly revised, in conducting its business meetings.

(7) Form of authority action: The authority may act on the basis of a motion except when authorizing issuance of bonds pursuant to WAC 253-16-070 and when otherwise taking official and formal action with respect to the creation of special funds and the issuance and sale of bonds for a project of a participant, in which case the authority shall act by resolution. Such resolutions shall be adopted upon the affirmative vote of a majority of the members of the authority and shall be signed by a majority of the members of the authority. Motions shall be adopted upon the affirmative vote of a majority of a quorum of members present at any meeting. All bonds and coupons shall bear either the manual or the facsimile signatures of the governor and executive director.

(8) Public participation in the meetings of the authority shall be as follows:

(a) Any person or organization wishing to make a formal presentation at a scheduled meeting of the authority shall so notify the executive director in writing at least seventeen days prior to the time of the meeting. The authority or executive director may waive the seventeen-day notice period in the event the proposed presentation is of critical importance to the operation of the authority.

(i) Such notification shall contain the name of the person, association, corporation or organization that desires to make a presentation; the address of such person and, if applicable, the address of the entity to be represented in the presentation; and the topic to be presented or discussed.

(ii) Permission to make a presentation to the authority shall be granted by the executive director as authorized by the authority.

(iii) Confirmation of permission to make a presentation to the authority shall be made, if at all possible, by the authority staff prior to the meeting of the authority and shall include the date and time of the meeting and time set for the formal presentation.

(b) The presiding officer of the authority shall have the discretion to recognize anyone in the audience who indicates in writing at the time of the meeting a desire to speak at such meeting, provided that remarks by any individual person shall be limited to five minutes unless a time extension is granted by the presiding officer.

[Statutory Authority: RCW 28B.07.040, 84-24-012 (Order 3), § 253-02-050, filed 11/27/84.]

## Chapter 253-12 WAC PUBLIC RECORDS

### WAC

253-12-010	Purpose.
253-12-020	Definitions.
253-12-030	Public records available.
253-12-040	Public records officer.
253-12-050	Office hours.
253-12-060	Requests for public records.

253-12-070	Copying.
253-12-080	Exemptions and denials of requested public records.
253-12-090	Review of denials of public records requests.
253-12-100	Protection of public records.
253-12-101	Records index.

**WAC 253-12-010 Purpose.** The purpose of this chapter shall be to ensure compliance by the Washington higher education facilities authority with the provisions of RCW 42.17.250 through 42.17.340, dealing with public records.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-12-010, filed 11/27/84.]

**WAC 253-12-020 Definitions.** (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency, regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing and every other means of recording any form of communication or representation, including letters, words, pictures, sounds or symbols, or any combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) "Washington higher education facilities authority" and "authority" each refers to that state agency described in WAC 247-02-030.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-12-020, filed 11/27/84.]

**WAC 253-12-030 Public records available.** All public records of the authority are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-12-030, filed 11/27/84.]

**WAC 253-12-040 Public records officer.** The authority's public records shall be under the charge of the public records officer designated by the executive director of the authority. The person so designated shall be located in the administrative office of the authority. The public records officer shall be responsible for implementing the authority's rules and regulations regarding release of public records, coordinating the staff of the authority in this regard and generally ensuring compliance by the staff with the public records disclosure requirements of chapter 42.17 RCW.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-12-040, filed 11/27/84.]

**WAC 253-12-050 Office hours.** Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-12-050, filed 11/27/84.]

**WAC 253-12-060 Requests for public records.** In accordance with the requirements of chapter 42.17 RCW that agencies prevent unreasonable invasion of privacy, that they protect public records from damage or disorganization and that they prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained by members of the public upon compliance with the following procedures:

A request shall be made in writing upon a form prescribed by the authority, which form shall be available at its administrative office. The form shall be presented by the public records officer, or to any member of the authority's staff if the public records officer is not available, at the administrative office of the authority during the office hours specified in WAC 253-12-050. The request shall include the following information:

- (1) The name of the person requesting the record;
- (2) The time of day and calendar date on which the request was made;
- (3) The nature of the request;
- (4) If the matter requested is referenced within the current index maintained by the public records officer, a reference to the requested record as it is described in such current index;
- (5) If the requested matter is not identifiable by reference to the authority's current index, an appropriate description of the record requested.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-12-060, filed 11/27/84.]

**WAC 253-12-070 Copying.** No fee shall be charged for the inspection of public records. The authority shall charge a fee of twenty-five cents per page of copy for providing copies of public records and for use of the authority's copying equipment. This charge is the amount necessary to reimburse the authority for its actual costs incident to such copying.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-12-070, filed 11/27/84.]

**WAC 253-12-080 Exemptions and denials of requested public records.** (1) The authority reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 253-12-060 is exempt under the provisions of RCW 42.17.310.

(2) In addition, pursuant to RCW 42.17.260, the authority reserves the right to delete identifying details when it makes available or publishes any public record in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-12-080, filed 11/27/84.]

**WAC 253-12-090 Review of denials of public records requests.** (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the executive director of the authority. The executive director may request that a special meeting of the authority be called as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the authority has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-12-090, filed 11/27/84.]

**WAC 253-12-100 Protection of public records.** In order that public records maintained on the premises of the authority may be protected from damage or disorganization as required by chapter 42.17 RCW, the following procedures and practices are hereby instituted:

(1) Upon receipt of a request by a member of the public for a public record, the public records officer or the staff member in the authority's office receiving the request shall review the request for a public record and the requested public record to determine whether deletions from such record should be made or the request for such record should be denied pursuant to WAC 253-12-080.

(2) Only after a determination has been made that all or such portion of a public record as is not deleted may be inspected shall such public record or portion thereof be made available for inspection by a member of the public.

(3) Only the staff and members of the authority may open authority files to gain access to authority records for either authority business or to respond to a request for a public record.

(4) No public record of the authority may be taken from the premises of the authority by a member of the public.

(5) Public inspection of authority records shall be done only in such locations as are approved by the public records officer, which locations must provide an opportunity for authority staff members to ensure that no public record of the authority is damaged, destroyed, unreasonably disorganized or removed from its proper location or order by a member of the public.

(6) Public records of the authority may be copied only on the copying machines of the authority unless other arrangements are authorized by the public records officer.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-12-100, filed 11/27/84.]

**WAC 253-12-101 Records index.** (1) The authority shall establish a current index which provides identifying

information as to the following records issued, adopted or promulgated since its inception:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy statute and the constitution which have been adopted by the authority;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultants' reports and studies, scientific reports and studies, and reports or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the commission relating to any regulatory, supervisory or enforcement responsibilities of the authority whereby the authority determines, or opines upon, or is asked to determine or opine upon the rights of the state, the public, a subdivision of state government or any private party.

(2) The current index promulgated by the authority shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-12-101, filed 11/27/84.]

**Chapter 253-16 WAC**

**PROCEDURES AND FEES FOR PREPARATION AND PROCESSING OF APPLICATIONS FOR AUTHORITY ASSISTANCE**

**WAC**

253-16-010	Purpose.
253-16-020	Definitions.
253-16-030	Applications for financial assistance.
253-16-040	Fees.
253-16-050	Processing of application.
253-16-060	Priorities regarding applicant funding.
253-16-070	Authority action on applications.
253-16-090	Selection of investment banking firms as underwriters.
253-16-100	Selection of bond counsel.

**WAC 253-16-010 Purpose.** The purpose of this chapter shall be to set forth the procedures pursuant to which the authority determines those higher education institutions to which the authority will give financial assistance.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-16-010, filed 11/27/84.]

**WAC 253-16-020 Definitions.** (1) "Applicant" means a participant which submits an application to the authority.

(2) "Application" means a formal request for the providing of bonds for the financing of a higher education institution by the authority, in a format and containing such information as the authority shall specify in these rules or in the application instructions and which is signed and sworn to by a representative designated by formal action of the applicant's governing board or equivalent.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-16-020, filed 11/27/84.]

**WAC 253-16-030 Applications for financial assistance.** Because the needs of higher education institutions in the state vary substantially, no application forms shall be provided by the authority. However, an applicant should furnish the following information to the authority, where applicable, with its request for financial assistance, and such other information as is deemed pertinent by the applicant or the executive director of the authority:

- (1) Identification of applicant:
  - (a) Legal name and address of applicant;
  - (b) Names, titles, and telephone numbers of chief executive officer, chief financial officer, and person assigned responsibility for liaison with the authority;
  - (c) Names, addresses, and telephone numbers of applicant's legal counsel, outside accounting firm, and financial consultant or investment banking firm (if any);
  - (d) Description of applicant's legal structure (e.g., private nonprofit corporation). Describe type and ownership of stock, if any; how assets held and by whom; and attach copies of articles of incorporation or similar documentation;
  - (e) Copy of IRS determination of 501(c)(3) status;
  - (f) Accreditation status and name and address of accrediting body.
- (2) Project for which financial assistance is sought (if applicable):
  - (a) Amount and requested terms of repayment for financing sought;
  - (b) Description of project to be accomplished with authority financial assistance;
  - (c) Current status of planning for project and dates proposed for (i) completion of drawings for project, if necessary (attach copies if completed); (ii) filing of environmental impact statement, if necessary; (iii) entry into construction contract; and (iv) completion or occupancy;
  - (d) Cost of project (including simple breakdown of costs of general construction, site work, utilities, equipment, land acquisition, architects' and other fees, contingency, interim interest, other);
  - (e) Sources of funds for payment of project costs and dates of expected receipt (assistance from authority, interim financing, grants, funds on hand, interest and profit on interim investment of construction funds, other);
  - (f) Amount of projected revenues to be derived from project, the sources of such revenues, when expected to begin, and a three-year projection;
  - (g) Feasibility studies on project, if any (attach copy if one has been completed);
  - (h) Proposed security for authority-issued bonds;
  - (i) Contracts or preliminary arrangements with planners, architects, consultants, investment banking firm, if any, regarding project.
- (3) Debt to be refinanced with authority assistance (if applicable):
  - (a) Amount, date, maturity or maturities, interest rate or rates, prepayment penalties, if any, debt service and form of applicant's existing debt to be refinanced;
  - (b) Source of revenue for payment of existing debt, security for debt and rating, if any, assigned to debt instruments at time of debt issuance;

- (c) Holder of debt (if ascertainable);
- (d) Any negative debt service payment history;
- (e) Proposed security for new authority-issued debt;
- (f) Proposed date schedule for accomplishing debt refinancing.
- (4) Finances of applicant:
  - (a) Audited (if audited) financial statements for past three years;
  - (b) Latest current financial statement;
  - (c) Current year's budget of revenues, expenses and capital expenditures;
  - (d) Projection of revenues, expenses, capital expenditures for next three-five years, including revenues and expenses of proposed project (if applicable);
  - (e) Description of long-term debts of applicant, if not already given above, including date incurred, by whom held, debt service schedule, interest rate, form of debt, source of revenues for repayment, security for repayment;
  - (f) Sources of institution revenues (tuition, grants, etc.) and approximate dollar volumes and percentages of total revenues for each source in last three years.
- (5) Student populations:
  - (a) Fall FTE enrollment for each of the preceding three years as well as projections for each of the next three to five years;
  - (b) Number of freshmen and transfer students who have registered at the institution in each of the preceding three years as well as projections for each of the next three to five years;
  - (c) Number of applications completed for admission as a freshman or transfer student in each of the past three years.
- (6) General:
  - (a) Pending or threatened litigation or administrative actions with potential of material adverse effect on applicant;
  - (b) Brief description of existing institution facilities and location of such facilities;
  - (c) Brief description of institution expansion plans, if any, in next ten years;
  - (d) Estimate of aggregate savings over the life of the proposed financing to be realized by applicant through authority financing by tax-exempt bonds as compared to financing through taxable obligations. Specify interest assumptions on which savings calculations based;
  - (e) Other information the authority or the applicant deem necessary and important.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-16-030, filed 11/27/84.]

**WAC 253-16-040 Fees.** (1) Authorization to charge fees: The authority, pursuant to chapter 28B.07 RCW, shall require applicants to pay fees and charges to the authority to provide it with funds for expenses of issuance and sale of bonds, and other charges for services provided by the authority in connection with projects undertaken, as well as the operating and administrative expenses of the authority. In accordance with this authorization, an applicant shall pay to the authority such fees and charges as are necessary to meet any and all expenses incurred by the authority in connection with the processing of the application of the applicant, together with an annual service fee to defray expenses of the authority in administering and servicing the

financing provided to the applicant and other allocable expenses of the authority. The authority shall assess an annual fee of one-tenth of one percent of the outstanding and unredeemed bonds of each applicant. The initial annual fee shall be paid to the authority on the date of closing of each tax exempt note or bond issue and in every anniversary date thereafter: *Provided, however*, That the authority by an adopted motion may set a different fee schedule and may waive or credit all or any part of the annual or application fee.

(2) Fee obligations of the applicants: An applicant shall submit with its application an initial remittance of: (a) A three thousand seven hundred fifty dollar fee which shall accompany each application for a bond anticipation note; or (b) a seven thousand five hundred dollar fee which shall accompany all other applications for assistance. The authority shall, in its discretion make the final determination whether any application is for a bond anticipation note. The applicant shall pay such fees and charges as they are billed to it from time to time by the authority. These expenses may be reimbursed to the applicants from the bond proceeds if financing is consummated. In addition, the application shall contain an appropriate legal commitment to indemnify the authority against any expenses or costs incurred by it in connection with the processing of the applicant's application and the completion of any project or plan and system subsequently approved and undertaken by the authority, as well as to pay the authority an annual service fee to defray expenses of the authority in administering and servicing the financing provided to the applicant and other allocable expenses of the authority, which annual fee shall be imposed so long as financing is being provided by the authority to the applicant.

(3) Refund of excess fees: The authority may from time to time, at its discretion refund any surplus fees paid or deposited by an applicant or participant which the authority believes exceeds the actual application-processing expenses and authority-determined pro rata administrative and operating costs of the authority.

(4) All the costs and expenses of the authority shall be paid from fees assessed pursuant to this section. No moneys of the state of Washington shall be expended for such purposes.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-16-040, filed 11/27/84.]

**WAC 253-16-050 Processing of application.** An application will be reviewed by the executive director and such authority staff as he or she determines. Upon completion of authority staff analysis and recommendations, such staff analysis and recommendations and the application shall be presented to the authority for appropriate action.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-16-050, filed 11/27/84.]

**WAC 253-16-060 Priorities regarding applicant funding.** The authority will process higher educational facility applications for assistance in the order of their date of receipt. The date of receipt shall be the date the higher education facility application together with the application fee is received by the authority at its office.

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The authority reserves the right to change priorities and scheduling when the authority determines that a "first come, first served" priority scheduling is detrimental to the sale of another higher educational facility's bond issue or when conditions of health and safety or public benefit require a different priority.

[Statutory Authority: RCW 28B.07.040. 84-24-012 (Order 3), § 253-16-060, filed 11/27/84.]

**WAC 253-16-070 Authority action on applications.**

(1) The authority shall meet to review and consider the staff analysis and recommendations and the application.

(2) The authority may approve an application and adopt a resolution authorizing the issuance of bonds for the requested financing where it determines:

(a) It is necessary or advisable for the benefit of the higher education system for the authority to provide financing for the proposed project;

(b) The applicant can reasonably be expected to achieve successful completion of the higher education facilities to be financed by the authority;

(c) The proposed project and the issuance of bonds by the authority for such project are economically feasible and can be undertaken on terms economically satisfactory to the authority;

(d) The proposed higher education facility, if completed as described in the application, will carry out the purposes and policies of the act;

(e) The applicant has reasonably satisfied the requirements of the act and these regulations; and

(f) Other criteria that the authority has determined are appropriate factors in its decision-making process have been met.

(3) The authority may approve an application on a conditional basis where the criteria of subsection (2) of this section have been met and pending satisfaction of such other conditions or requirements as the authority shall determine to be reasonable and necessary in order to carry out the purposes, policies and requirements of the act and these regulations. The applicant shall be notified in writing of such conditions or requirements, which may include, but need not be limited to, the amendment of an application or proposed bond resolution in order to meet the availability of funds, changes in costs, or other purposes or circumstances which may enhance the ability of the authority or the applicant to complete the project or better serve the purposes and policies of the act. Upon the satisfaction of such additional conditions or requirements, the application shall be deemed approved pursuant to subsection (2) of this section.

(4) The authority may also deny an application; in such event, it shall notify the applicant of such action, specifying in writing the reasons for its denial.

[Statutory Authority: RCW 28B.07.040. 87-01-035 (Order 1), § 253-16-070, filed 12/12/86; 84-24-012 (Order 3), § 253-16-070, filed 11/27/84.]

**WAC 253-16-090 Selection of investment banking firms as underwriters.** (1) The authority shall create and maintain a roster of underwriters who the authority believes possess the requisite special expertise and professional standing to provide bond marketing services which would be accepted by bondholders and other members of the financial

community, and which would be in furtherance of the public interest in marketing the authority's bonds at the lowest possible costs in Washington state as well as nationally.

(2) Any underwriter may apply to have its name placed on the roster. Each underwriter placed on the roster must be able to demonstrate current competence and experience in the structuring and sale of higher educational facility bond financing. In addition the underwriter must meet the following minimum standards:

(a) The firm must have a minimum equity capital of twenty million dollars; and

(b) The firm must currently possess the competence and ability to underwrite a higher education facility bond issue by demonstrating, among other things, that the firm or its key underwriting personnel have either managed or comanaged two higher educational facility bond issues within the last three calendar years; or

(c) The firm has served as a credit facility for a higher education facility within the past three years; or

(d) The firm meets other criteria as the authority may adopt from time to time which establish a firm's ability to prepare for issuance, underwrite and market bonds to be issued by the authority.

(3)(a) Whenever the authority decides that it needs the services of an underwriter, it shall provide all underwriters on the roster with a notice of its intentions and shall invite each of them to submit to the authority an itemization of its fees and other charges for providing underwriting services on the issue. The authority shall have wide discretion in selecting the underwriter it considers to be most appropriate to provide the services, but in the exercise of this discretion the authority shall consider the underwriter's fees and other charges and the public interest in achieving issuance of bonds on terms most favorable to the authority.

(b) The applicant may, at its option, exercise the notice and selection procedures regarding underwriters set forth in (a) of this subsection. In such circumstances the applicant shall supply the authority with written verification that it has complied with the provisions of (a) of this subsection and the applicant shall obtain the authority's prior approval of the actual selection of the underwriter.

(4)(a) To provide balanced management knowledge and sale distribution and to assure the most realistic bond terms and interest, the authority reserves the right to name investment banking firms as comanagers of any authority bond issue(s). The authority will not name an investment banking firm or firms as a comanaging underwriter or comanaging underwriters on bond issues of less than ten million dollars unless the authority determines that special circumstances so require. On each issue aggregating more than ten million dollars the authority may name a comanager or comanagers. On each issue aggregating more than twenty million dollars the authority may name two or more comanagers. The authority will also review and approve the division of the management fee in each instance where a comanager is named. While the authority will actually select the comanagers, it will consider recommendations from the applicant as to the selection of any comanager or comanagers. In each instance, the applicant will be given a written notification fifteen days prior to the authority's actual designation of an investment banking firm or firms as a comanager on a particular bond issue.

(b) For purposes of selecting comanagers on any bond issues, the authority shall maintain a roster of qualified comanagers for higher education facility bond issues. Any underwriter may, at any time, apply to the authority to have the underwriter's name placed on the roster or removed from the roster. Any underwriter qualified as a senior manager pursuant to subsection (2) of this section will also be placed on the roster of comanagers. The authority may, from time to time, request updated proposals for underwriter services from firms on the comanager roster. When the authority determines the need to retain comanagers, it shall select comanagers from the roster, with the advice of the applicant, the financial advisor, and the senior underwriter on the particular issue. In selecting a comanager, the authority shall consider each of the following factors:

(i) The underwriter's success in structuring and/or marketing higher education bond issues;

(ii) Underwriter's familiarity with higher education bond issues;

(iii) The underwriter's fee schedule for services;

(iv) The underwriter's regional and/or national reputation with respect to financial and underwriting services and ability to market bonds nationally and regionally as well as in Washington;

(v) Other qualifications which the authority may establish from time to time which indicate the firm's ability to act as a comanager on an authority bond issue.

(5) All compensation of the senior and comanaging underwriters, members of any underwriting syndicate, and placement agents shall be contingent upon the successful issuance and payment for the obligations and shall be paid from the proceeds of the sale or through the underwriting spread. The amount of the compensation for all such parties shall be determined by the authority, after considering the recommendations of the participant.

(6) For private placements the applicants may select a firm as placement agent for its proposed financing, subject to review and approval by the authority. In every instance, the placement agent selected must be able to demonstrate a familiarity with, and competence and experience in, the structuring and sale of higher education facility bonds. The applicant shall notify the authority in writing of its proposed placement agent selection fifteen days prior to the date it intends to enter into a formal contractual agreement. The authority will notify the applicant of its acceptance or rejection of the applicant's placement agent selection no later than ten days after receipt of the applicant's notification. If rejected, the authority will set forth the reasons for rejection, and the applicant will then propose another placement agent subject to authority approval in the same manner. The authority shall, in its discretion, make the final determination whether an issue is a private placement.

[Statutory Authority: RCW 28B.07.040, 87-01-035 (Order 1), § 253-16-090, filed 12/12/86; 84-24-012 (Order 3), § 253-16-090, filed 11/27/84.]

**WAC 253-16-100 Selection of bond counsel.** The authority will establish a roster of bond counsels whom the authority believes possess the requisite special expertise and professional standing to provide bond counsel opinions which would be accepted by the underwriters, bond holders, rating agencies and other members of the financial communi-

ty, and which would be in furtherance of the public interest in obtaining the lowest possible interest rates on bonds issued by the authority.

The authority will notify bond counsel firms that the authority is establishing an initial roster by publishing a notice in a publication commonly circulated among bond counsels, by sending notice to each of the bond counsel firms listed in the Washington state section of the *Red Book (Bond Buyers' Directory of Municipal Bond Dealers of the United States — 1984 spring edition)* and notifying the Washington State Bar Association. Interested firms will be requested to submit their qualifications for listing on the authority's initial roster, together with its proposal for serving as bond counsel, including a determination as to whether the firm believes that a test suit is necessary as a prerequisite to the issuance of any bonds.

The authority will upon receipt of these submissions establish an initial roster of bond counsel whom the authority believes possess the requisite special expertise and professional standing to provide bond counsel opinions.

Any firm or attorney wishing to be considered for the initial roster or added to the roster shall provide the background, expertise, professional standing and a listing of approving bond counsel opinions previously written to the authority for its consideration in adding the firm's or attorney's name to the roster of bond counsel.

Law firms or attorneys may submit to the authority at any time the request to be included on the roster of approved bond counsel.

Before beginning the selection process for bond counsel from the approved roster, the authority will give notice of its intention to select bond counsel. Each firm or attorney listed on the approved roster will be asked to submit a proposal, including a fee schedule for providing bond counsel services if such proposal and fee schedule would be different from that previously submitted to the authority for establishing the approved roster. The authority when making the initial selection will review the submissions, determine the relative expertise of those who wish to be selected, and will review the fee schedule and whether the firm believes that a test case or litigation is necessary prior to the issuance of the bonds. The authority has wide discretion in selecting the attorney or attorneys or bond firm it considers to be most appropriate to provide the services, but in exercise of this discretion the authority shall consider all submitted fee schedules and the public interest in achieving the issuance of bonds on terms most favorable to the authority.

At least once every two calendar years, the authority shall select anew an attorney or attorneys to serve as bond counsel. However, the authority may retain an attorney for longer than two years when necessary to complete work on a particular bond issue. An attorney previously selected may be selected again, but the authority will provide other attorneys or bond counsel on the roster with an opportunity to be selected prior to this action being taken. The authority also reserves the right to appoint bond counsel with respect to only a particular bond issue or issues.

[Statutory Authority: RCW 28B.07.040, 87-01-035 (Order 1), § 253-16-100, filed 12/12/86; 84-24-012 (Order 3), § 253-16-100, filed 11/27/84.]