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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 123
OREGON BUSINESS DEVELOPMENT DEPARTMENT

FILED
08/15/2019 10:59 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: These rules relate to Economic Development Revenue Bonds.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/23/2019 1:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S):

The Department has been seeing an increasing amount of very large bond issues and the rules replace Department discretion in offering alternative bond closing fee arrangements with a fixed fee schedule, so there is greater transparency to users of the bond program about bond closing fees. In addition, in response to issues which have come up recently, the rules require applicants to agree in writing upfront to pay all required fees and to stay current with fees due the Department's bond counsel, and the rules clarify the refundability of fees and the application of fees to the bond closing fee.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 285B.320 - 285B.371

FISCAL AND ECONOMIC IMPACT:

If a businesses chooses to participate in this program there are fees the department must charge to support administrative cost associated with the program. There is no fiscal impact in general to the public associated with these rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Business who choose to take part in and are approved for this program will be required to pay upfront nonrefundable costs and other fees associated with this bond program. Members of the public and local governments will not be economically affected as a result of these rules. There is no effect on small businesses as a whole. This program is

voluntary and provides a financial benefit to the applicants.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Finance Committee, private bond counsel, Department of Justice, State Treasurers Office who assist in promulgating these amendments are made up of members of and are associated with the small business community and do so in public meetings.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

These rules do not have a fiscal impact to the community. Other stakeholders were consulted in the promulgation of these amendments.

AMEND: 123-011-0045

RULE SUMMARY: These proposed rules changes address a multitude of issues. The Department has been seeing an increasing amount of very large bond issues and the rules replace Department discretion in offering alternative bond closing fee arrangements with a fixed fee schedule, so there is greater transparency to users of the bond program about bond closing fees. In addition, in response to issues which have come up recently, the rules require applicants to agree in writing upfront to pay all required fees and to stay current with fees due the Department's bond counsel, and the rules clarify the refundability of fees and the application of fees to the bond closing fee.

CHANGES TO RULE:

123-011-0045

Fees ¶

Applicants shall pay the Department and the Commission's bond counsel the following fees and expenses:¶

(1) For a new money Bond which is not a ~~refunding or restructuring, modification, restructuring, or reissuance.~~¶

(a) Applicant shall pay to the Department a non-refundable application fee of \$500 that shall accompany the application, unless the project is an Exempt Facility solid waste disposal waste-to-energy project. If the project is an Exempt Facility solid waste disposal waste-to-energy project, the Applicant shall pay to the Department an ~~additional~~ non-refundable application fee of \$2,0500 that shall accompany the application. If an Exempt Facility solid waste disposal waste-to-energy Bond closes, \$2,000 ~~may~~shall be credited towards the total closing fee due at closing.¶

(b) For Bonds to be issued for Exempt Facility solid waste disposal waste-to-energy projects, the Applicant shall pay to the Department a fee of up to the greater of \$10,000 or 1/10 of one percent (0.1%) of the total Bonds proposed to be issued for the project up to a maximum amount of \$50,000 that, The fee shall accompany the request for approval of a Resolution for Project Eligibility or the request for approval of an extension of a Resolution for Project Eligibility. If the Resolution for Project Eligibility is not approved, this fee will be refunded; provided, however, that if the request is for an extension of a Resolution for Project Eligibility, the fee shall be calculated based only on the increase, if any, from the amount of the Bonds approved in the pending Resolution to the amount of the Bonds sought in the request for the Resolution's extension. If the Resolution for Project Eligibility is not approved, this fee, in whole or part, may be refunded at the Department's sole discretion. If the Resolution for Project Eligibility is approved, this fee will not be refunded but if the Bond closes, it ~~may~~shall be credited towards the total bond closing fee due at closing.¶

(c) If the Department brings a request for current year or carry forward allocation to the Private Activity Bond Committee (PABC), the Applicant benefiting from the allocation request shall pay the Department a ~~non-refundable fee of up to the greater of \$10,000 or fee of~~ 1/10 of one percent of (0.1%) of the PABC allocation requested for each such request. If the Bond closes, up to a maximum amount of \$10,000, for each such request. If the Applicant's request to PABC is denied, in whole or part, the Department may refund this fee, in whole or part,

at its sole discretion. If the Bonds close, this fee may shall be credited towards the total closing fee due at closing. This fee is in addition to any fees charged directly by PABC.¶

(d) For Bond issues which are not issued under the Oregon Express Bond Program, the Applicant shall pay to the Department at the time of initial Bond closing a closing fee ~~of which equals~~ of one percent (0.5%) of the total Bonds issued for the project amount of bond proceeds (par plus premium or minus discount) from Bonds issued for the project for the first \$10,000,000 in bond proceeds plus of one percent (0.25%) of proceeds in excess of \$10,000,000. When bonds are issued in more than one series for an eligible project, this bond closing fee shall be applied to the total amount of bond proceeds from all series.¶

(e) For the Oregon Express Bond Program, the Applicant shall pay to the Department at the time of initial Bond closing a closing fee of of one percent (0.25%) of the total Bond issuance for the project, regardless of the total amount of Bonds. When bonds are issued in more than one series for an eligible project, this bond closing fee shall be applied to the total amount of Bonds from all series.¶

(f) The total closing fee due at closing shall be adjusted by the credits described in OAR 123-011-0045(1) (a) - (c).¶

~~(eg) For Bonds that exceed \$10,000,000, the Department, at its sole discretion, may offer alternative fee payment options that may include a reduced closing fee and/or annual fees based upon the outstanding principal balance of the Bonds provided the total fees collected does not exceed of one percent of the amount of the Bonds issued at closing. The fees imposed by OAR 123-011-0045(1)(a)-(e) shall apply to both tax-exempt and taxable bonds.~~¶

(h) Before the Finance Committee or Department acts on a Declaration of Intent or Resolution for Project Eligibility and before the Department or Finance Committee acts on a request for new money Bonds, an Applicant shall agree in writing to pay all fees described in this Rule.¶

(2) For a current refunding of an outstanding Bond:¶

(a) The Applicant shall pay to the Department a non-refundable processing fee of \$500 that shall accompany the request for the refunding.¶

~~(b) The Applicant shall pay to the Department~~Department may charge the Applicant a closing fee of up to 1/10 of one percent (0.1%) of the amount of the total bond proceeds from the refunding Bond or bond proceeds for any additional Bonds issued under a single project eligibility. This closing fee may be waived for any refunding Bond issued within 18 months of the closing date of the Bond issue to be refunded.¶

~~(3c) Before the modification or restructuring~~Department or Finance Committee acts on a request for a refunding of existing Bonds, an Applicant shall agree in writing to pay all fees described in this Rule.¶

(3) For the modification, restructuring, or reissuance of existing Bonds:¶

(a) The Applicant shall pay to the Department a non-refundable processing fee of \$1,000 that shall accompany the request for approval of the modification ~~or~~, restructuring, or reissuance.¶

~~(b) The Department may charge the Applicant a closing fee of up to 1/10 of one percent of the amount of the modified or restructured Bond~~(0.1%) of the total bond proceeds from the modified, restructured, or reissued Bonds.¶

(c) Before the Department or Finance Committee acts on a request for a modification, restructuring, or reissuance of existing Bonds, an Applicant shall agree in writing to pay all fees described in this Rule.¶

(4) The Department may charge any out-of-pocket expenses, including but not limited to legal expenses, incurred by the Department for processing any Bond request. The Department may charge an estimation of these expenses in advance of the scheduled Bond closing. Any overpayments for estimated out-of-pocket expenses will be credited to the applicant at Bond closing. Applicants shall agree in writing, before Finance Committee acts on a Declaration of Intent or a Resolution for Project Eligibility, to pay any out-of-pocket expenses incurred by the Department for processing any Bond request whether or not the Bonds close.¶

(5) The Commission may collect the above fees and expense reimbursements from an Applicant that seeks to have an Economic Development Project declared eligible for financing, ~~even though the project has not been~~ before the project is determined to be eligible for financing.¶

(6) Applicants or beneficiaries of Bond financing shall pay directly ~~to the Commission's bond counsel~~ their legal fees and direct expenses, and remain current with their payment obligations, for legal fees or expenses payable to the Commission's bond counsel related to issuance, refunding, modifications, restructuring or ~~for other~~

~~miscellaneous legal charges related to the Bonds~~ reissuance of Bonds through the Commission.

Statutory/Other Authority: ORS 285A.075

Statutes/Other Implemented: ORS 285B.326