

**INDUSTRIAL DEVELOPMENT  
REVENUE BOND FINANCING  
GUIDELINES AND PROCEDURES**



**Lee County Industrial  
Development Authority**

Revisions approved September 24, 2010



# Lee County Industrial Development Authority

## INDUSTRIAL DEVELOPMENT REVENUE BOND (IDRB) FINANCING LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY GUIDELINES AND PROCEDURES<sup>1</sup>

### INTRODUCTION

The Lee County Industrial Development Authority (IDA) 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. IDRBs are securities issued by a local governmental agency, such as the Lee County Industrial Development Authority, for the purpose of financing capital projects.

The IDA encourages both companies interested in locating in Lee County and companies presently located in Lee County to explore the use of IDRBs to finance projects.

When the IDA assists with the issuance of bonds, it is accomplished in the form of an Inducement Resolution and a Memorandum of Agreement between the IDA 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. In addition, since the IDA serves as a conduit for the issuance of bonds (rather than directly as a lender) it is recommended that potential applicants discuss the financing with potential financial institutions or investment bankers to determine whether the current financial market is willing to underwrite the project. Upon request, the IDA will provide a list of financial institutions and investment bankers that have worked with the IDA on past transactions, but in no way does the IDA recommend or suggest any particular financial institution or investment banking firm.

These procedures and guidelines are effective as of September 24, 2010, and supersede any previous procedures and guidelines issued by the Authority.

### 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, V, and VI, as amended.
- (2) Constitution of the State of Florida, Article VII, Sections 10 and 12.

<sup>1</sup>The information in these Guidelines and Procedures is intended to assist businesses in determining whether their project may be appropriate for Lee County Industrial Development Revenue Bond financing. 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.

- (3) General Statutes of Florida, Chapter 75, Bond Validation and Chapter 189, Special Districts.
- (4) Sections 141 -150 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. This interest differential ranges from 2.0% to 3.0%. For example, on a \$5 million transaction, the differential between a taxable rate and a tax-exempt rate is between 1-2%. That equates to about \$1,000,000 of savings over the life of a 20-year obligation.
- (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:
  - (a) Up to 25% of bond proceeds may be used to acquire land (including the cost of surveys and title insurance).
  - (b) The cost of construction.
  - (c) The cost of demolishing, removing, or relocating any buildings or structures on lands so acquired.
  - (d) The cost of new machinery and equipment.
  - (e) The cost of interest during construction and for a reasonable period thereafter.
  - (f) The cost of engineering and architectural surveys, plans and specifications (if related to the financing, such costs may be subject to the Costs of Issuance Limitation described below).
  - (g) The cost of consultant and legal services directly related to the issuance of bonds (may be subject to the Costs of Issuance Limitation).
  - (h) The cost of reimbursements to any state or other governmental agency for expenditures directly related to the project.
  - (i) The cost of other expenses necessary or incidental in determining the feasibility or practicability of such construction, acquisition, demolishing, removing or relocating (may be subject to the Costs of Issuance Limitation).
  - (j) 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 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 \$3 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.
- (7) 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 or the Authority's bond counsel to determine what alternatives are available to them:

- (1) **Small-Issue 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 are 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 \$20 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 federal tax legislation. Some of these include:

(a) Limit on Land Acquisition

Pursuant to §147(c)(1)(A) of the Code, Industrial Development Revenue Bond proceeds, subject to certain exceptions, can be applied to the purchase of land for a project only if the cost is less than 25% of total bond proceeds.

(b) Restrictions on Purchase of Existing Buildings and Equipment

Pursuant to §147(d)(2) of the Code, existing buildings can be purchased only if an amount equal to 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.

(c) Costs of Issuance Limit

Pursuant to §147(g) of the Code, the issuance costs (including, without limitation, underwriter's spread, counsel fees, financial advisor fees, rating agency fees, trustee fees, accounting fees and printing costs) cannot exceed 2% of the total bond proceeds.

(d) Per-User Limit for Small-Issue Manufacturer Bonds

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.

(e) Non-Qualified Projects

Pursuant to §147(e) of the Code, airplanes, stadium skyboxes, gambling facilities, health clubs and liquor stores cannot be financed with IDRB's.

(f) Arbitrage Restrictions

Pursuant to §148 of the Code, arbitrage profits must be rebated to the U.S. Treasury Department, with certain exceptions related to the expenditure of construction funds.

(g) State Volume Caps

Pursuant to §146 of the Code 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 qualifiable 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) Lee County Industrial Development Authority Requirements

The Lee County IDA requires that 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

Should the company, the bond investor/purchaser, the Lee County IDA, or bond counsel believe that a proposed project or its financing structure does not fit squarely within the definition of a qualified project under the Florida Statutes, the Lee County IDA may require the bonds to be validated in the Florida courts, pursuant to Florida Statutes Chapter 75, before issuance.

(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.

## **PROJECT ELIGIBILITY APPLICATION**

Application for the issuance of Industrial Development Revenue Bonds shall be made directly to the Lee County Industrial Development Authority upon company letterhead and shall include three (3) copies of the following information:

(1) Company name, parent company name, names of principal operating officers, business address and telephone number, and a description of the company, its history and operations. Complete description of the manufacturing process contemplated and the product produced. If any hazardous materials are used or produced, enumerate and describe the control on these. A detailed account of any improvements and/or construction contemplated.

- (2) A detailed description of the real property involved, including the strap number, street number and number of existing buildings. A map showing the location of the property, which can be obtained from the Lee County Property Appraiser's Office. The present zoning and comprehensive plan designation for the property together with a description of any special utilities or infrastructure needed to serve the proposed project.
- (3) Specific amount in U.S. Dollars being requested to be raised by issuance of Industrial Development Revenue Bonds. An estimate in U.S. Dollars of the total cost of the project.
- (4) A statement regarding the intended use of bond proceeds with regard to land acquisition cost, construction cost, engineering/architectural fees, machinery and equipment cost, legal/financial fees.
- (5) A statement indicating the applicant's estimate of company performance as a result of new investment made possible by Industrial Development Revenue Bonds, including new employment, or existing employment to be preserved. An estimate of ad valorem taxes anticipated should be included.
- (6) A statement indicating the proposed security for the bonds.
- (7) A statement as to the proposed method of sale of the bonds.
- (8) Conventional financial statements prepared in accordance with generally accepted accounting principles for the three (3) immediately preceding years. An audited statement is required for the latest fiscal year prior to the closing of the bond sale. Information should be available concerning outstanding debts, earnings history, and copies of annual reports or of Form 10-K filed with the Securities and Exchange Commission, if applicable.
- (9) The names and addresses of the attorney and CPA who will represent the applicant.
- (10) All three (3) copies of the application and supporting materials, together with the application fee, must be filed with the Economic Development Office, 12800 University Drive, Suite 300, Fort Myers, Florida 33907, at least twenty (20) days prior to the application being considered at a public meeting of the Lee County Industrial Development Authority.

## **APPLICATION PROCESSING**

(Flow Chart attached as Exhibit A)

Copies of the application will be distributed to each member of the Lee County Industrial Development Authority, Authority Counsel, Authority Bond Counsel, and appropriate County staff. A financial analysis will be conducted either by the Authority staff or an independent financial analyst. Legal notice of a public hearing on the application will be published fourteen (14) days in advance of the scheduled meeting of the Authority. Both the legal and financial analysis of the project will be provided to Authority members at least ten (10) days prior to the scheduled meeting. On completion of the public hearing, the Authority may, at its own discretion, entertain a motion to enter into a Memorandum of Agreement with the applicant. If the motion fails to carry, the action of the Authority is deemed final and conclusive. If the motion carries, the Authority Counsel or Authority Bond Counsel will submit to the County Attorney the legal proceedings and a transcript of the Authority's public hearing for consideration by the Board of County Commissioners. The Authority Counsel or Authority Bond Counsel will prepare a written report addressing the legal conformity, financial feasibility and public purpose aspects

of the project and submit this report to the Board of County Commissioners and appropriate County staff. The Authority Counsel or Authority Bond Counsel will ask to appear before the County Commission at the earliest possible weekly meeting to request, officially, the Board's confirmation of the Authority's action. The Commissioners' action at the meeting, to confirm or disapprove the Authority's action, will be deemed final and conclusive.

## **BOND COUNSEL AND PREPARATION OF BOND DOCUMENTS**

- (1) The preparation of all documents necessary for the sale of bonds shall be performed by bond counsel selected by the Lee County Industrial Development Authority.
- (2) Should the applicant request that legal counsel other than that selected by the Lee County Industrial Development Authority serve as Bond Counsel, he may submit the name of the proposed Bond Counsel to the Authority for consideration of said request. The Authority in its sole discretion may grant or deny applicant's request. Applicant's request, however, shall not be considered unless the proposed Bond Counsel is recognized as having expertise in the field of Industrial Development Revenue Bond financing. Notwithstanding the above, the Lee County Industrial Development Authority shall have the unrestricted final authority to select the Bond Counsel.
- (3) Issuance fees are paid by the company and up to two percent (2%) of the proceeds of the bonds may be used to reimburse the company for such costs. Typically, they include bond counsel fees, local counsel fees, underwriting discounts and where required, Authority counsel fees, official statement printing costs, trustee fees, title insurance, and miscellaneous expenses. At the closing of the bond issue, a financing fee will be paid to the Lee County Industrial Development Authority and shall be equal to one-half (1/2) of one (1) percent (.5%) of the face amount of the issue.
- (4) At the Public Hearing where the Lee County Industrial Development Authority ("IDA") considers the Inducement Resolution relative to the proposed issuance of the Revenue Bonds and should the Resolution be adopted, the Applicant ("Borrower") shall then within 15 business days of its adoption remit 25% of the IDA's total financing fee, not to exceed \$15,000. The amount is to be payable directly to the IDA, c/o the Economic Development Office, 12800 University Drive, Suite 300, Fort Myers, Florida 33907. Should an additional amount be required due to the complexity of the proposed issue or for any unforeseen circumstances, the IDA by a majority vote may increase the amount. This fee shall be non-refundable but shall apply toward the Authority's financing fee if and when the Bond issue closes. If the Bond issue does not close, such fee may be used to off-set fees and expenses incurred by the IDA and payable by the Borrower pursuant to the Memorandum of Agreement between the IDA and the Borrower executed at the time the Inducement Resolution was adopted.

The Memorandum of Agreement for Issuance of the Revenue Bonds shall also be amended to include the obligation of the Borrower to pay the fee within the time frame outlined above.

Upon application, applicant will remit an application fee in accordance with the following schedule:

(i)	Bond application <i>amount</i>	
	\$0-5 million	\$1,500.00
	Over \$5 million	\$2,500.00
(ii)	Refunding of existing issues:	\$1,500.00

## **TIMING**

Most Industrial Development Revenue Bond issues processed through the Lee County Industrial Development Authority will require approximately 90 to 200 days from the point of initial processing to closing when bond proceeds will be available, providing however, that validation is not required. If validation is required, this time period will be increased by a minimum of 90 days depending on court availability. This time period is dependent upon when the company and the purchaser complete the negotiation of terms of the bond issue. Included in this time period is the controlling date of "official action" or "inducement". Official action by the Authority as required by the Internal Revenue Code is established by the execution of the Memorandum of Agreement which states that in return for the company's agreeing to proceed with the project which will impart certain economic benefits to the community, the Industrial Development Authority agrees (subject to certain conditions) to issue bonds for the purpose of financing the proposed project. Any expenditure or commitment to expend funds on the project, such as land contracts, equipment orders, etc., made earlier than 60 days prior to the date of inducement cannot be refinanced with the proceeds of IDRBs. Generally, official action will require approximately 3 to 4 weeks from the date of initial processing.

## **SALE OF BONDS**

The action of the Authority in entering into a Memorandum of Agreement with the applicant for the issuance of Industrial Development Revenue Bonds should not be construed as indicating the marketability of the bonds, but rather that the Authority will issue its bonds (subject to certain conditions) if a willing purchaser can be found and upon the execution of bond sale documents mutually agreeable to all parties thereto.

As the obligation for repayment of Industrial Development Revenue Bonds rests solely with the applicant, and neither the Authority, the County, the State, nor any municipality therein is responsible for their repayment or any associated expense, it is the policy of the Authority that, subject to the conditions contained herein, or as may be adopted at a later date, the manner in which the bonds shall be sold, so long as complying with all applicable federal and state statutes, shall be the prerogative of the applicant. However, the Authority reserves the right to review the credentials of any investor, financial institution or investment banker chosen and to reject the same upon good cause shown. Further, except in certain exceptional cases, the Authority discourages the use of unrated publicly sold bonds.

In general, prospective bond issues not considered of investment grade quality may be sold at private sale or by limited public offering usually in bond denominations of not less than \$100,000, unless otherwise waived in the sole discretion of the Authority. For purposes of this paragraph, the term "limited public offering" shall be defined as an offering made only to qualified institutional investors, not more than 35 in number. The intent of this paragraph is applicable not only to the initial sale of the bonds, but to resales, if any, in secondary markets

and shall be incorporated in the bond sale documents. Prospective issues of investment grade quality bond issues may be sold at public or private sale in bond denominations of not less than \$5,000 each. Investment grade quality shall be determined as meeting one of the following tests.

- (1) A rating of the issue equivalent to or better than Moody's Baa or Standard and Poor's BBB.
- (2) A rating or recently issued debt instrument(s) of company of similar term and security as that of the prospective bond issue equivalent to or better than that stated above.

The Authority shall not recommend or suggest to the applicant, any investor, financial institution, or investment banker to be used in the sale of bonds. Upon the applicant's request, the Authority may provide the applicant with a list of investors, financial institutions and investment bankers who have advised the Authority of their interest in purchasing or placing the Authority's Industrial Development Revenue Bonds.

### **DISPOSITION OF PROCEEDS OF BOND SALE**

Following the sale of the bonds, the proceeds will be deposited in a trust account with the Trustee, to be disbursed for the acquisition and/or construction of the project according to a schedule provided in one or more of the bond sale documents. The Authority will be concerned with the disposition of the proceeds to the extent that they are used for items allowed by governing statutes and portions of the project as authorized in the Memorandum of Agreement and bond sale documents.

### **WAIVER OF GUIDELINES AND PROCEDURES**

The Industrial Development Authority reserves the right to waive any of the aforesaid Guidelines and Procedures upon good cause shown by Economic Development Office or by any corporation, firm, or business concerned with the proposed Industrial Development Revenue Bond Issue.

### **CONFIDENTIALITY OF RECORDS**

Pursuant to Florida Statute §288.075 and at the request of the company, the records, reports, data, and documents which contain information concerning plans, intentions, or interest of any manufacturing company or other business to relocate or expand any of its business activities shall be kept confidential and not open to public inspection for a period not to exceed 24 months from the date the Lee County Industrial Development Authority receives a request from the company for confidentiality.

An applicant's request for confidentiality must be submitted in writing to the Lee County Industrial Development Authority and the applicant must identify the information, reports, and documents which they want kept confidential.

## **ECONOMIC DEVELOPMENT OFFICE OF LEE COUNTY**

The Economic Development Office of Lee County (EDO) is the staff to the Lee County Industrial Development Authority. The EDO provides complete location and expansion assistance to both existing and new industry. Services offered by the EDO include the following:

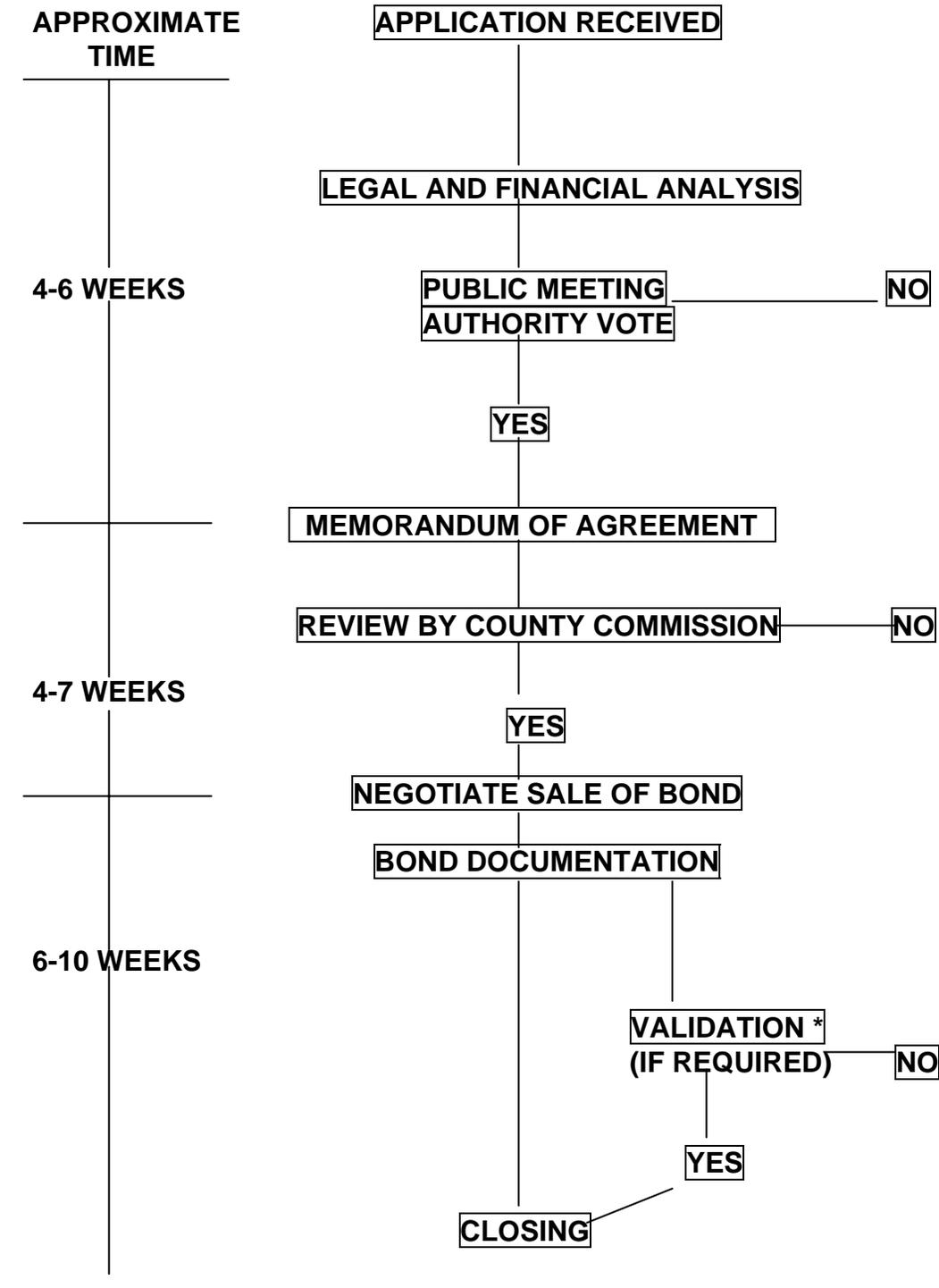
- Expansion/relocation assistance.
- Information about Industrial Development Revenue Bond financing.
- Site selection assistance.
- Permitting consultation.
- Workforce data.
- Training assistance.
- Local area demographics

Additional information regarding Industrial Development Revenue Bond financing and economic and industrial development may be obtained at [www.FortMyersRegionalPartnership.com](http://www.FortMyersRegionalPartnership.com) or by contacting the Economic Development Office of Lee County:

Economic Development Office of Lee County  
12800 University Drive, Suite 300  
Fort Myers, Florida 33907  
(239) 338-3161  
(800) 330-3161  
FAX: (239) 338-3227

(Exhibit A)

## TIME AND FLOW CHART



\* ADD APPROXIMATELY 12 WEEKS FOR VALIDATION