

12/20/83

INTRODUCED BY Laing ^{BILL REAMS}

PROPOSED NO. 83-534

ORDINANCE NO. **6628**

1 AN ORDINANCE relating to economic development; creating
2 the King County Economic Enterprise Corporation to issue
3 industrial revenue bonds for the purpose of fostering
4 economic development in King County; authorizing a
5 charter and bylaws therefor; establishing a Board of
6 Directors to govern the affairs of the public corpora-
7 tion and providing how the public corporation shall
8 conduct its affairs.

9 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

10 SECTION 1. CORPORATION CREATED. A public corporation is hereby created
11 to promote local economic development consistent with the purposes of Chapter
12 300, 1981 Washington Laws, the Local Economic Development Act (the "Act," pre-
13 sently codified as RCW 39.84), and the policies of Exhibit A of this ordi-
14 nance.

15 SECTION 2. NAME. The name of the public corporation shall be the King
16 County Economic Enterprise Corporation (the "Public Corporation").

17 SECTION 3. POWERS. The Public Corporation shall have all the powers and
18 be subject to all of the limitations and provisions contained in the Act.

19 SECTION 4. CHARTER. The Charter of the Public Corporation (the
20 "Charter"), Exhibit B of this ordinance, is hereby approved. The Public
21 Corporation shall conduct its affairs in accordance with the Charter. The
22 Public Corporation's Charter shall be amended only by ordinance.

23 SECTION 5. BYLAWS. The Bylaws of the Public Corporation (the "Bylaws"),
24 Exhibit C of this ordinance, are hereby approved. The Public Corporation
25 shall have the authority to amend its Bylaws. The Public Corporation's Bylaws
26 shall be consistent with the Charter and the Act.

27 SECTION 6. BOARD OF DIRECTORS. A board of directors (the "Board of
28 Directors") is hereby established to govern the affairs of the Public
29 Corporation. All corporate powers of the Public Corporation shall be exer-
30 cised by or under the authority of the Board of Directors; and the business,
31 property, and affairs of the Public Corporation shall be managed under the
32 direction of the Board of Directors, except as may be otherwise provided for
33 in the Charter of the Public Corporation or the Act.

SECTION 7. APPOINTMENT OF DIRECTORS -- TERM OF OFFICE. The number of
directors of the Board of Directors shall be five (5).

1 A. APPOINTMENT OF BOARD OF DIRECTORS.

2 1. The King County Executive shall appoint five (5) directors to the
3 Public Corporation's Board of Directors. Collectively, the Public
4 Corporation's directors shall be knowledgeable about: (a) industrial revenue
5 bond financings, (b) the respective roles of the private and public sectors in
6 local economic development, and (c) the interests of King County's suburban
7 cities in promoting economic development through industrial revenue bond
8 financings.

9 2. No person appointed by the King County Executive shall be eligible
10 to serve as a director except a person who has been confirmed by Motion of the
11 King County Council.

12 3. Directors may be reappointed to serve consecutive terms on the
13 Public Corporation's Board of Directors.

14 4. A vacancy on the Board of Directors because of death, resignation,
15 removal, disqualification, or any other cause, shall be filled for the
16 remainder of the term of the vacant position in the manner prescribed in the
17 initial appointment.

18 B. TERM OF OFFICE. The directors shall serve a term of three (3) years
19 or until their successor is appointed and confirmed as provided for in this
20 ordinance. The terms of office of the directors shall be staggered consistent
21 with the provisions of K.C.C. 2.28.

22 SECTION 8. QUORUM AND MANNER OF ACTION. At all meetings of the Board of
23 Directors, a majority of the directors in office at the time shall be suf-
24 ficient to constitute a quorum. Unless a greater number is expressly required
25 by the Act, Ordinance, or Charter, every act or decision done or made by a
26 majority of the directors at a meeting of the Public Corporation duly held
27 shall be regarded as the act of the Board of Directors.

28 SECTION 9. INDEMNIFICATION. To the extent permitted by law, the Public
29 Corporation shall protect, defend, hold harmless, and indemnify any person who
30 becomes a director, officer, employee, or agent of the Public Corporation, and
31 who is a party or threatened to be made a party to a proceeding by reason
32 related to that person's conduct as a director, officer, employee, or agent of
33 the Public Corporation, against judgments, fines, penalties, settlements, and

1 reasonable expenses (including attorneys' fees) incurred by him or her in con-
2 nection with such proceeding, if such person acted in good faith and reason-
3 ably believed his or her conduct to be in the Public Corporation's best
4 interests and if, in the case of any criminal proceeding, he or she had no
5 reasonable cause to believe his conduct was unlawful. The indemnification
6 and protection provided herein shall not be deemed exclusive of any other
7 rights to which a person may be entitled as a matter of law or by contract or
8 by vote of the Board of Directors. The Public Corporation may purchase and
9 maintain appropriate insurance for any person to the extent provided by the
10 applicable law.

11 SECTION 10. ALTERATION OF CORPORATION. The King County Council reserves
12 the right at its discretion and at any time to alter or change the policies,
13 powers, structure, or activities of the Public Corporation, including ter-
14 minating the Public Corporation if the contracts entered into by the Public
15 Corporation are not impaired and other provisions of the Act are met. Any net
16 earnings of the Public Corporation beyond those necessary for the retirement
17 of the indebtedness incurred by it, shall not inure to the benefit of any per-
18 son other than King County. Upon dissolution of the Corporation, title to all
19 property owned by the Corporation shall vest in King County.

20 INTRODUCED AND READ for the first time this 17th day of

21 October, 1983.

22 PASSED this 3rd day of January, 1984.

23 KING COUNTY COUNCIL
24 KING COUNTY, WASHINGTON

25 Berry Grant
26 Chairman

27 ATTEST

28
29 Janet M. Owens
30 Clerk of the Council

31 APPROVED this 12th day of January, 1984.

32 Randy L. Wada
33 King County Executive

ATTACH A

MOTION NO. 5597 6628

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A MOTION endorsing the concept of Industrial Revenue Bonds as defined by R.C.W. 39.84, and directing the Executive to transmit a draft charter, bylaws, and enabling ordinance which would create a public corporation for the purpose of fostering economic development in King County.

WHEREAS, industrial revenue bonds are a means of fostering economic activity and of increasing employment opportunities; and

WHEREAS, industrial revenue bonds are a way to finance the acquisition, construction, enlargement, or improvement of industrial facilities pursuant to the provisions of R.C.W. 39.84; and

WHEREAS, tax-exempt revenue bonds may be issued by a public corporation specifically created for this purpose by local government, such as port districts, cities, towns, and counties; and

WHEREAS, any project financed by industrial revenue bonds must be consistent with King County's land use plans, energy management plans, and economic development goals.

NOW, THEREFORE, BE IT MOVED by the Council of King County:

The Council endorses the potential use of industrial revenue bonds to encourage the diversification and stability of King County's economic base.

BE IT FURTHER MOVED,

The Council directs the Executive to transmit a draft charter bylaws, and enabling ordinance which would establish a public corporation for the purpose of issuing industrial revenue bonds in King County.

PASSED this 25th day of October, 1982

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Lois North
Chairman

ATTEST:

Dorothy E. Quinn
Clerk of the Council

DEPUTY

ATTACHMENT B

RECOMMENDED POLICIES GOVERNING THE USE OF IRBS IN KING COUNTY

I. Recommended Policies For All Industrial Facilities Receiving IRB Financing From King County's Public Corporation

Recommended Policy	Location of Proposed Facility	Administrative Requirement	Timing and Method of Compliance
<p>1. IRB financed facilities shall be consistent with the policy and requirements of the Local Economic Development Act (LEDA), Chapter 300, 1981 Washington Laws.</p>			
<p>A. The proposed facility shall create or maintain employment</p>	<p>Incorporated and Unincorporated King County</p>	<p>A firm must show in their IRB application that the proposed facility will create or maintain employment.</p>	<p>This information is required prior to the King County Public Corporation's approval of the inducement resolution.</p>
<p>B. The proposed facility shall be an eligible facility under LEDA</p>	<p>Incorporated and Unincorporated King County</p>	<p>A firm must work with Bond Counsel to insure that the proposed facility is eligible under LEDA.</p>	<p>Bond Counsel (and the Washington State Department of Commerce and Economic Development) must certify that the proposed facility is eligible under LEDA prior to the King County Public Corporations's approval of the bond issuing resolution.</p>
<p>C. The proposed facility shall be financially feasible</p>	<p>Incorporated and Unincorporated King County</p>	<p>A firm must obtain a commitment from a bond purchaser to buy the IRBs.</p>	<p>A commitment to purchase the bonds is required prior to the King County Public Corporation's approval of the bond issuing resolution.</p>
<p>2. IRB financed facilities shall meet U.S. Internal Revenue Service (IRS) regulations</p>	<p>Incorporated and Unincorporated King County</p>	<p>A firm must work with Bond Counsel to insure that the proposed facility meets IRS regulations.</p>	<p>Bond Counsel must certify that the proposed facility meets IRS requirements prior to the King County Public Corporation's approval of the bond issuing resolution.</p>

II. Recommended Policies Governing IRB Financing for Industrial Facilities Proposed in Unincorporated King County

Recommended Policy	Location of Proposed Facility	Administrative Requirement	Timing and Method of Compliance
<p>1. IRB financed facilities shall be consistent with King County's land use policies.</p>			
<p>A. The proposed facility shall be consistent with King County zoning requirements</p>	<p>Unincorporated King County</p>	<p>A firm must obtain a rezone, shoreline redesignation or unclassified use permit from King County, if required for the proposed facility.</p>	<p>Approvals must be obtained prior to the King County Public Corporation's approval of the inducement resolution.</p>
<p>B. The proposed facility shall be consistent with all other land use policies and requirements</p>	<p>Unincorporated King County</p>	<p>A firm must obtain all other land use approvals for the proposed facility.</p>	<p>Approvals must be obtained prior to the King County Council's approval of the bond issuing resolution.</p>
<p>2. IRB financed facilities shall be consistent with King County's economic development goals.</p>			
<p>A. Firms are encouraged to hire employees trained by local manpower programs.</p>	<p>Unincorporated King County</p>	<p>A firm should describe its efforts to hire employees trained by local manpower programs in their IRB application.</p>	<p>Firms are encouraged to comply with this policy. They are also required to provide this information in their IRB application prior to the King County Council's approval of the bond issuing resolution.</p>
<p>B. Firms are encouraged to locate their proposed facilities in or near designated activity centers in adopted King County land use plans.</p>	<p>Unincorporated King County</p>	<p>Covered under policy #1.</p>	<p>Covered under policy #1.</p>

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Recommended Policies Governing IRB Financing for Industrial Facilities Proposed in Unincorporated King County (continued)

Recommended Policy	Location of Proposed Facility	Administrative Requirement	Timing and Method of Compliance
<p>1. IRB financed facilities shall be consistent with King County's energy management plans.</p>	<p>Unincorporated King County</p>	<p>A firm's proposed facility must meet the requirements of the King County Energy Code adopted pursuant to Ordinance 4753.</p>	<p>Firms must demonstrate that their proposed facilities meet Energy Code requirements prior to the King County Council's approval of the bond issuing resolution.</p>
<p>2. Firms are encouraged to hire local residents as employees for IRB financed facilities.</p>	<p>Unincorporated King County</p>	<p>A firm should describe the projected number of local hires in their IRB application.</p>	<p>Firms are encouraged to hire local residents. They are also required to provide this information in their IRB application prior to the King County Council's approval of the bond issuing resolution.</p>
<p>3. Firms are encouraged to propose facilities compatible with maintaining a high quality environment.</p>	<p>Unincorporated King County</p>	<p>A firm should work with the King County Building and Land Division to complete an Environmental Checklist for the proposed facility.</p>	<p>An Environmental Checklist should be completed for the proposed facility prior to the Public Corporation approving the inducement resolution. All legal requirements under the State Environmental Policy Act (SEPA) must be met prior to the King County Council's approval of the bond issuing resolution.</p>
<p>6. Firms are encouraged to propose facilities that do not put an unreasonable burden on available public services.</p>	<p>Unincorporated King County</p>	<p>A firm should identify the impact of the proposed facility on public services in their IRB application.</p>	<p>Firms are encouraged to mitigate the adverse impacts of the proposed facilities on public services. They are also required to provide information about the impact of the proposed facility on public services in their IRB application prior to the King County Council's approval of the bond issuing resolution.</p>

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RECOMMENDED PROCEDURE FOR ISSUING IRBS IN KING COUNTY

There are ten steps in issuing IRBs which are presented in rough chronological order. The actual order of the steps, however, will depend upon the circumstances surrounding each proposed bond issue.

Step 1: Company Inquiry/Preliminary Discussions -- A company interested in IRB financing is referred (e.g., by a city official) to the King County public corporation's lead staff person on IRBs (the "IRB Coordinator") for preliminary discussions about the nature of the IRB program and the company's proposed project. Discussions will normally focus on whether the proposed project appears eligible and feasible.

If the proposed project appears eligible and feasible, the IRB Coordinator sends the company an application for IRB financing unless the proposed project is port-related (in which case the company will be referred to the Port of Seattle's public corporation) or located in a city that has its own public corporation for issuing IRBs (in which case the company will be referred to that city's public corporation).

Step 2: Company Submits Application -- The company submits an application for IRB financing that describes: (1) the proposed project, (2) the recent financial operating history of the firm, (3) the timing of the proposed project, (4) the employment and other impacts resulting from the proposed project, and (5) a certification from the Chief Executive Officer that the company engages in non-discriminatory employment practices. At the same time, the company also submits a nonrefundable application fee to pay for the review process. The size of this fee reflects the amount of staff time needed to process an average IRB issue. If a project requires additional work, an interim reimbursement fee is assessed by the King County public corporation.

If the proposed project is located within a city, the IRB Coordinator sends a copy of the application (excluding confidential financial information) to the appropriate person at the city.

Step 3: Preliminary Staff Review -- The IRB Coordinator examines the company's application to be sure that the necessary materials have been submitted. The IRB Coordinator, with the aid of bond counsel and King County staff, reviews the application to determine: (1) the project's apparent eligibility, (2) the project's apparent consistency with the provisions of LEDA, IRS regulations and the County's policy on fair employment, (3) the project's apparent consistency with King County land use policies, economic development goals and energy management plans (if the project is located in unincorporated King County), (4) the project's apparent consistency with King County's IRB policies for projects located in unincorporated areas and (5) any special issues or impacts associated with the proposed project. The IRB Coordinator writes a staff report summarizing the results of this review for use by the public corporation, King County officials and the planning jurisdiction (if the project is located within an incorporated area).

III. Recommended Policies Governing Revenue Bond Financing for Industrial Facilities Proposed in Incorporated King County

Recommended Policy	Location of Proposed Facility	Administrative Requirement	Timing and Method of Compliance
<p>1. Firms shall meet the policy guidelines set forth by the city or town where the proposed facility is located.</p>	<p>Incorporated King County</p>	<p>Determined by the city or town where the proposed facility is located. The King County Public Corporation will work with each city or town to ensure this requirement is complied with.</p>	<p>Determined by the city or town where the proposed facility is located. The King County Council shall not approve the bond issuing resolution until the city or town has approved the project.</p>

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In addition, the King County Planning and Community Development (P&CD) Department reviews the proposal (if it is located in unincorporated King County) to: (1) identify land use approvals needed to attain consistency with County land use policies and plans and (2) complete an Environmental Checklist for the project. If the proposed project needs a rezone, shoreline redesignation or unclassified use permit, the company is informed that it must get these approvals prior to obtaining an inducement resolution from the King County public corporation (see step 5).

Step 4: Submission of Application to the State Department of Commerce and Economic Development -- The IRB Coordinator fills out the State Department of Commerce and Economic Development's (DCED) "Application for Determination of Revenue Bond Eligibility" and sends it to the DCED. The Coordinator also sends the Department a copy of the King County public corporation's enabling ordinance and charter unless DCED already has it on file.

If the proposed project is not eligible under state law, the DCED gives King County's public corporation notice of this, in writing and by certified mail, within twelve working days of receipt of the application. DCED's review of the proposed project can occur concurrent with the staff review (Step 3) described above.

Step 5: Public Corporation Approves Inducement Resolution -- The Board of Directors of King County's public corporation holds a public hearing on the proposed project and reviews the application, staff report and terms to issue the IRBs. If the proposed project meets the applicable requirements in Attachment B and is acceptable to the Board based on legal and financial considerations, bond counsel assists in preparing an inducement resolution which states that the public corporation intends to issue IRBs to the company. The inducement resolution may condition issuance of the bonds upon agreement between the company and the public corporation on acceptable terms and conditions of the bonds, and/or other agreements pertaining to the project. The inducement resolution also explicitly requires the applicant to get all other necessary government approvals before the bonds will be issued. The date of the inducement resolution is important to the company because project expenditures made after this date are recoverable from bond proceeds.

The applicant does not have to secure a purchaser for the bonds prior to receiving approval of the inducement resolution from King County's public corporation. If the proposed project is located within a city, the IRB Coordinator makes sure city representatives are invited to the public corporation's public hearing on the inducement resolution. (The IRB Coordinator also invites representatives from any King County city that the company is leaving).

Step 6: Completion of Project Planning and Negotiations -- The company, public corporation, bond counsel, bond purchaser or underwriter and, if applicable trustee, complete negotiations defining the terms of the financing and satisfying the applicable conditions of the inducement resolution. The applicant, at this stage, must arrange for someone to commit to purchasing the bonds.

Attachment C (Continued)

Step 7: Planning Jurisdiction Approves the Proposed Project (only when a proposed project is located within an incorporated area) -- The planning jurisdiction reviews the proposed project for consistency with its own policies and procedures. The IRB Coordinator is available to provide information about the proposed project. However, the planning jurisdiction and its staff determines whether the proposed project is consistent with its policies.

The planning jurisdiction acts on the proposed project by either: (1) approving the project, (2) approving the project after negotiating changes or (3) denying the project. If the planning jurisdiction denies the project, it cannot receive IRB financing.

Step 8: Public Corporation Approves the Bond Issuing Resolution -- The IRB Coordinator and bond counsel make sure that all revenue bond financing documents are complete, the applicable requirements in Attachment B are satisfied and the conditions of the inducement resolution are met. King County's public corporation reviews these documents and approves a resolution which: (1) makes a finding that the interest on the bonds is tax exempt, (2) determines that there are sufficient revenues, and (3) determines the form and manner of execution of the IRBs. The resolution will also normally contain the following additional items:

- (a) a bond purchase agreement
- (b) a financing (loan, sale or lease) agreement
- (c) an indenture
- (d) an official statement describing the IRB financing

Step 9: King County Approves the Bond Issuing Resolution -- The King County Council reviews the proposed project to ensure that it is consistent with the adopted policies and requirements governing the use of revenue bonds (Attachment B). If the project is consistent with these policies and requirements, the King County Council approves the bond issuing resolution by ordinance.

Under state law (the Local Economic Development Act), only 60 days are allowed from when King County approves the bond issuing resolution until the actual sale of the bonds.

Step 10: Sale of the Bonds -- The public corporation closes the sale and delivers the bonds. If the IRBs are sold by public sale, King County's public corporation passes a resolution accepting the bid and selling the bonds.

KING COUNTY INDUSTRIAL REVENUE BOND
ADVISORY COMMITTEE

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<u>Members</u>	<u>Affiliation</u>
Berne Biteman	Councilman, City of Kent Representing Suburban City Jurisdictions
Robert Cowan	Director, King County Finance Office
Deborah Cushing	Attorney, Perkins, Coie, Stone, Olsen and Williams
David Edwards	Director of Banking and Finance, Weyerhaeuser Company
Alec Fiskén	Assistant Vice President, Public Finance and Utilities, Rainier Bank
Tom Fitzsimmons (Chairperson)	Manager, King County Program Development Office
Rueben Flores	Regional Vice President, Pacific Northwest Region, National Alliance of Business
Dick Hamlin	Evergreen Management Company Nominated by the Bellevue Chamber of Commerce
Fred Jarrett	Councilman, City of Mercer Island Manager, Finance Systems, Boeing Commercial Airplane Company Representing Suburban City Jurisdictions
Jim Johnson	J. L. Johnson Company Nominated by the Eastside Municipal League
Bill Lum	Staff, Office of the Council Administrator, King County Council
Holly Miller	Director, King County Department of Planning and Community Development
A. Henry Schilling	Director, Science and Government Study Center, Battelle
Mike Waske	Business Manager, International Federation of Professional and Technical Engineers - Local 17
Bob Yeasting/Alex Ford	Foster and Marshall/American Express Inc.

EXHIBIT C
BYLAWS
OF
THE KING COUNTY
ECONOMIC ENTERPRISE CORPORATION

ARTICLE I

Principal Office, Definitions, Organization, Purpose, Powers and Seal

Section 1.01. Principal Office. The principal office of the King County Economic Enterprise Corporation shall be the King County Finance Office, 611 King County Administration Building, Seattle, Washington 98104.

Section 1.02. Definitions. Terms used in these Bylaws shall have the same meaning as defined in Chapter 300, 1981 Washington Laws (the "Act") and the Charter of the King County Economic Enterprise Corporation.

Section 1.03. Organization, Purpose and Powers. The Public Corporation is a public corporation organized pursuant to the provisions of the Act and Ordinance. The powers of the Public Corporation shall be limited to those described in its Charter.

Section 1.04. Seal. The corporate seal of the Public Corporation shall be a circle with the "KING COUNTY ECONOMIC ENTERPRISE CORPORATION" inscribed therein.

ARTICLE II

Board of Directors

Section 2.01. Powers of the Directors. All corporate powers of the Public Corporation shall be exercised by or under the authority of, and the business, property and affairs of the Public Corporation shall be managed under the

direction of, the Board of Directors, except as may be otherwise provided in the Charter or the Act.

Section 2.02. Number of Directors, Term of Office. The number and term of office of directors of the Public Corporation shall be as provided for in the Ordinance.

Section 2.03. Organization Meeting. The first Board of Directors may at any time hold an organizational meeting at which the directors shall elect a President, Vice-President, Secretary and Treasurer. In addition, the Board of Directors may elect such subordinate officers as they may determine.

Section 2.04. Place of Directors' Meeting. Meetings of the directors shall be held at such places in King County as may be designated in the notice of meeting or by resolution of the Board of Directors.

Section 2.05. Regular Meetings. The Board of Directors, by resolution, may provide for the holding of regular meetings and may fix the time and place of holding such meetings. The Board of Directors shall comply with the requirements of the Open Public Meeting Act (Chapter 42.30 RCW) when holding regular meetings.

Section 2.06. Annual Meeting. An annual meeting of the Board of Directors shall be held with notice as provided for in Section 2.07 of these Bylaws during the month of January. The Board of Directors, at the annual meeting, shall review the accomplishments of the previous year and plans for the upcoming year. The Board may also conduct regular business at the annual meeting.

Section 2.07. Special Meetings, Notice, Waiver. A special meeting of the Board of Directors shall be held whenever called by the President, or by a majority of the Board of Directors. Each such meeting shall be held upon notice by delivering personally or by mail written notice to each member of the Board.

of Directors and to each local newspaper of general circulation and to each local radio or television station which has on file with the Board of Directors a written request to be notified of such special meeting or of all special meetings. If personally delivered, the notice of a special meeting shall be delivered not less than forty-eight (48) hours previous to the special meeting. If mailed, such notice shall be posted not less than 96 hours prior to such special meeting. The call and notice shall specify the time and place of the special meeting and the business to be transacted. Additional notices of any special meeting shall be given, if necessary, to comply with the Open Public Meeting Act (Chapter 42.30 RCW). Such written notice may be dispensed with as to any director who at or prior to the time the meeting convenes files with the Secretary a written waiver of notice. Such written notice may also be dispensed with as to any director who was actually present at the meeting at the time it convenes.

Section 2.08. Adjournments. The Board of Directors may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Whenever any meeting is adjourned a copy of the order or notice of adjournment shall be conspicuously posted immediately after the time of the adjournment on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held. If all directors are absent from any regular or adjourned regular meeting the Secretary may declare the meeting adjourned to a stated time and place; he or she shall cause a written notice of adjournment to be given in the same manner as provided in Section 2.07 of these Bylaws for special meetings, unless such notice is waived as provided for special meetings.

Section 2.09. Quorum and Manner of Action. At all meetings of the Board

of Directors, a majority of directors in office at the time shall be sufficient to constitute a quorum. Unless a greater number is expressly required by the Act, Ordinance or Charter, every act or decision done or made by the majority of the directors at a meeting of the Public Corporation duly held shall be regarded as the act of the Board of Directors.

Section 2.10. Conduct of Meetings. The President or, in his or her absence, the Vice-President, or, in the absence of the Vice-President, a Chairman chosen by a majority of the directors present, shall preside.

Section 2.11. Resignations and Vacancies. Any director of the Corporation may resign at any time by giving written notice to the President, the Secretary or to the Board of Directors. Such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery thereof and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

A vacancy or vacancies in the Board of Directors shall be deemed to exist in the event of the death, resignation or removal of any director. Any vacancy in the Board shall be filled in accordance with Section 7 of the Ordinance. Each director so selected shall hold office for the remainder of the term of office of the person he or she replaces or until his or her death, resignation, or removal, whichever occurs earlier.

Section 2.12. Reimbursement of Directors. By Board resolution, Directors may be reimbursed for out-of-pocket costs incurred while conducting Public Corporation business. Reimbursement shall come from fees and charges collected by the Public Corporation. King County, Washington, shall not reimburse directors for costs incurred.

Section 2.13. Removal of Directors. Any director may be removed in accordance with the Charter.

Section 2.14. Notice to King County Council. Notice of all meetings and minutes of such meetings of the Board of Directors of the Public Corporation shall be given by the Secretary to the Clerk of the King County Council.

Section 2.15. Fees. The Board of Directors shall adopt, by resolution, a fee schedule and shall amend such schedule from time to time to charge users and potential users all organizational and administrative costs and expenses incurred in the exercise of its powers and duties in accordance with the Act and Charter.

ARTICLE III

Officers

Section 3.01. Number and Qualifications. The officers of the Public Corporation shall be a President, a Vice-President, a Secretary, and a Treasurer, and such subordinate officers, including one or more assistant secretaries and assistant treasurers, as the Board of Directors elect. Only directors shall be qualified to hold the office of President or Vice-President, but the Board of Directors may elect any person, whether or not a director of the Public Corporation, to hold the office of Secretary or Treasurer or any subordinate office. Any two or more offices may be held by the same person, except that the offices of President and Secretary may not be held by the same person. Each officer shall hold office until the election and qualification of his or her successor or until his or her death, resignation or removal.

Section 3.02. Election, Term of Office. Each officer shall be elected by the Board of Directors and shall hold office until his or her successor shall have been elected and qualified, or until the death, resignation or removal of

such officer.

Section 3.03. Resignations. Any officer may resign at any time by giving written notice to the President, the Secretary or the Board of Directors of the Public Corporation. Any such resignation shall take effect at the time specified therein or if the time is not specified upon delivery thereof and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.04. Removal. Any officer may be removed for cause or at will by the vote of the majority of the Board of Directors.

Section 3.05. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause, shall be filled in the manner prescribed in these Bylaws for regular election to such office.

Section 3.06. President. The President shall be the chief executive officer of the Public Corporation and shall have general supervision over the business of the Public Corporation, subject, however, to the control of the Board of Directors. The President shall preside at all meetings of the Board of Directors. The President may sign and execute, in the name of the Public Corporation, deeds, mortgages, leases, bonds, contracts and other instruments duly authorized by the Board of Directors, and generally shall perform all duties incident to the office of President and such other duties as may from time to time be assigned to such office by the Board of Directors.

Section 3.07. Vice-President. At the request of the President or in case of his or her absence or disability, the Vice-President shall perform all duties of the President and, when so acting, shall have all the powers of, and be subject to all restrictions upon, the President. In addition, the Vice-President shall perform such other duties as may from time to time be

assigned to that office by the Board of Directors or the President.

Section 3.08. Secretary. The Secretary shall:

(a) Certify and keep at the office of the Public Corporation, or at such other place as the Board of Directors may order, the original or a copy of the Bylaws, as amended or otherwise altered;

(b) Keep at the office of the Public Corporation, or at such other place as the Board of Directors may order, a book of minutes of all meetings of the directors, recording therein the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, and the proceedings thereat;

(c) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(d) Be custodian of the records and seal of the Public Corporation;

(e) Exhibit at all reasonable times to any director, upon application, the Bylaws and minutes of the proceedings of the directors of the Public Corporation; and

(f) In general, perform all duties of the office of Secretary and such other duties as may from time to time be assigned to such office by the Board of Directors or the President.

Section 3.09. Treasurer. The Treasurer shall receive and have charge of all funds of the Public Corporation and shall disburse such funds only as directed by the Board of Directors. The Treasurer shall, in general, perform all duties incident to the office of Chief Financial Officer and such other duties as may from time to time be assigned to such office by the Board of Directors or the President.

Section 3.10. Subordinate Officers. Subordinate officers shall perform

such duties as shall be prescribed from time to time by the Board of Directors or the President.

ARTICLE IV

Policies, Requirements and Procedures Governing Issuance of Revenue Bonds

Section 4.01. Issuing Policies and Requirements. The Public Corporation shall review financing proposals and issue revenue bonds consistent with the policies and requirements contained in Attachment 1 of these Bylaws -- Policies Governing the Use of Revenue Bonds in King County.

Section 4.02. Issuing Procedures. The Public Corporation, to the maximum extent practicable, shall follow the procedures for issuing revenue bonds contained in Attachment 2 of these Bylaws -- Procedure for Issuing Revenue Bonds.

ARTICLE V

Amendment of the Bylaws

To the extent that such an amendment would not conflict with the Charter, Ordinance or Act, any of these Bylaws may be amended or repealed, and new Bylaws may be adopted, by four-fifths vote or written consent of the Board of Directors. Amendment of Bylaws by the Board of Directors may occur only after notice is given in accordance with Section 2.07 hereof.

The King County Council may also amend the Public Corporation's Bylaws by Ordinance.

ARTICLE VI

Financial Transactions and Records

Section 6.01. Fiscal Year. The fiscal year of the Public Corporation shall begin January 1 and end December 31 of each year, except the first fiscal year which shall run from the date the Charter was approved by the King County

Council to December 31, 1983.

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Section 6.02. Books and Records. The Public Corporation shall keep correct and complete books and records of account, minutes of the proceedings of the Board and such other records as may be necessary or advisable. The finances of the Public Corporation are subject to examination by the Washington State Auditor's Office pursuant to RCW 43.09.260. The complete books and records of account, minutes of the proceedings of the Board Directors, and other records of the Public Corporation shall be made available to King County and the State of Washington for periodic review and examination.

Section 6.03. Contracts. Except as otherwise provided in these Bylaws, the Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Public Corporation.

Section 6.04. Payments and Issuance of Debt. All checks, drafts or other orders for the payment of money, and all notes, bonds or other evidence of indebtedness issued in the name of the Public Corporation shall be signed by such officer or officers, agent or agents, employee or employees of the Public Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 6.05. Deposits. All funds of the Public Corporation shall be deposited from time to time to the credit of the Public Corporation in such banks as the Board of Directors may select.

Section 6.06. Accounting System and Reports. The Board of Directors shall cause to be established and maintained an appropriate accounting system, in accordance with the standards of the Washington State Auditor.

ARTICLE VII

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Adoption of Bylaws

The foregoing Bylaws were adopted by resolution of the Board of Directors
on _____ 1983.

President

ATTEST:

Secretary

Recommended Policies For All Industrial Facilities Receiving Revenue Bond Financing From King County's Public Corporation
 (continued)

Recommended Policy	Location of Proposed Facility	Administrative Requirement	Timing and Method of Compliance
Firms receiving IRB financing shall engage in nondiscriminatory employment practices.	Incorporated and Unincorporated King County	A firm's Chief Executive Officer must certify in their IRB application that the firm engages in nondiscriminatory employment practices.	Certification is required prior to the King County Public Corporation's approval of the inducement resolution.

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ATTACHMENT 1

POLICIES GOVERNING THE USE OF REVENUE BONDS IN KING COUNTY

I. Policies For All Industrial Facilities Receiving Revenue Bond Financing From King County's Public Corporation

Policy	Location of Proposed Facility	Administrative Requirement	Timing and Method of Compliance
<p>1. Revenue bond financed facilities shall be consistent with the policy and requirements of the Local Economic Development Act (LEDA), Chapter 300, 1981 Washington Laws.</p>			
<p>A. The proposed facility shall create or maintain employment</p>	<p>Incorporated and Unincorporated King County</p>	<p>A firm must show in their revenue bond application that the proposed facility will create or maintain employment.</p>	<p>This information is required prior to the King County Public Corporation's approval of the inducement resolution.</p>
<p>B. The proposed facility shall be an eligible facility under LEDA</p>	<p>Incorporated and Unincorporated King County</p>	<p>A firm must work with Bond Counsel to insure that the proposed facility is eligible under LEDA.</p>	<p>Bond Counsel (and the Washington State Department of Commerce and Economic Development) must certify that the proposed facility is eligible under LEDA prior to the King County Public Corporation's approval of the bond issuing resolution.</p>
<p>C. The proposed facility shall be financially feasible</p>	<p>Incorporated and Unincorporated King County</p>	<p>A firm must obtain a commitment from a bond purchaser to buy the revenue bonds.</p>	<p>A commitment to purchase the bonds is required prior to the King County Public Corporation's approval of the bond issuing resolution.</p>
<p>2. Revenue bond financed facilities shall meet U.S. Internal Revenue Service (IRS) regulations</p>	<p>Incorporated and Unincorporated King County</p>	<p>A firm must work with Bond Counsel to insure that the proposed facility meets IRS regulations.</p>	<p>Bond Counsel must certify that the proposed facility meets IRS requirements prior to the King County Public Corporation's approval of the bond issuing resolution.</p>

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Policies For All Industrial Facilities Receiving Revenue Bond Financing From King County's Public Corporation (continued)

Policy	Location of Proposed Facility	Administrative Requirement	Timing and Method of Compliance
<p>3. Firms receiving revenue bond financing shall not engage in discriminatory employment practices.</p>	<p>Incorporated and Unincorporated King County</p>	<p>A firm's Chief Executive Officer must certify in their revenue bond application that the firm engages in nondiscriminatory employment practices.</p>	<p>Certification is required prior to the King County Public Corporation's approval of the inducement resolution.</p>

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II. Additional Policies Governing Revenue Bond Financing for Industrial Facilities Proposed in Unincorporated King County

Policy	Location of Proposed Facility	Administrative Requirement	Timing and Method of Compliance
<p>1. Revenue bond financed facilities shall be consistent with King County's land use and growth management goals, objectives, and policies.</p>			
<p>A. The proposed facility shall be consistent with King County zoning requirements</p>	<p>Unincorporated King County</p>	<p>A firm must obtain a rezone, shoreline redesignation or unclassified use permit from King County, if required for the proposed facility.</p>	<p>Approvals must be obtained prior to the <u>King County Public Corporation's approval of the inducement resolution.</u></p>
<p>B. The proposed facility shall be consistent with all other land use policies and requirements</p>	<p>Unincorporated King County</p>	<p>A firm must obtain all other land use approvals for the proposed facility.</p>	<p>Approvals must be obtained prior to the <u>King County Council's approval of the bond issuing resolution.</u></p>
<p>2. Revenue bond financed facilities shall be consistent with King County's economic development goals, objectives, and policies.</p>			
<p>A. Firms are encouraged to hire employees trained by local manpower programs.</p>	<p>Unincorporated King County</p>	<p>A firm should describe its efforts to hire employees trained by local manpower programs in their revenue bond application.</p>	<p>Firms are encouraged to comply with this policy. They are also required to provide this information in their revenue bond application prior to the King County Council's approval of the bond issuing resolution.</p>
<p>B. Firms are encouraged to locate their proposed facilities in or near designated activity centers in adopted King County land use plans.</p>	<p>Unincorporated King County</p>	<p>Covered under policy #1.</p>	<p>Covered under policy #1.</p>

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Additional Policies Governing Revenue Bond Financing for Industrial Facilities Proposed in Unincorporated King County
(continued)

Policy	Location of Proposed Facility	Administrative Requirement	Timing and Method of Compliance
<p>3. Revenue bond financed facilities shall be consistent with King County's energy management goals, objectives and policies.</p>	<p>Unincorporated King County</p>	<p>A firm's proposed facility must meet the requirements of the King County Energy Code adopted pursuant to Ordinance 4753.</p>	<p>Firms must demonstrate that their proposed facilities meet Energy Code requirements prior to the King County Council's approval of the bond issuing resolution.</p>
<p>4. Firms are encouraged to hire local residents as employees for revenue bond financed facilities.</p>	<p>Unincorporated King County</p>	<p>A firm should describe the projected number of local hires in their revenue bond application.</p>	<p>Firms are encouraged to hire local residents. They are also required to provide this information in their revenue bond application prior to the King County Council's approval of the bond issuing resolution.</p>
<p>5. Firms are encouraged to propose facilities compatible with maintaining a high quality environment.</p>	<p>Unincorporated King County</p>	<p>A firm should work with the King County Building and Land Division to complete an Environmental Checklist for the proposed facility.</p>	<p>An Environmental Checklist should be completed for the proposed facility prior to the Public Corporation approving the inducement resolution. All legal requirements under the State Environmental Policy Act (SEPA) must be met prior to the King County Council's approval of the bond issuing resolution.</p>
<p>6. Firms are encouraged to propose facilities that do not put an unreasonable burden on available public facilities, and services.</p>	<p>Unincorporated King County</p>	<p>A firm should identify the impact of the proposed facility on public services in their revenue bond application.</p>	<p>Firms are encouraged to mitigate the adverse impacts of the proposed facilities on public services. They are also required to provide information about the impact of the proposed facility on public services in their revenue bond application prior to the King County Council's approval of the bond issuing resolution.</p>

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III. Additional Policies Governing Revenue Bond Financing for Industrial Facilities Proposed in Incorporated King County

Policy	Location of Proposed Facility	Administrative Requirement	Timing and Method of Compliance
<p>1. Firms shall meet the policy guidelines set forth by the city or town where the proposed facility is located.</p>	<p>Incorporated King County</p>	<p>Determined by the city or town where the proposed facility is located. The King County Public Corporation will work with each city or town to ensure this requirement is complied with.</p>	<p>Determined by the city or town where the proposed facility is located. The King County Council shall not approve the bond issuing resolution until the city or town has approved the project.</p>

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PROCEDURE FOR ISSUING REVENUE BONDS

There are ten steps in issuing revenue bonds which are presented in rough chronological order. The actual order of the steps, however, will depend upon the circumstances surrounding each proposed bond issue.

Step 1: Company Inquiry/Preliminary Discussions -- A company interested in revenue bond financing is referred (e.g., by a city official) to the King County public corporation's lead staff person on revenue bonds (the "Revenue Bond Coordinator") for preliminary discussions about the nature of the revenue bond program and the company's proposed project. Discussions will normally focus on whether the proposed project appears eligible and feasible.

If the proposed project appears eligible and feasible, the Revenue Bond Coordinator sends the company an application for revenue bond financing unless the proposed project is port-related (in which case the company will be referred to the Port of Seattle's public corporation) or located in a city that has its own public corporation for issuing revenue bonds (in which case the company will be referred to that city's public corporation).

Step 2: Company Submits Application -- The company submits an application for revenue bond financing that describes: (1) the proposed project, (2) the recent financial operating history of the firm, (3) the timing of the proposed project, (4) the employment and other impacts resulting from the proposed project, and (5) a certification from the Chief Executive Officer that the company engages in nondiscriminatory employment practices. At the same time, the company also submits a nonrefundable application fee to pay for the review process. The size of this fee reflects the amount of staff time needed to process an average revenue bond issue. If a project requires additional work, an interim reimbursement fee is assessed by the King County public corporation.

If the proposed project is located within a city, the Revenue Bond Coordinator sends a copy of the application (excluding confidential financial information) to the appropriate person at the city.

Step 3: Preliminary Staff Review -- The Revenue Bond Coordinator examines the company's application to be sure that the necessary materials have been submitted. The Revenue Bond Coordinator, with the aid of bond counsel and King County staff, reviews the application to determine: (1) the project's apparent eligibility, (2) the project's apparent consistency with the provisions of LEDA, IRS regulations and the County's policy on fair employment, (3) the project's apparent consistency with King County land use policies, economic development goals and energy management plans (if the project is located in unincorporated King County), (4) the project's apparent consistency with King County's revenue bond policies for projects located in unincorporated areas and (5) any special issues or impacts associated with the proposed project. The Revenue Bond Coordinator writes a staff report summarizing the results of this review for use by the public corporation, King County officials and the city or town (if the project is located within an incorporated area).

Attachment 2 (Continued)

In addition, the King County Planning and Community Development (P&CD) Department reviews the proposal (if it is located in unincorporated King County) to: (1) identify land use approvals needed to attain consistency with County land use policies and plans and (2) complete an Environmental Checklist for the project. If the proposed project needs a rezone, shoreline redesignation or unclassified use permit, the company is informed that it must get these approvals prior to obtaining an inducement resolution from the King County public corporation (see step 5).

Step 4: Submission of Application to the State Department of Commerce and Economic Development -- The Revenue Bond Coordinator fills out the State Department of Commerce and Economic Development's (DCED) "Application for Determination of Revenue Bond Eligibility" and sends it to the DCED. The Coordinator also sends the Department a copy of the King County public corporation's enabling ordinance and charter unless DCED already has it on file.

If the proposed project is not eligible under state law, the DCED gives King County's public corporation notice of this, in writing and by certified mail, within twelve working days of receipt of the application. DCED's review of the proposed project can occur concurrent with the staff review (Step 3) described above.

Step 5: Public Corporation Approves Inducement Resolution -- The Board of Directors of King County's public corporation holds a public hearing on the proposed project and reviews the application, staff report and terms to issue the revenue bonds. If the proposed project meets the applicable requirements in Attachment 1 of the Public Corporation's Bylaws, and is acceptable to the Board based on legal and financial considerations, bond counsel assists in preparing an inducement resolution which states that the public corporation intends to issue revenue bonds to the company. The inducement resolution may condition issuance of the bonds upon agreement between the company and the public corporation on acceptable terms and conditions of the bonds, and/or other agreements pertaining to the project. The inducement resolution also explicitly requires the applicant to get all other necessary government approvals before the bonds will be issued. The date of the inducement resolution is important to the company because project expenditures made after this date are recoverable from bond proceeds.

The applicant does not have to secure a purchaser for the bonds prior to receiving approval of the inducement resolution from King County's public corporation. If the proposed project is located within a city, the Revenue Bond Coordinator makes sure city representatives are invited to the public corporation's public hearing on the inducement resolution. (The Revenue Bond Coordinator also invites representatives from any King County city that the company is leaving).

Step 6: Completion of Project Planning and Negotiations -- The company, public corporation, bond counsel, bond purchaser or underwriter and, if applicable trustee, complete negotiations defining the terms of the financing and satisfying the applicable conditions of the inducement resolution. The applicant, at this stage, must arrange for someone to commit to purchasing the bonds.

Attachment 2 (Continued)

Step 7: The City or Town Approves the Proposed Project (only when a proposed project is located within an incorporated area) -- The city or town reviews the proposed project for consistency with its own policies and procedures. The Revenue Bond Coordinator is available to provide information about the proposed project. However, the city or town and its staff determines whether the proposed project is consistent with its policies.

The city or town acts on the proposed project by either: (1) approving the project, (2) approving the project after negotiating changes or (3) denying the project. If the planning jurisdiction denies the project, it cannot receive revenue bond financing.

Step 8: Public Corporation Approves the Bond Issuing Resolution -- The Revenue Bond Coordinator and bond counsel make sure that all revenue bond financing documents are complete, the applicable requirements in Attachment 1 of the Public Corporation's Bylaws are satisfied and the conditions of the inducement resolution are met. King County's public corporation reviews these documents and approves a resolution which: (1) makes a finding that the interest on the bonds is tax exempt, (2) determines that there are sufficient revenues, and (3) determines the form and manner of execution of the revenue bonds. The resolution will also normally contain the following additional items:

- (a) a bond purchase agreement
- (b) a financing (loan, sale or lease) agreement
- (c) an indenture
- (d) an official statement describing the revenue bond financing

Step 9: King County Approves the Bond Issuing Resolution -- The King County Council reviews the proposed project to ensure that it is consistent with the adopted policies and requirements governing the use of revenue bonds. If the project is consistent with these policies and requirements, the King County Council approves the bond issuing resolution by ordinance.

Under state law (the Local Economic Development Act), only 60 days are allowed from when King County approves the bond issuing resolution until the actual sale of the bonds.

Step 10: Sale of the Bonds -- The public corporation closes the sale and delivers the bonds. If the revenue bonds are sold by public sale, King County's public corporation passes a resolution accepting the bid and selling the bonds.

EXHIBIT D

6828

FINAL REPORT

PROPOSAL TO FORM A KING COUNTY
PUBLIC CORPORATION TO ISSUE
INDUSTRIAL REVENUE BONDS

August, 1983

King County Industrial Revenue
Bond Advisory Committee

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I. EXECUTIVE SUMMARY

King County became eligible to issue Industrial Revenue Bonds (IRBs) in 1981 following passage by the Washington State Legislature of the Local Economic Development Act (LEDA) and approval by state voters of constitutional amendment, House Joint Resolution (HJR) 7. LEDA (RCW 39.84) permits any city, town, county or port district to enact an ordinance to form a public corporation to issue IRBs.

A King County public corporation can provide IRB financing for eleven industrial facilities -- manufacturing, processing, research, production, assembly, warehousing, transportation, pollution control, solid waste disposal, energy facilities and industrial parks -- located anywhere in King County, subject to approval from the "creating municipality" (King County) and the local "planning jurisdiction" (the jurisdiction with land use authority).

In October, 1982 the King County Council adopted Motion 5597 (attachment A). The motion endorses the potential use of Industrial Revenue Bonds for the purpose of encouraging a diversified and stable economic base in King County and directs the King County Executive to transmit a draft enabling ordinance, charter and bylaws creating a public corporation for the purpose of issuing IRBs.

Following passage of Motion 5597, King County Executive Randy Revelle established a King County Industrial Revenue Bond (IRB) Advisory Committee in November, 1982 to assist the Executive Office in preparing a proposal to form a public corporation to issue IRBs. Executive Revelle directed the IRB Advisory Committee to address a variety of issues prior to developing a recommended proposal establishing an IRB public corporation.

This report presents the IRB Advisory Committee's findings and a recommended IRB program for King County. The report describes IRB financing, reviews the issues addressed by the Committee in planning King County's program, and presents recommendations for the purpose of creating a King County public corporation to issue IRBs.

IRB Financing

Industrial Revenue Bonds are tax-exempt, non-recourse bonds issued by a local public corporation for the purpose of financing a privately operated industrial facility. Bondholders are paid from the revenues of the financed facility and, in the event of default, the bondholders recourse for payment is through the private firm and any collateral securing the bonds.

IRB financing does not constitute a local government debt. King County will not be liable for repayment of IRBs nor will its general obligation bonding capacity be reduced by IRB financings.

Private firms seek IRB financing largely to take advantage of the lower interest costs associated with tax-exempt bonds. The difference between conventional financing and lower cost IRB financing is known as the "spread" and is the principal measure of the value of IRB financing. The lower costs associated with IRB financing have made them very popular in other parts of the country.

Many private and public sector participants will be involved in IRB financings in King County. They include: (1) the private firm requesting financing, (2) the public corporation issuing the bonds, (3) the local government(s) approving issuance of the bonds, (4) the Washington State Department of Commerce and Economic Development with limited authority to disallow issuance of the bonds, (5) the bond counsel advising the participants, (6) the bond purchaser(s) buying the IRBs and (7) the trustee providing bond redemption and certain project management services.

Committee Recommendation

The King County IRB Advisory Committee unanimously recommends that King County promptly establish a public corporation to issue IRBs. The IRB Advisory Committee concluded that offering IRBs is an appropriate means to encourage increased investment and employment in King County and establishing a public corporation now will avoid delays when processing the first application for IRB financing.

In developing this recommendation, the IRB Advisory Committee addressed a variety of policy and planning issues related to the capacity to issue IRBs and the necessary enabling ordinance, charter and bylaws to form an IRB public corporation.

Issues Addressed

The IRB Advisory Committee's findings and recommendations for each issue are summarized below:

Issue 1: Formation of a Public Corporation -- King County is currently at a competitive disadvantage by not having an IRB program because IRB financing is widely used throughout the U.S. by other states and localities to attract business investment. Adoption of an IRB program by King County would eliminate this competitive disadvantage and improve the local "business climate." King County should form a public corporation to issue IRBs because it will further the County's economic and growth management objectives by providing an incentive to firms to invest and provide jobs.

Issue 2: Policies Governing the Use of IRBs -- The Local Economic Development Act requires King County approve each project receiving IRB financing. King County may adopt policies governing the use of IRBs so long as it does not permit financing for projects prohibited by state or federal law.

LEDA also requires the appropriate King County city to approve each project receiving IRB financing if the proposed project is located within its planning jurisdiction. King County cities have their own policies for industrial development and may require IRB financed projects to meet these or additional policies.

King County's policies governing the use of IRBs should distinguish between whether a project is located in an incorporated or an unincorporated area. King County's IRB policies should pertain primarily to projects located in

unincorporated areas. Policies governing the use of IRBs in incorporated areas should be under the control of King County cities.

Firms requesting IRB financing for facilities located in unincorporated King County should propose projects consistent with King County's land use policies, economic development goals and energy management plans (as directed by King County Council Motion 5597). The County should also encourage firms locating facilities in the unincorporated area to propose projects that: (1) provide jobs for local residents, (2) are compatible with maintaining a high quality environment and (3) do not put an unreasonable burden on existing public services.

Firms proposing projects for IRB financing in incorporated areas should meet the IRB policies adopted by the appropriate King County city. Additionally, King County should require all firms receiving IRB financing from its public corporation to propose projects consistent with the requirements of LEDA and the IRS Code and to certify that they engage in nondiscriminatory employment practices. (See Attachment B.)

Issue 3: Coordination with King County Cities -- Many large suburban cities --Bellevue, Kent, Renton -- have expressed an interest in a King County public corporation issuing IRBs for projects located in their cities. King County's IRB policies and procedures should encourage these cities to refer applicants for IRB financing to King County's public corporation.

Issue 4: Coordination with the Port of Seattle -- In early 1982, the Port of Seattle formed the Industrial Development Corporation (IDC) to issue IRBs for port-related projects. King County should work closely with the Port to ensure that projects are appropriately referred to the IDC or the King County public corporation.

Issue 5: Impact on Existing Businesses -- King County should not prohibit IRB financing for a firm because of a projects impact on existing businesses. The County could run afoul of federal anti-trust laws for refusing to issue IRBs for this reason.

Issue 6: Composition of the Board of Directors -- LEDA requires King County to establish a Board of Directors for the purpose of governing the affairs of its IRB public corporation. King County's Board of Directors should be composed of five members, one member each from the King County Council, King County Executive and the suburban jurisdictions and two members from the private sector. Board members from the private sector should be selected primarily for their technical expertise.

Issue 7: Staff Support for the Public Corporation -- A King County public corporation will require staff to: (1) serve as the contact point for the applicant and other participants involved in the IRB financing, (2) coordinate the review of the proposed project by all of the participants, (3) prepare a report summarizing its review of each proposed project for use by the public corporation, King County officials and the planning jurisdiction, and (4) ensure that all necessary documents are in order throughout

the application process. King County's public corporation should contract for staff services from the King County Finance Office, who should designate one person as the "IRB Coordinator" with lead responsibility for staffing the public corporation.

Issue 8: Liability of Participants -- It is highly unlikely that either King County or its public corporation could be held liable to repay IRBs because of the way IRB financings are structured and the protections provided under state and federal law. However, King County will want to establish procedures that reduce the chance of either party being sued and strengthen the legal position of both parties in the event of suit. King County can do this by: (1) requiring the applicant for IRB financing indemnify the public corporation and its Board of Directors, (2) establishing a Board of Directors separate from the King County Council, and (3) not conducting an independent financial review to determine the credit worthiness of the proposed project.

Issue 9: Financial Review -- Financial institutions rigorously analyze a proposed project before deciding whether to invest in the project by purchasing the IRBs. Only sound, credit-worthy firms can get IRB financing. This "test of the marketplace" provides excellent protection from default.

Neither King County or its public corporation should conduct an independent financial review because it will not reduce the risk of default and could increase the chances of both parties being sued. Further, conduct of such a review would be expensive and time consuming and would serve as a major disincentive to businesses interested in IRB financing.

Issue 10: Public Corporation Ownership of the Financed Facility: LEDA permits a public corporation to structure an IRB financing so that it owns the financed facility. It is unlikely that IRB financings in King County will be structured in this manner, though, because a private firm may have to pay both the leasehold excise tax and regular property taxes if the public corporation owns the facility. If, however, an IRB financing is structured in this manner, King County's public corporation should sign a trustee agreement that provides for a competent third party to assume property management responsibilities in the event of default.

Issue 11: Procedure for Issuing IRBs -- Businesses will be discouraged from obtaining IRB financing if King County's procedure for issuing IRBs is unnecessarily lengthy and/or vague. King County should develop a clear procedure for issuing IRBs -- as recommended in Attachment C of this report -- and provide this information beforehand to all participants in an "Application for IRB Financing."

Recommended Enabling Ordinance, Charter and Bylaws

The IRB Advisory Committee, acting in the role of advising the King County Executive, developed recommended provisions for the enabling ordinance, charter and bylaws establishing a King County public corporation to issue IRBs. A summary of the Committee's recommendations is presented below.

Enabling Ordinance -- King County should adopt an enabling ordinance establishing a public corporation that:

- (a) Contains policies which: (1) require firms receiving IRB financing engage in nondiscriminatory employment practices and propose projects consistent with the provisions of LEDA and IRS regulations; (2) require projects receiving IRB financing, located in unincorporated areas, be consistent with King County's land use policies, economic development goals and energy management plans; (3) encourage projects receiving IRB financing, located in unincorporated King County, provide jobs for local residents, be compatible with maintaining a high quality environment and not put an unreasonable burden on available public services; and (4) require projects receiving IRB financing in incorporated areas be consistent with the policy guidelines set forth by the city where the proposed facility is located.
- (b) Establishes a five member public/private Board of Directors who shall serve a three year term. A majority of Board members shall constitute a quorum.
- (c) Requires the public corporation indemnify its directors, officers and employees.

Charter -- King County should adopt a charter for the public corporation that spells out the purposes, policies and powers of the public corporation and Board of Directors consistent with the provisions of LEDA and the King County enabling ordinance. The Charter should contain procedures which: (1) require an early public hearing by the King County public corporation, (2) encourage the early and full participation of cities in IRB financings for projects located within their planning jurisdiction, (3) promote coordination between King County and the Port of Seattle and (4) require King County's public corporation sign a trust agreement when it retains ownership of the financed industrial facility.

Bylaws -- King County should adopt bylaws for the public corporation consistent with its charter and enabling ordinance. The bylaws should provide for officers for the Board of Directors and procedures for Board meetings.

II. PARTICIPANTS IN THE PLANNING PROCESS

In October, 1982, the King County Council passed Motion 5597 (Attachment A) endorsing the potential use of Industrial Revenue Bonds for the purpose of encouraging a diversified and stable economic base in King County. The Council directed the King County Executive to transmit a draft enabling ordinance, charter and bylaws creating a public corporation for the purpose of issuing IRBs in King County.

Following passage of Motion 5597, King County Executive Randy Revelle established the King County Industrial Revenue Bond Advisory Committee, in November 1982, to assist the Executive Office in preparing a proposal to form a public corporation. County Executive Revelle directed the Committee to address a variety of policy and planning issues and prepare a proposal describing how King County should implement the IRB program.

In establishing the IRB Advisory Committee, the King County Executive appointed three kinds of members: (1) private sector participants knowledgeable about IRB financing, (2) suburban representatives knowledgeable about local economic development issues and (3) King County personnel likely to implement the IRB program. A special effort was made to select Committee members from outside the City of Seattle by asking for (and receiving) nominations from the Suburban Mayors Association, the Bellevue Chamber of Commerce and the Eastside Municipal League. Fifteen members were appointed by County Executive Revelle to the IRB Advisory Committee:

1. Honorable Berne Biteman, Kent City Council
2. Robert Cowan, Director, King County Finance Office (added to committee in February, 1983)
3. Deborah Cushing, Perkins, Coie, Stone, Olsen and Williams
4. David Edwards, Weyerhaeuser
5. Alec Fiskens, Rainier Bank
6. Tom Fitzsimmons, King County Executive Office, Committee Chair
7. Rueben Flores, National Alliance of Business
8. Dick Hamlin, Bellevue Chamber of Commerce
9. Honorable Fred L. Jarrett, Mercer Island Council
10. Jim Johnson, Eastside Municipal League
11. Bill Lum/Holly Kean, King County Council (Bill Lum replaced Holly Kean in February, 1983)
12. Holly Miller, King County Department of Planning and Community Development
13. A. Henry Schilling, Battelle
14. Mike Waske, ISPTE - Local 17
15. Bob Yeasting/Alex Ford, Foster and Marshall/American Express Inc.

The IRB Advisory Committee met eight times from November, 1982 to May, 1983. Committee members addressed eleven issues in preparing their proposal. The Committee invited a large number of participants to its meetings to provide information on IRB financing issues. These participants included: Michael Alvine, Central Puget Sound Economic Development District; Wayne Booth, Perkins, Coie, Stone, Olsen & Williams; Sandra Cohen, King County Prosecuting Attorney's Office; Beth Davis, Washington State Department of Commerce and Economic Development; Lee Dedrick, King County Finance Office; Pat Duggan, City of

Auburn; John Finke, City of Seattle; Amy Gallagher, Roberts and Shefelman; Phil Kushlan, City of Bellevue; Stan McNutt, City of Des Moines; Michael Mulcahy, City of Renton; Cliff Muller, Port of Seattle; Thomas Newton, Economic Development Council of Puget Sound; Michael Parness, City of Renton; Jerry Rosenquist, King County Finance Office and C. Mark Smith, Tacoma/Pierce County Economic Development Board.

The IRB Advisory Committee was staffed by Jim Feldmann and Anne Smith of the King County Executive Office. Michael Alvine from the Central Puget Sound Economic Development District also assisted in staffing the Committee.

Finally, the IRB Advisory Committee, through Executive Office staff, contacted every local government in King County with authority, under LEDA, to form a public corporation to issue IRBs. These jurisdictions participated in a survey regarding their interest in the IRB program and reviewed the Committee's draft proposal in June, 1983.

III. AUTHORITY TO ISSUE IRBS

King County's authority to issue Industrial Revenue Bonds derives from the 1981 Local Economic Development Act (LEDA) and constitutional amendment, House Joint Resolution 7. LEDA (RCW 39.84) permits any city, town, county or port district to enact an ordinance to form a public corporation to issue IRBs.

In passing LEDA, the Washington State Legislature declared the purposes of the IRB program to be the promotion of higher employment and capital investment; the attraction of environmentally sound industry to the state; the protection and enhancement of natural resources; and the production and conservation of energy. Eleven industrial development facilities -- manufacturing, processing, research, production, assembly, warehousing, transportation, pollution control, solid waste disposal, energy facilities, industrial parks -- are eligible to receive IRB financing under state law.

King County must enact an enabling ordinance to form a public corporation to issue IRBs. This ordinance must: approve a charter for the public corporation; establish a Board of Directors to govern the affairs of the public corporation; set forth what constitutes a quorum of the Board of Directors; and describe how the public corporation shall conduct its affairs.

A public corporation formed to issue IRBs is considered by LEDA to be an instrumentality of the County and not a municipal corporation. It may exercise certain limited powers including the power to: (1) issue IRBs, (2) construct and maintain industrial development facilities, (3) lease or sell any part or all of a facility, (4) make secured loans for the purpose of providing temporary or permanent financing, (5) enter into contracts, (6) make bylaws not inconsistent with its charter and (7) collect fees or charges from applicants or users of industrial development facilities. A public corporation, however, may not operate an industrial development facility.

King County maintains oversight responsibilities with respect to its public corporation. Under LEDA, the County: is required to approve each IRB financing prior to issuance by its public corporation; must annually review the public corporation's financial statements; and may change or terminate its public corporation if contracts entered into by the corporation are not impaired.

Finally, LEDA imposes some restrictions on King County in implementing the IRB program. King County may not give or lend any money or property in aid of its public corporation, nor may the County delegate to its public corporation any of its attributes of sovereignty (including the power to tax, the power of eminent domain and the police power). In addition, bond proceeds received from the sale of IRBs or revenues derived from financed facilities may not be commingled with King County's funds.

State's Role

The state's role in implementing the IRB program under LEDA is quite limited. The local public corporation is required to send a description of the proposed project for IRB financing to the Washington State Department of Commerce and Economic Development which has 12 days to veto the project if it is not eligible

under LEDA. DCED also is to report annually to the Washington State Legislature and Governor on the amount of capital investment undertaken and permanent employment reasonably related to the IRB program. In addition, the finances of an IRB public corporation are subject to examination by the State Auditors Office.

Federal Restrictions

The U.S. Internal Revenue Service (IRS) imposes many restrictions on the use of IRBs. The most significant of these restrictions are the \$1 million and \$10 million "small issue" ceilings which limit the amount of IRB financing available for most business projects. Normally a business can qualify its project for up to \$1 million in IRB financing. It is also possible for a business to obtain up to \$10 million in IRBs if it meets a large number of conditions under the IRS Code (e.g., the capital expenditures condition).

The IRS has exempted some types of projects from the \$1 million and \$10 million "small issue" ceiling. For example, the IRS imposes no dollar limit for airports, wharves, mass transit, solid waste, water pollution control and some energy generating projects. Most economic development benefits (e.g., jobs) however, come from projects whose IRB financings are restricted by the "small issue" ceilings.

In 1982, Congress passed the Federal Tax Equity and Fiscal Responsibility Act (TEFRA) which made numerous changes reforming and limiting the use of IRBs. For King County, the additional requirements mandated by TEFRA consist mainly of: (1) requiring the County to hold a public hearing prior to issuing any IRBs; (2) mandating King County's public corporation to submit information to the IRS on a quarterly basis for all IRBs issued; and (3) eliminating the tax-exempt status of all "small issue" IRBs after December 31, 1986.

IV. IRB FINANCING

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Industrial Revenue Bonds are tax-exempt, non-recourse bonds issued by a local public corporation for the purpose of financing a privately operated industrial facility. Bondholders are paid from the revenues of the financed facility and, in the event of default, the bondholders recourse is to the private firm and any collateral securing the bonds.

IRB financing does not constitute a debt of King County. The County is not liable for repayment of IRBs nor is its general obligation bonding capacity reduced by IRB financings.

Private firms seek IRB financing principally to take advantage of the lower interest costs associated with tax-exempt bonds. The difference between conventional financing and lower-cost IRB financing is known as the "spread" and is the principal measure of the value of IRB financing to private firms.

The lower interest costs associated with IRB financing have made them very popular with private firms. In 1980, state and local governments issued \$12.3 billion in IRBs (Battelle and Touche Ross Co, Potential Impacts of an Industrial Revenue Bond Program, 1981).

Roles of participants in an IRB financing

The specific agreements and events surrounding issuance of IRBs for projects located in King County will be unique to each IRB financing. It is not unusual for an IRB financing to entail 15-20 separate legal and financial agreements.

Many private and public sector participants will be involved in IRB financings in King County. They include: (1) the private firm requesting the financing, (2) the public corporation issuing the bonds, (3) the local government(s) approving issuance of the bonds, (4) the Washington State Department of Commerce and Economic Development with limited authority to disallow issuance of the bonds, (5) the bond counsel advising all the participants, (6) the bond purchaser(s) buying the IRBs and (7) the trustee providing bond redemption and certain project management services.

State law and current financial practice dictate certain roles for each of the participants in an IRB financing. These roles are described below.

- Private Firm -- An IRB financing is initiated by a private firm who requests such financing from a public corporation. The private firm submits an application form and fee to the public corporation; participates in all proceedings and negotiations; enters into a financing agreement with the public corporation; and repays the bondholders.
- Public Corporation -- The public corporation reviews and approves all projects for IRB financing and actually issues the IRBs. Governed by a Board of Directors, the public corporation evaluates the proposed project, participates in financing negotiations and approves the inducement resolution and bond issuing resolution. The public corporation also normally enters into an indenture of trust with a trustee for bond redemption and certain project management services.

- Local Government -- The local government responsible for creating the public corporation issuing the bonds is required by LEDA to approve the bond issuing resolution prior to and within 60 days of sale of the IRBs. Further, if the project is located in the planning jurisdiction of another local government, this local government must also approve the proposed financing prior to sale of the bonds.
- Washington State Department of Commerce and Economic Development -- Under LEDA, the local public corporation is required to submit a description of the proposed facility for IRB financing to the Washington State Department of Commerce and Economic Development (DCED). If the proposed facility is not eligible, DCED gives the public corporation notice of this, in writing and by certified mail, within twelve working days after receiving the description of the project from the public corporation.
- Bond Counsel -- Bond counsel is legal counsel to the public corporation but also works closely with other participants in the IRB financing. By virtue of their expertise, bond counsel is the key participant in IRB financings and normally drafts many of the documents -- inducement resolution, bond issuing resolution, trust indenture, financing agreement, bond purchase agreement -- involved in such financings. They also provide a legal opinion assuring all parties that interest on the IRBs is exempt from federal income tax. Bond counsel is normally paid by the private firm from bond proceeds.
- Bond Purchaser(s) -- Purchasers of IRBs will normally be either a commercial bank or an underwriting firm (an investment banker or broker or syndicate of bankers and/or brokers). IRBs are purchased either through negotiated private placement or by bid during a public sale. Banks and underwriters purchase IRBs based on the credit worthiness of the private firm, the revenue generating potential of the project and the amount of collateral and security associated with the financing.
- Trustee -- A public corporation will normally sign a trust indenture with a trustee (a bank or underwriting firm) for bond redemption and certain project management services. A trustee holds the bond proceeds for the private firm and disperses it when the firm makes an appropriate request. Similarly, the trustee collects the bond repayments from the private firm and disburses these to the bond purchaser(s)/bond holder(s). Further, the trustee also normally oversees proceedings in the event of default and assumes project management responsibilities when the public corporation owns the financed facility.

V. ISSUES ADDRESSED

King County Executive Randy Revelle directed the IRB Advisory Committee to examine six issues as part of preparing a recommended IRB proposal for King County. These six issues are: formation of a King County public corporation (Issue 1); local policy governing the use of IRBs (Issue 2); coordination with King County cities (Issue 3); coordination with the Port of Seattle (Issue 4); impact on existing businesses (Issue 5); and financial review (Issue 9).

Committee members, in addition to addressing these issues, examined five more issues: composition of the Board of Directors (Issue 6); staffing the public corporation (Issue 7); liability of participants (Issue 8); public corporation ownership of the financed facility (Issue 10); and procedures for issuing IRBs (Issue 11).

A summary of the Committee's findings and recommendations on each issue is presented below.

ISSUE 1: SHOULD KING COUNTY FORM A PUBLIC CORPORATION TO ISSUE IRBS?

The Local Economic Development Act permits King County to form a public corporation to issue IRBs. The King County Council, in Motion 5597, endorsed the concept of the IRB program. Similarly, County Executive Revelle, in his appointment letter to the IRB Advisory Committee, expressed interest in forming a public corporation to increase business investment and jobs.

Executive Revelle, however, instructed the IRB Advisory Committee to retain the option of recommending that King County not establish a public corporation if Committee members determined that IRB financing would not further King County's economic development and growth management objectives. This led the Committee to examine whether King County should form a public corporation to issue IRBs.

Committee Findings

King County's economic and growth management objectives encourage private firms to invest and provide jobs so long as their development conforms to County environmental, building and land use regulations. IRB financing furthers King County's economic development and growth management objectives because it provides an incentive to firms to invest and provide jobs. While the importance of IRB financing varies from project to project, in some cases, it can be a critical factor in a firm's decision to invest in King County. This was shown by Battelle and Touche Ross Co. in their 1981 study, Potential Impacts of an Industrial Revenue Bond Program, which estimated that an IRB program would have increased total State output by \$365 million and total jobs by 6500 had the program existed in 1980 in Washington State.

The benefits to King County of forming a public corporation to issue IRBs are the typical economic development benefits of increased industrial output, employment and tax revenue. While these benefits have not been quantified for the County, it is reasonable to assume that King County's share of the increase in state output and jobs estimated by Battelle and Touche Ross Co. would be considerable.

The costs to King County of issuing IRBs are minimal. There are some direct costs in administering the program, but the applicant is required by LEDA to pay for these costs. There are also costs associated with providing public services but these costs depend on where the facility is located and is (or should be) part of King County's current land use review of proposed development. The federal government bears the principal cost of the IRB program in the form of lost tax revenues as a result of the interest on the bonds being exempt from federal income tax.

King County is currently at a competitive disadvantage in attracting industry by not issuing IRBs because IRB financing is widely used throughout the U.S. by other states and localities to attract business investment. Adoption of an IRB program by King County would eliminate this disadvantage and improve the local "business climate" by showing that King County is interested in encouraging industrial investment.

Committee Recommendation

The IRB Advisory Committee unanimously recommends that King County promptly form a public corporation to issue IRBs. Issuing IRBs will further the County's economic and growth management objectives. In addition, the economic benefits of issuing IRBs exceed the program's minimal costs to the County. Adoption of an IRB program would improve the local business climate for industrial investment in King County.

ISSUE 2: WHAT POLICIES SHOULD GOVERN THE USE OF IRBS IN KING COUNTY?

LEDA requires King County approve each project receiving IRB financing. King County may adopt policies governing the use of IRBs so long as it does not permit IRB financing for projects prohibited by state or federal law.

LEDA also requires the appropriate King County city to approve each project receiving IRB financing if the proposed project is located within its planning jurisdiction. King County cities have their own policies for industrial development and may require IRB financed projects to meet these or additional policies.

The King County Council, in Motion 5597, endorsed the potential use of IRBs to encourage the diversification and stability of King County's economic base. The Council also called for projects financed by Industrial Revenue Bonds to be consistent with King County's land use policies, economic development goals and energy management plans.

County Executive Revelle instructed the IRB Advisory Committee to examine this issue further by addressing what criteria King County should use to establish a project's eligibility for IRB financing.

Committee Findings

State and federal law, as described previously, impose many restrictions on the use of IRBs in Washington State. LEDA, in particular, is quite restrictive

because it only permits eleven industrial development facilities to receive IRB financing.

King County's current policies on industrial development pertain mostly to land use and thus, for the most part, only affect development in unincorporated King County. The County's policies accommodate growth and do not prohibit or favor any of the eleven types of industrial facilities eligible for IRB financing under LEDA.

Some guidance, nevertheless, is provided by King County's policies in planning the IRB program. County policies encourage: (1) IRB projects to be consistent with land use policies and plans, (2) firms receiving IRB financing to hire people trained in local manpower programs, and (3) King County to work with other jurisdictions and the private sector in implementing the IRB program.

Both Snohomish and Pierce Counties have adopted policies governing the use of IRBs as part of forming a public corporation to issue IRBs. Their policies require/recommend that a firm receiving IRB financing propose a project that: (1) provides jobs for local residents, (2) is compatible with maintaining a high quality environment, (3) diversifies the local economy, (4) is consistent with land use and economic development policies and plans and (5) avoids putting an unreasonable burden on public services.

IRB Committee members expressed a variety of points of view regarding whether King County should adopt similar policies. A number of members argued that King County should not adopt IRB policies that go beyond the requirements of LEDA and Council Motion 5597 for the following reasons.

- The IRB program is not a strong vehicle for controlling or managing growth. Private firms will not apply for IRB financing if King County has too many policy requirements because the incentive of lower cost financing will not offset the potential problems associated with complying with these requirements.
- The IRB Advisory Committee is recommending King County establish a public corporation to issue IRBs in order to encourage private investment and jobs and to improve the local "business climate." A large number of King County policy requirements will discourage businesses from using IRBs and is inconsistent with the basic intent of the County offering IRBs as a business incentive program.
- A number of IRB policies, if adopted by King County as requirements for IRB financing, would pose at least two administrative problems. First, it would be difficult to know what constitutes compliance with such nebulous policies as "hiring local residents." Private firms would have a hard time determining ahead of time whether their proposed project will qualify for IRB financing. Second, several of the above policies would be difficult to enforce because compliance would occur after issuance of the bonds. The County would have little leverage to force compliance.
- Most other states and localities use IRBs as a financing incentive. King County will put itself at a competitive disadvantage if it adopts

restrictive policies governing the use of IRBs. The public purpose of the IRB program is best served by improving King County's competitiveness to attract industrial investment.

Other IRB Advisory Committee members argued for the adoption of additional IRB policies by King County. Their arguments were as follows:

- IRB policies are needed to remind businesses of their corporate responsibilities in such areas as nondiscriminatory employment practices and environmental protection. Community groups will be more supportive of the IRB program if King County adopts such policies.
- LEDA requires King County to approve each IRB issue independent of action taken by its public corporation. It is not the intent of LEDA for County approval of IRB financing to be a rubber stamp.
- King County should adopt policy guidelines when reviewing projects for IRB financing in order to avoid the charge of being arbitrary and capricious when making decisions on proposed financings.
- Federal law requires King County to hold a public hearing on each proposed IRB issue. Adoption of policy guidelines will help King County respond to public comments and concerns.
- IRB policies can affect the type of industrial investment proposed by businesses in King County even if the County does not enforce compliance. Firms with projects that do not conform to the intent of the above policies will be hesitant to apply for IRB financing.

In reviewing the arguments, Committee members struck a balance between both points of view. As described below, Committee members recommend adopting IRB policies that remind business of their corporate responsibilities in such areas as environmental protection without changing the basic intent of King County offering IRBs as a business incentive program.

Committee Recommendation

The IRB Advisory Committee recommends that King County, in developing policies governing the use of IRBs, distinguish between whether a project is located in an incorporated or an unincorporated area. King County's IRB policies should pertain primarily to projects located in unincorporated areas. Policies governing the use of IRBs in incorporated areas should be under the control of King County cities.

Attachment B of this report presents the Committee's recommended IRB policies for King County (and the requirements for complying with these policies). As described in this attachment, King County should require all firms receiving IRB financing from its public corporation to propose projects consistent with the requirements of LEDA and the IRS Code and to certify that they engage in non-discriminatory employment practices.

Additionally, firms requesting IRB financing for facilities located in unincorporated King County should propose projects consistent with King County's land use policies, economic development goals and energy management plans (as directed by King County Council Motion 5597). The County should also encourage firms locating facilities in the unincorporated area to propose projects that: (1) provide jobs for local residents, (2) are compatible with maintaining a high quality environment and (3) do not put an unreasonable burden on existing public services.

Finally, firms proposing projects for IRB financing in incorporated areas should meet the IRB policies adopted by the appropriate King County city.

ISSUE 3: HOW SHOULD KING COUNTY COORDINATE THE ISSUANCE OF IRBS WITH KING COUNTY CITIES?

The Local Economic Development Act permits every city in King County to form its own public corporation to issue IRBs. Presently, four cities in King County -- Auburn, Redmond, North Bend, and Snoqualmie -- have formed public corporations to issue IRBs and the City of Seattle is developing a proposal to form such a corporation.

Cities can also request either King County or the Port of Seattle's public corporation to issue IRBs for projects located in their jurisdiction. King County and the Port of Seattle can issue IRBs to projects located anywhere in the County. LEDA requires a city, relying on this option, to also approve the IRB issue.

County Executive Revelle directed the IRB Advisory Committee to examine how King County should coordinate the issuance of IRBs with King County cities. Pursuant to this direction, Committee members examined whether cities are interested in having a King County public corporation issue IRBs for projects located within their jurisdiction and whether King County should adopt policies and procedures encouraging cities to refer IRB applicants to King County's public corporation.

Committee Findings

The IRB Advisory Committee and Executive staff conducted a survey of King County cities regarding their interest in having a County public corporation issue IRBs for projects located in their jurisdiction. The results of this survey show that many of the larger suburban cities -- Bellevue, Kent, Renton -- are interested in referring projects for IRB financing to a King County public corporation (Table 1).

Committee members and city officials identified a number of advantages in King County's public corporation issuing IRBs for projects located in incorporated as well as unincorporated areas:

- (1) A King County public corporation could save cities the time and effort needed to establish and staff their own public corporation,
- (2) A King County public corporation could provide cities and the County with the technical information needed to issue IRBs,

- (3) A King County public corporation could help reduce the problem of "IRB shopping" where a business plays one jurisdiction off on another trying to get the best deal for its project,
- (4) A King County public corporation could improve intergovernmental coordination on economic development issues.

While voicing support for participating in a King County public corporation, city officials stressed that cities must retain primary control over policy matters for projects located in their jurisdiction. City officials also stressed the need to be involved early in reviewing proposed projects for IRB financing.

Committee Recommendation

The IRB Advisory Committee recommends that King County's IRB policies and procedures encourage cities to refer IRB applicants to King County's public corporation for projects located in their jurisdiction. Specifically, King County should adopt procedures encouraging the early and ongoing involvement of city officials in reviewing applications for IRB financing and locating primary control over policy matters with the local planning jurisdiction -- cities for incorporated areas and King County for unincorporated areas.

ISSUE 4: HOW SHOULD KING COUNTY COORDINATE THE ISSUANCE OF IRBS WITH THE PORT OF SEATTLE?

LEDA permits King County and the Port of Seattle to each form a public corporation to issue IRBs to projects located anywhere in King County. In 1982, the Port of Seattle formed the Industrial Development Corporation (IDC) to provide IRB financing to eligible industrial facilities.

King County Executive Randy Revelle directed the IRB Advisory Committee to examine how the County should coordinate the issuance of IRBs with the Port of Seattle.

Committee Findings

The Port of Seattle has adopted policy giving preference for IRB financing to "port-related" projects, such as marine terminals, airport facilities and import-export projects. As of February, 1983, ten firms have requested IRB financing from the Port and \$65-\$70 million dollars worth of bonds have been issued.

One project receiving IRB financing from the Port's IDC was located in unincorporated King County. In December, 1982, Beloit Manhattan Inc. requested King County, as the planning jurisdiction, to approve \$6.5 million in IRBs for a manufacturing plant located in Federal Way. The King County Council approved the issuance of IRBs for the Beloit Manhattan Inc. project based on the project's consistency with King County's land use policies and plans.

TABLE 1

SURVEY OF KING COUNTY CITIES

	(1) Has formed an IRB public corporation				(2) Interested in a King County public corporation				(3) Need for coordination between King County and jurisdiction		
	Yes	No	Under Consideration	Bonds Issued	Yes	No	Unsure	No industrial development planned	Yes	No	No Opinion
Algona		x	x		x		x		x		
Auburn	x								x		
Beaux Arts Village		x					x				x
Bellevue		x	x		x				x		
Black Diamond											
Bothell		x			x				x		
Carnation											
Clyde Hill		x					x				x
Des Moines		x	x		x				x		
Duvall		x	x		x				x		
Enumclaw		x	x		x				x		
Hunts Point											
Issaquah		x	x		x				x		
Kent		x	x		x				x		
Kirkland		x	x		x				x		
Lake Forest Park		x					x				x
Medina		x					x				x
Mercer Island		x					x				x
Normandy Park		x					x				x
North Bend	x					x			x		
Pacific											
Redmond	x								x		
Renton											
Seattle			x						x		
Skykomish											
Snoqualmie	x					x			x		
Tukwila		x					x		x		
Yarrow Point		x					x				x

The IRB Advisory Committee examined this issue by discussing the pros and cons of two options for membership on the Board of Directors. These options are:

- (1) A Board of Directors composed of members from the public and private sector, or
- (2) A Board of Directors composed of members of the King County Council or a Council Committee, such as the Fiscal Management Committee.

Committee Findings

Pierce and Snohomish Counties (and most jurisdictions in other states) have established Boards of Directors composed of members from both the public and private sectors. The advantages of establishing a private-public sector Board include: (1) greater technical expertise and experience on the Board; (2) a balance of public and private sector views reflected in Board decisions; (3) the separation of the oversight function of the creating municipality from the governing function of the Board of Directors (thus avoiding the potential problem of "incompatible offices" if the King County Council both oversees the Board and is the Board); and (4) the opportunity for suburban city representation on the Board. These advantages are weighed against the potential problems of: (1) delay in reviewing IRB applications due to the need for two separate organizations to approve the project and (2) private sector Board members' business activities conflicting with their fiduciary responsibilities.

The second option of designating the King County Council as the Board of Directors is the approach taken by the cities of North Bend and Redmond and the Port of Seattle. The advantages of this approach include: (1) avoiding conflicts associated with having two separate decision-making organizations -- the Council and the Board of Directors and (2) encouraging timely and efficient review of IRB applications. On the other hand, the disadvantages to this option include: (1) the lack of private sector and suburban city involvement on the Board and (2) the potential problems associated with having the King County Council overseeing itself as the Board of Directors.

Committee Recommendation

The IRB Advisory Committee recommends that King County establish a private-public sector Board to provide for greater expertise on the Board and avoid any potential legal problems in designating the King County Council as the Board of Directors. However, the Committee recommends that at least one King County Councilmember serve on the Board in order to minimize potential conflicts between the Council and the Board when issuing IRBs. Committee members also recommend that suburban cities and the King County Executive be represented on the Board.

ISSUE 7: HOW SHOULD KING COUNTY'S PUBLIC CORPORATION BE STAFFED?

The Local Economic Development Act permits a public corporation to hire staff to assist the corporation in its administrative responsibilities. The public corporation must pay for its staff by charging fees from private firms requesting IRB financing.

Committee Recommendation

The IRB Advisory Committee recommends that King County work closely with the Port to ensure that projects are appropriately referred to either the Port of Seattle's IDC or King County's public corporation.

King County should review requests for IRB financing from the Port's IDC for projects located in unincorporated areas to assure that they are in conformance with the County's IRB policies. King County, as the local planning jurisdiction, should retain control over policy matters for projects receiving IRB financing in its jurisdiction.

ISSUE 5: IN WHAT WAYS CAN KING COUNTY AVOID ADVERSELY IMPACTING EXISTING BUSINESSES WHEN ISSUING TAX-EXEMPT IRBS TO NEW OR EXPANDING BUSINESSES?

IRB financing permits a business to finance an industrial facility at less cost than is possible with conventional financing. By lowering costs, IRB financing permits a business to compete more effectively against other firms.

The IRB Advisory Committee, as directed by County Executive Revelle, examined whether King County should avoid issuing IRBs to firms that compete with existing businesses.

Committee Findings

The issue of providing IRB financing to firms that compete with existing businesses in one that has arisen in other states with IRB programs. It has most frequently arisen when IRBs are used to finance commercial development because commercial firms normally share the same local market.

LEDA and HJR 7 prohibit King County from offering IRB financing to commercial development. This issue, however, could still occasionally occur in financing industrial development.

King County faces at least two problems if it tries to avoid issuing IRBs to firms that compete with existing businesses. First, the County would have difficulty showing how IRB financing for one firm will adversely impact other businesses. And second, King County could run afoul of federal anti-trust laws for refusing to issue IRBs for this reason.

Committee Recommendation

The IRB Advisory Committee recommends that King County not prohibit IRB financing for a firm because of its impact on existing businesses.

ISSUE 6: WHAT SHOULD BE THE COMPOSITION OF THE BOARD OF DIRECTORS OF KING COUNTY'S PUBLIC CORPORATION?

LEDA requires King County establish a Board of Directors to govern the affairs of its public corporation. State law, however, does not specify what the composition of the Board should be.

The IRB Advisory Committee, however, examined whether additional protections for public corporation participants are needed.

Committee Findings

LEDA does not contain any provisions for indemnifying the public corporation participants against liability incurred in carrying out their duties. Indemnification provisions provide certain kinds of protection to participants in the event they have made an untrue or misleading statement during the proceedings or in the IRB financing documents. The Directors of the public corporation will need indemnification protection because they are neither municipal officers nor directors of a private corporation and the indemnification provisions routinely available for people serving in either position are not automatically applicable to them.

Additional protection for the Directors can be obtained by purchasing errors and omissions insurance. With this insurance, Board members would be defended by an insurance company if a conflict occurs with the company over the indemnification provisions in the IRB financing documents. Errors and omissions insurance, however, may be difficult to obtain initially due to the lack of a "track record" by the public corporation in IRB financings. The ability to secure this insurance depends, to some degree, on who presently insures King County.

Committee members identified two other ways to minimize the liability of King County and Board members. Liability can be minimized by: (1) establishing a Board of Directors separate from the legislative body of the creating municipality (Issue 6) and (2) not conducting a separate financial review to determine the credit worthiness of a proposed project for IRB financing (Issue 9).

Committee Recommendation

The IRB Advisory Committee recommends that King County require the public corporation indemnify its directors, officers and employees. In addition, King County's public corporation should obtain errors and omissions insurance for its participants.

ISSUE 9: SHOULD KING COUNTY OR ITS PUBLIC CORPORATION CONDUCT AN INDEPENDENT FINANCIAL REVIEW OF AN IRB FINANCED PROJECT IN ORDER TO REDUCE THE RISK OF DEFAULT?

County Executive Revelle directed the IRB Advisory Committee to examine what safeguards King County should adopt to minimize the risk of default. Committee members explored whether the County or its public corporation should conduct an independent financial review of a project proposed for IRB financing in order to reduce the risk of default.

Committee Findings

IRB applicants must arrange their own financing by finding a purchaser(s) for the bonds. Many firms interested in IRBs will not qualify for IRB financing because they will not be able to arrange for someone to buy the bonds.

The IRB Advisory Committee examined how King County's public corporation should be staffed.

Committee Findings

A King County public corporation will require staff to: (1) serve as the contact point for the applicant and other participants involved in an IRB financing, (2) coordinate the review of a proposed project by all of the participants, (3) prepare a report summarizing its review of each proposed project for use by the public corporation, King County officials and the planning jurisdiction, and (4) ensure that all necessary documents are in order throughout the application process.

It is not possible, at least initially, to predict how much staff time will be needed because it is not possible to predict either the volume or type of IRB applications private firms will submit to King County's public corporation. However, it is unlikely that more than one full time person will be needed initially because most of the documents in an IRB financing will be prepared by bond counsel and other private sector participants.

The public corporation's staff will also need to provide information about proposed IRB financings to King County and local city staff and be familiar with the policies and workings of King County government.

Committee Recommendation

The IRB Advisory Committee recommends that King County's public corporation contract for staff services from the King County Finance Office. The Finance Office should designate one person as an "IRB Coordinator" to have the lead role in staffing the public corporation. This person should work with Bond Counsel to perform the four responsibilities outlined above and be available to provide information to the public corporation, King County and the local planning jurisdiction.

The alternative of contracting with a consulting firm for staff work is not desirable because of the difficulties involved in coordinating the participants in the process and the fact that an outside person would not be familiar with King County policies and procedures. Similarly the alternative of contracting with other County staff is not recommended because the public corporation needs staff who are familiar with financial analysis and markets.

ISSUE 8: HOW CAN KING COUNTY MINIMIZE THE LIABILITY OF PUBLIC SECTOR PARTICIPANTS INVOLVED IN IRB FINANCINGS?

It is highly unlikely that either King County or its public corporation could be held liable to repay bondholders in IRB financings; there are many protections for both parties under federal and state law. For example, Washington State law requires each IRB contain language that neither the state, the municipality, nor any other municipal corporation or agency of the state is obligated to pay the principal or interest on the bonds.

Financial institutions rigorously analyze a proposed project before deciding whether to invest in the project by purchasing the IRBs. Only sound, credit-worthy firms can get IRB financing. This "test of the marketplace" provides excellent protection from default.

An independent financial review by King County or its public corporation is unlikely to reduce the risk of default. King County is unlikely to improve on the analysis performed by private financial institutions.

The added time and expense associated with an independent financial review would be a significant disincentive for businesses interested in IRB financing. Further, the County would increase its chance of being sued and make its legal defense more difficult if it makes a determination that a project is a good financial risk and default occurs.

Committee Recommendation

The IRB Advisory Committee recommends that neither King County or its public corporation should conduct an independent financial review of a project proposed for IRB financing. However, King County's public corporation should review the project's financial documents to make sure the proper analysis has been done and that all documents needed for the IRB financing are completed.

ISSUE 10: SHOULD KING COUNTY PERMIT ITS PUBLIC CORPORATION TO OWN AN IRB FINANCED FACILITY?

The Local Economic Development Act permits a public corporation to structure an IRB financing in one of three ways: (1) by lease agreement, (2) by installment sales agreement or (3) by loan agreement. The public corporation, under either option 1 or 2, could own the IRB-financed facility.

The IRB Advisory Committee examined the legal and financial implications of the public corporation retaining ownership of the financed facility in order to determine if King County should permit IRB financings to be structured in this manner.

Committee Findings

Most IRB financings in Washington State will be structured as loan agreements with the private firm owning the facility. Private firms are unlikely to request IRB financings where the public corporation owns the facility because, under present interpretation of Washington State law, such financings may require the firm to pay both the leasehold excise tax and regular property taxes.

Legally, it is unclear whether the public corporation or King County would assume additional liability if the public corporation owns the financed facility. LEDA empowers the public corporation to incur property management responsibilities and residual liability if it owns the facility. Further, ownership of an IRB financed facility could increase the chance of the public corporation being named as the defendant in lawsuits, since property owners are

often routinely named as defendants. However, IRB agreements can be structured to protect the public corporation and King County by requiring a trustee to assume management responsibilities if the private firm defaults on the bonds.

The fiscal impact on King County of its public corporation owning the facility may be beneficial. The County would collect its regular property tax revenue in addition to the possibility of collecting additional revenues for the leasehold excise tax.

Committee Recommendation

If an IRB financing is structured so that the public corporation owns the facility, the IRB Advisory Committee recommends that the public corporation sign a trustee agreement that provides for a competent third party to assume property management responsibilities in the event of default.

ISSUE 11: WHAT PROCEDURES SHOULD BE FOLLOWED IN ISSUING IRBS IN KING COUNTY?

An IRB applicant must satisfy many financial and legal requirements prior to receiving IRBs. LEDA requires an IRB applicant get the approval of the public corporation, the creating municipality and the planning jurisdiction prior to receiving IRB financing (the state also has limited power to disallow the financing). The IRB applicant must also find someone to purchase the bonds.

Unclear or overly complex procedures for issuing IRBs will deter private sector participation in the IRB program. Consequently, the IRB Advisory Committee examined the question of how King County should issue IRBs.

Committee Findings

Committee members set forth a number of procedural criteria for issuing IRBs in King County. These are listed below:

- (1) King County's procedures should be clear and understandable to all parties involved in the financing.
- (2) King County's procedures should meet all federal (TEFRA), state (LEDA), and King County legal requirements.
- (3) King County's procedures should not pre-empt existing land use procedures.
- (4) King County's procedures should provide for early review by the planning jurisdiction and early participation by the public.
- (5) King County's procedures should require the public corporation to review the proposed project on the basis of legal and financial considerations.
- (6) King County's procedures should require local government to review the proposed project on the basis of policy considerations.

- (7) King County's procedures should avoid unnecessary delays in issuing IRBs.

Committee Recommendation

The IRB Advisory Committee developed a recommended procedure for issuing IRBs in King County. This procedure is contained in Attachment C of this report. A brief summary of the procedure is provided below.

Step 1: Company Inquiry/Preliminary Discussions -- A company interested in IRB financing is referred to the King County public corporation's lead staff person on IRBs for preliminary discussions about the nature of the IRB program and the company's proposed project.

Step 2: Company Submits Application -- The company submits an application for IRB financing and a nonrefundable application fee.

Step 3: Preliminary Staff Review -- The IRB Coordinator, with the aid of bond counsel and King County staff, reviews the application to assess the apparent eligibility and feasibility of the proposed project. If the proposed project is located in unincorporated King County, the preliminary staff review also includes a description of which County approvals are needed to attain compliance with its land use policies and plans.

Step 4: Submission of Application to the State Department of Commerce and Economic Development -- The IRB Coordinator mails a description of the proposed project to the State Department of Commerce and Economic Development which has twelve working days to veto the proposed project if it is ineligible under LEDA.

Step 5: Public Corporation Approves Inducement Resolution -- The Board of Directors of King County's public corporation holds a public hearing on the proposed project. The Board reviews the application, staff report and terms of the agreement to issue the IRBs and if these are acceptable (and, for projects located in unincorporated King County, the company has obtained all land use approvals requiring discretionary action from the County), the Board approves an inducement resolution stating the intent of the public corporation to issue IRBs to the company for a specific purpose and amount.

Step 6: Completion of Project Planning and Negotiations -- The company, public corporation, bond counsel, bond purchaser or underwriter and, if applicable, trustee complete negotiations defining the terms of the financing while meeting all applicable conditions of the inducement resolution.

Step 7: Planning Jurisdiction Approves the Proposed Project (only when a proposed project is located within an incorporated area) -- The planning jurisdiction reviews the proposed project for consistency with its own policies and procedures and acts by either: (1) approving the proposed project, (2) approving the proposed project after negotiating changes or (3) denying the proposed project.

Step 8: Public Corporation Approves Bond Issuing Resolution -- The public corporation reviews all financing documents and approves a resolution which: (1) makes a finding that the interest on the bonds is tax-exempt, (2) determines that there are sufficient revenues to repay the IRBs, and (3) determines the form and manner of execution of the revenue bonds.

Step 9: King County Approves the Bond Issuing Resolution -- King County reviews the proposed project to ensure that it is consistent with its IRB policies and approves the bond issuing resolution, by ordinance, giving the public corporation a maximum of sixty days to issue the bonds.

Step 10: Sale of the Bonds -- The public corporation closes the sale and delivers the bonds.

VI. RECOMMENDED ENABLING ORDINANCE, CHARTER AND BYLAWS

8823

King County Council Motion 5597 directed County Executive Randy Revelle to transmit a draft enabling ordinance, charter, and bylaws for the purpose of creating a public corporation to issue IRBs. The IRB Advisory Committee, acting in the role of advising the King County Executive, developed recommended provisions for these documents. A summary of the Committee's recommendations is provided below.

Enabling Ordinance

The Local Economic Development Act requires King County to enact an enabling ordinance to form a public corporation to issue IRBs. The enabling ordinance must approve a charter for the public corporation, establish a Board of Directors to govern the affairs of the public corporation, specify what constitutes a quorum of the Board of Directors and describe how the public corporation shall conduct its affairs.

In addition to these legal requirements, the IRB Advisory Committee recommends that King County's enabling ordinance contain a number of additional provisions. These are summarized below.

- (1) King County policy governing the IRB program -- Committee members recommend that King County: (1) require firms receiving IRB financing engage in nondiscriminatory employment practices and propose projects consistent with the provisions of LEDA and IRS regulations; (2) require projects receiving IRB financing located in unincorporated areas be consistent with King County's land use policies, economic development goals and energy management plans; (3) encourage projects receiving IRB financing located in unincorporated King County provide jobs for local residents, be compatible with maintaining a high quality environment and not put an unreasonable burden on available public services; and (4) require projects receiving IRB financing in incorporated areas be consistent with the policy guidelines set forth by the city where the proposed facility is located.
- (2) Public Corporation Board of Directors -- Committee members recommend that King County:
 - (a) Establish a five member Board of Directors with two representatives from the private sector and one representative each from the King County Council, the King County Executive and the suburban jurisdictions. Board members from the private sector should be selected primarily for their technical expertise.
 - (b) Appoint Directors for a three year term. The terms of the Directors should be staggered.
 - (c) Require a majority of the Board of Directors constitute a quorum and permit public officials on the Board to designate an alternate to attend in their place.

- (3) Indemnification -- Committee members recommend that King County require the public corporation indemnify the public corporation's directors, officers and employees.

Charter

The Local Economic Development Act requires the charter of King County's public corporation contain, in substance, the limitations on the public corporation's powers set forth in RCW 39.84.060. Committee members also recommend that the charter contain the following elements:

- (1) Purposes and policies of the public corporation -- Committee members recommend adoption consistent with the enabling ordinance.
- (2) Board of Directors members -- Committee members recommend adoption consistent with the enabling ordinance.
- (3) Powers and limitations on the powers of the public corporation -- Committee members recommend adoption consistent with LEDA.
- (4) Indemnification -- Committee members recommend adoption consistent with the enabling ordinance.
- (5) Procedures for issuing IRBs -- Committee members recommend that King County:
 - (a) Require a public hearing by the public corporation early in its review of the proposed project.
 - (b) Encourage the early and full participation of cities for those projects located within their planning jurisdiction.
 - (c) Promote coordination between King County and the Port of Seattle.
 - (d) Require King County's public corporation sign a trust agreement when it retains ownership of the financed industrial facility.
- (6) Changes to or dissolution of the public corporation -- Committee members recommend adoption consistent with LEDA. Amendment of the public corporation's charter should only be by ordinance of the King County Council.

Bylaws

One of the powers granted to a public corporation by LEDA is the power to "make or alter bylaws not inconsistent with its charter for the administration and regulation of the affairs of the corporation." IRB Advisory Committee members recommend that the public corporation's bylaws contain the following provisions.

- (1) Purposes and policies of the public corporation -- Committee members recommend adoption consistent with the enabling ordinance.
- (2) Powers and limitations on the powers of the public corporation -- Committee members recommend adoption consistent with LEDA and the enabling ordinance.

- (3) Board of Directors -- Committee members recommend adoption consistent with the enabling ordinance.
- (4) Officers of the Board of Directors -- The Board should elect a President (to chair the meetings), Vice President (to act in the absence of the President), Secretary (to keep minutes and records, oversee public notice procedures) and Treasurer (to receive and oversee funds as directed by the Board).
- (5) Board Meetings -- Committee members recommend that the Board of Directors have the authority to establish regular meetings by resolution. The President of the Board should also have the power to call special meetings.
- (6) Fees -- Committee members recommend that the Board of Directors have the authority to adopt a fee schedule in order to recover its expenses.

Other Recommendations

- (1) Errors and Omissions Insurance -- Committee members recommend that King County's public corporation obtain errors and omissions insurance for the Board of Directors. King County should investigate whether the public corporation can contract with the County's insurer for errors and omissions insurance.
- (2) Application for Financing -- Committee members recommend that the public corporation develop an application for IRB financing that clearly explains to all participants: (1) the general purpose and nature of the program, (2) applicant responsibilities and information required from the applicant, (3) procedure for issuing IRBs, and (4) name of contact person to call for further information.

Finally, the Committee recommends that King County promptly establish a public corporation to issue IRBs in order to avoid delays when processing the first application for IRB financing.

VII. ATTACHMENTS

6623

- A. King County Council Motion 5597
- B. Recommended Policies Governing the Use of IRBs in King County
- C. Recommended Procedure for Issuing IRBs in King County

EXHIBIT A
POLICIES GOVERNING THE USE
OF
REVENUE BOND FINANCING
IN KING COUNTY

6623

I. Policies Governing All Industrial Development Facilities Receiving Revenue Bond Financing From King County's Public Corporation.

Policy #1 - Financed facilities shall be consistent with the purposes and requirements of the Local Economic Development Act, Chapter 300, 1981 Washington Laws.

Policy #2 - Financed facilities shall meet all applicable requirements of the U.S. Internal Revenue Service (IRS) Code, 1954, as amended.

Policy #3 - Firms receiving revenue bond financing shall not engage in discriminatory employment practices.

II. Additional Policies Governing Revenue Bond Financing for Industrial Development Facilities Proposed in Unincorporated King County.

Policy #1 - Financed facilities shall be consistent with King County's land use and growth management goals, objectives, and policies.

Policy #2 - Financed facilities shall be consistent with King County's economic development goals, objectives, and policies.

Policy #3 - Financed facilities shall be consistent with King County's energy management goals, objectives, and policies.

Exhibit A (Continued)

Policy #4 - Firms receiving revenue bond financing are encouraged to provide employment for local residents.

Policy #5 - Firms receiving revenue bond financing are encouraged to propose facilities compatible with maintaining a high quality environment.

Policy #6 - Firms receiving revenue bond financing are encouraged to propose facilities that do not put an unreasonable burden on available public facilities and services.

III. Additional Policies Governing Revenue Bond Financing for Industrial
Development Facilities Proposed in Incorporated King County.

Policy #1 - Firms shall meet the policy guidelines set forth by the city where the proposed facility is located.

EXHIBIT B
CHARTER
OF
THE KING COUNTY
ECONOMIC ENTERPRISE CORPORATION

6828

ARTICLE I

Name, Seal and Definitions

Section 1.01. Name. The name of this corporation is "King County Economic Enterprise Corporation" (hereinafter referred to as the "Public Corporation").

Section 1.02. Seal. The Public Corporation's seal, as set forth below, shall be a circle with the name "KING COUNTY ECONOMIC ENTERPRISE CORPORATION" inscribed therein.

Section 1.03. Definitions. Terms used in this Charter shall have the same meaning as defined in Chapter 300, 1981 Washington Laws (the "Act") as now and hereafter amended. Further, as used in this Charter, the following terms have the meanings indicted unless the context clearly requires otherwise.

(a) "County" means King County, Washington.

(b) "Ordinance" means King County Ordinance 628 passed on 3rd of January, 1983, adopting this Charter.

(c) "Planning jurisdiction" means that geographic area in which the county, city or town exercises or possesses authority to grant land use approvals.

ARTICLE II

Purpose and Powers of Corporation

Section 2.01. Purpose. The Public Corporation is organized to promote local economic development consistent with the provisions of the Act and the

policies of Exhibit A of the Ordinance.

Section 2.02. Powers. The Public Corporation shall have all the powers granted to the Public Corporation by the Act and by the Ordinance. Such powers include, but are not limited to, the following:

(a) To construct and maintain one or more industrial development facilities;

(b) To lease to a lessee all or any part of any industrial development facility for such rentals and upon such terms and conditions, including options to purchase, as the Board of Directors considers advisable and not in conflict with the Act;

(c) To sell by installment contract or otherwise and convey all or any part of any industrial development facility for such purchase price and upon such terms and conditions as the Board of Directors considers advisable which are not in conflict with the Act;

(d) To make secured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the project costs of any industrial development facility, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the project costs; and to charge and collect interest on the loans for the loan payments upon such terms and conditions as the Board of Directors considers advisable which are not in conflict with the Act;

(e) To issue revenue bonds for the purpose of financing all or part of the project costs of any industrial development facility and to secure the payment of the revenue bonds as provided in the Act;

(f) As security for the payment of the principal of and interest on any revenue bonds issued and any agreements made in connection therewith; to

mortgage, pledge, or otherwise encumber any or all of the Public Corporation's industrial development facilities or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the Public Corporation, to secure any loan made by the Public Corporation and to pledge the revenues and receipts therefrom;

(g) To sue and be sued, complain, and defend in its corporate name;

(h) To make contracts and to execute all instruments necessary or convenient for the carrying out of its business;

(i) To have a corporate seal and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(j) Subject to the limitations of section 6 of the Act, to borrow money, accept grants from, or contract with any local, state, or federal governmental agency or with any financial, public, or private corporation;

(k) To make and alter bylaws not inconsistent with this Charter for the administration and regulation of the affairs of the Public Corporation;

(l) To collect fees or charges from users or prospective users of industrial development facilities to recover actual or anticipated administrative costs;

(m) To execute financing documents incidental to the powers enumerated herein; and

(n) To take any other action now or hereafter permitted by the Act.

Section 2.03. Incurring of Indebtedness. The Public Corporation may: incur such indebtedness for the proper purposes of the Public Corporation as it deems necessary or appropriate; issue revenue bonds and other nonrecourse revenue obligations of the Public Corporation; secure the same by mortgage, pledge or other encumbrance of the whole or any part of the assets of the Public

Corporation; and establish funds and make other provisions for the payment of such indebtedness and interest thereon, all in accordance with the provisions of this Charter and the Act.

Section 2.04. Indemnification. To the extent permitted by law, the Public Corporation shall protect, defend, hold harmless and indemnify any person who becomes a director, officer, employee or agent of the Public Corporation, and who is a party or threatened to be made a party to a proceeding by reason related to that person's conduct as a director, officer, employee or agent of the Public Corporation, against judgments, fines, penalties, settlements and reasonable expenses (including attorneys' fees) incurred by him or her in connection with such proceeding, if such person acted in good faith and reasonably believed his or her conduct to be in the Public Corporation's best interests and if, in the case of any criminal proceeding, he or she had no reasonable cause to believe his conduct was unlawful. The indemnification and protection provided herein shall not be deemed exclusive of any other rights to which a person may be entitled as a matter of law or by contract or by vote of the Board of Directors. The Public Corporation may purchase and maintain appropriate insurance for any person to the extent provided by the applicable law.

Section 2.05. Business Venture. The Public Corporation may not operate any industrial development facility as a business other than as lessor, seller, or lender. The purchase and holding of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof is not considered the operation of an industrial development facility.

Section 2.06. Project Area. The Public Corporation may not exercise any of the powers authorized in Section 2.02 or issue any revenue bonds with respect to any industrial development facility unless the industrial development

facility is located wholly within the boundaries of King County or unless the industrial development facility comprises energy facilities or solid waste disposal facilities which provide energy for or dispose of solid waste from King County or its residents.

ARTICLE III

Organization, Directors, Procedural Requirements, Agent for Service of Process, Bond Counsel and Staff Services

Section 3.01. Organization. The Public Corporation is organized as a public corporation, subject to the provisions of the Act. The affairs of the Public Corporation shall be governed by the Board of Directors. All corporate powers of the Public Corporation shall be exercised by or under the authority of, and the business, property and affairs of the Public Corporation shall be managed under the direction of the Board of Directors except as may be otherwise provided in this Charter, the Ordinance or the Act.

Section 3.02. Directors. The number of directors of the Public Corporation shall be five (5). No person shall be eligible to serve as a director except a person who has been appointed as a director by the King County Executive and confirmed by Motion of the King County Council. Directors shall serve a term of three (3) years or until their successor is appointed and confirmed. Directors may be reappointed to serve consecutive terms on the Public Corporation's Board of Directors.

Section 3.03. Removal of Directors. Any director may be removed for cause by a majority vote of the members of the King County Council.

Section 3.04. Coordination with King County Cities and Towns. The Board of Directors shall establish procedures encouraging King County cities and towns to refer applicants for revenue bond financing to the Public Corporation. These

at any time, alter or change the policies, powers, structure or activities of the Public Corporation, including termination of the Public Corporation if contracts entered into by the Public Corporation are not impaired and other provisions of the Act are met.

Section 5.02. Amendment of Charter. This Charter shall be amended only upon a duly adopted ordinance of the King County Council.

Section 5.03. Amendment of Bylaws. The Public Corporation shall require a vote of four-fifths of the Board of Directors to amend its Bylaws. The King County Council may also amend the Public Corporation's Bylaws by ordinance.

ARTICLE VI

Dissolution of Corporation

The Public Corporation may be dissolved by the King County Council if the Public Corporation: (1) has no property to administer, other than funds or property, if any, to be paid or transferred to King County; and (2) all its outstanding obligations have been satisfied. Such a dissolution shall be accomplished by the King County Council adopting an ordinance providing for the dissolution. Upon dissolution of the Public Corporation, title to all property owned by the Public Corporation shall vest in King County.

ARTICLE VII

Adoption of Charter

APPROVED by Ordinance 6628 adopted by the King County Council on

January 3, 1983.

Section 4.03. Instrumentality. The Public Corporation constitutes an authority and an instrumentality (within the meaning of those terms in the regulations of the United States Treasury and the rulings of the Internal Revenue Service prescribed pursuant to Section 103 of the Internal Revenue Code of 1954, as amended) and may act on behalf of King County for the specific public purposes authorized by the Act. The Public Corporation is not a municipal corporation within the meaning of the Constitution of the State of Washington and the laws of the State of Washington, or a political subdivision within the meaning of the Constitution of the State of Washington and the laws of the State of Washington, including without limitation, Article VIII, Section 7, of the Washington Constitution. King County has not delegated to the Public Corporation any of the municipality's attributes of sovereignty, including, without limitation, the power to tax, the power of eminent domain, and the police power.

Section 4.04. No Conflict. No director, officer, agent, or employee of the Public Corporation shall have, directly or indirectly, any financial interest in any property to be included in or any contract for property, services or materials to be furnished or used in connection with any industrial development facility financed through the Public Corporation. No part of the net earnings, funds or assets of the Public Corporation, beyond those necessary for retirement of indebtedness incurred by it, shall inure to the benefit of any director, officer employee, agent, or any other person, firm or corporation, except King County.

ARTICLE V

Alteration of Corporation

Section 5.01. General. The King County Council may, at its discretion and

Corporation makes a finding that in its opinion the interest paid on the bonds will be exempt from income taxation by the federal government.

Section 4.02. Full Faith and Credit Pledge Prohibition. Revenue bonds issued by the Public Corporation shall not constitute a debt of the State of Washington, of King County, or of any other municipal corporation, quasi-municipal corporation, subdivision, or agency of the State of Washington nor pledge any or all of the faith and credit of any of these entities. The revenue bonds shall be payable solely from both the revenues derived as a result of the industrial development facilities funded by the revenue bonds, including, without limitation, amounts received under the terms of any financing document or by reason of any additional security furnished by the user of the industrial development facility in connection with the financing thereof, and money and other property received from private sources. Each revenue bond shall contain on its face statements to the effect that: (1) Neither the State of Washington, King County, nor any other municipal corporation, quasi-municipal corporation, subdivision, or agency of the State of Washington is obligated to pay the principal of, premium, if any, or interest thereon; (2) no tax funds or governmental revenue may be used to pay the principal of, premium, if any, or interest thereon; and (3) neither any or all of the faith and credit nor the taxing power of the State of Washington, King County, nor any other municipal corporation, quasi-municipal corporation, subdivision or agency thereof is pledged to the payment of the principal of, premium, if any, or the interest on the revenue bond. The Public Corporation may incur only those financial obligations which will be paid from revenues received pursuant to financing documents, from fees or charges paid by users or prospective users of the industrial development facilities funded by the revenue bonds, or from the proceeds of revenue bonds.

Section 3.09. Agent for Service of Process. The name and address of the agent for service of process are Clerk of the King County Council, 403 King County Courthouse, Seattle, Washington 98104.

Section 3.10. Bond Counsel. The Board of Directors shall select firm(s) eligible to serve as Bond Counsel to the Public Corporation. Applicants for revenue bond financing shall only retain the services of a Bond Counsel firm designated by the Board of Directors as eligible to serve.

Section 3.11. Staff Services. The Public Corporation shall contract for staff services from the King County Finance Office to perform duties including but not limited to those specified for the Revenue Bond Coordinator in Attachment 2 of the Public Corporation's Bylaws - Procedure for Issuing Revenue Bonds.

Section 3.12. Annual Report. The Board of Directors shall prepare an annual report, which includes an annual financial statement, and shall submit copies of this report to the King County Council, the King County Executive and the King County Auditor.

ARTICLE IV

Limitations on Corporation

Section 4.01. Limitations. No municipality may give or lend any money or property in aid of the Public Corporation. The King County Auditor shall annually review any financial statements of the Public Corporation and at all times shall have access to the books and records of the Public Corporation. The Public Corporation may not issue revenue obligations pursuant to the Act except upon the approval of both the King County Council and the city or town within whose planning jurisdiction the proposed industrial development facility lies. No revenue bonds may be issued unless the Board of Directors of the Public

procedures shall provide city officials with early and full participation in Public Corporation proceedings pertaining to financing industrial development facilities located within a city's or town's planning jurisdiction.

Section 3.05. Coordination with the Port of Seattle. The Public Corporation shall work closely with the Port of Seattle's Industrial Development Corporation to ensure that applicants for revenue bond financing are referred to the appropriate public corporation.

Section 3.06. Issuing Requirements - Inducement Resolution. The Public Corporation, prior to approving an inducement resolution for any industrial development facility, shall:

(a) Hold a public hearing; and

(b) Require the applicant for revenue bond financing to: (i) certify that the firm engages in fair employment practices, (ii) show that the proposed industrial development facility creates or maintains employment and (iii) obtain a rezone, shoreline redesignation or unclassified use permit from King County if required for a proposed industrial development facility in unincorporated King County.

Section 3.07. Issuing Requirements - Bond Issuing Resolution. The Public Corporation, prior to approving a bond issuing resolution for any industrial development facility, shall:

(a) Require the applicant for revenue bond financing obtain a commitment from a bond purchaser(s) to buy the revenue bonds; and

(b) Sign a trust agreement if the revenue bond financing is structured so that the Public Corporation owns the financed industrial development facility.

Section 3.08. Compliance with Open Public Meetings Act. Board of Directors meetings shall be held and conducted in compliance with the requirements of the Open Public Meetings Act, Chapter 42.30 RCW.