



# Brevard County Board of County Commissioners

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Legislation Text

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**File #:** 6531, **Version:** 1

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### **Subject:**

Ordinance providing for Housing Finance Authority TEFRA hearing notification and municipal participation requirements.

### **Fiscal Impact:**

None.

### **Dept/Office:**

County Attorney's Office

### **Requested Action:**

It is requested that the Board of County Commissioners hold a public hearing and consider adopting an ordinance amending Chapter 2, Article VI, Division 3 of the Brevard County Code of Ordinances pertaining to the Housing Finance Authority to provide for additional TEFRA hearing notification and municipal participation requirements.

### **Summary Explanation and Background:**

At the December 5, 2023 Board of County Commissioners meeting, the Board approved legislative intent and permission to advertise an ordinance amending Chapter 2, Article VI, Division 3 of the Brevard County Code of Ordinances pertaining to the Housing Finance Authority to provide for additional TEFRA hearing notification and municipal participation requirements.

Since the adoption of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), the Internal Revenue Code (the "Code") has afforded tax-exempt status to private activity bonds only if the "applicable elected representative" of a governmental unit having jurisdiction of the area containing the financed facility approves the issuance of the bond after a public hearing following reasonable public notice.

Because the governing boards of county housing finance authorities in Florida are appointed, these entities do not have an "applicable elected representative" under the Code. To satisfy this provision, the Board of County Commissioners is called upon to approve the Brevard County Housing Finance Authority's issuance of tax-exempt bonds.

The public hearing that the Code requires does not have to occur before the "applicable elected representative," but it must provide a "reasonable opportunity for interested individuals to express their views, orally or in writing, on the proposed issue of bonds and the nature of the proposed projects to be financed." Treas. Reg. sec. 1.147(f)-1(d)(1). In Brevard, these public hearings are held by the Housing Finance Authority, with the comments being reported to the Board.

Under Florida law, a county that creates a housing finance authority may, at its sole discretion, and at any time, alter or change the structure, organization, programs, or activities of the authority or may terminate the authority, subject to any limitation on the impairment of contracts entered into by the authority and subject to limitations set forth in the Housing Finance Authority Law. Section 159.604(3), Florida Statutes.

Currently, the Housing Finance Authority publishes notices of its TEFRA hearings only on its own website and on the meetings calendar on the public meetings calendar on the County's website. The Housing Finance Authority then holds the TEFRA hearing, typically at the Brevard County Agricultural Center in Cocoa. Unlike County zoning hearings, notice is not mailed to adjacent and nearby property owners and the subject property is not posted. So, for example, the residents near the proposed Venue at Heritage Oaks project in West Melbourne asserted that they were not aware of the TEFRA hearing held by the Housing Finance Authority in Cocoa on October 25.

To complicate matters, because of the Live Local Act recently adopted by the State, the project will not require a land use or zoning change from the City of West Melbourne. Rather, if the project meets certain affordability requirements, West Melbourne will be required to administratively approve the project. The neighbors will not have an opportunity to voice their concerns at a City Council meeting on the project. That is why many residents appeared at the Board of County Commissioners' November 14 meeting to express their views on the proposed project, rather than at the public hearing required by TEFRA.

The proposed ordinance is intended to avoid such situations in the future by providing for enhanced notification requirements for Housing Finance Authority TEFRA hearings. The following requirements are proposed for new construction projects when Board approval of private activity bond financing is requested, and the subject property is not already zoned for multifamily residential housing:

1. Notice of the TEFRA hearing held by the Housing Finance Authority should be equivalent to the notice provided for rezoning requests, including publication on the County's Legal Ads and Notices publicly accessible website, posting of the property, and mailed notice to properties within 500 feet, with the developer to pay the notification cost.
2. If the property is within a municipality, written notice of the TEFRA hearing must be provided to the municipality. The bond authorization request to the Board must be accompanied by written input from the governing body of the municipality in the form of a resolution or correspondence approved by the governing body and signed by the mayor or chief administrative officer.

As a courtesy, the County Attorney provided the proposed ordinance to the Housing Finance Authority's attorney for review. Attorney Abbott responded that the ordinance was well drafted and that she had no suggested changes.

### **Clerk to the Board Instructions:**

Upon approval by the Board, execution by the Chair, and attestation by the Clerk, file the ordinance with the Department of State as required by law within the 10-day deadline.