

# Private Activity Bond Guide

June 2024



**Note:** The entirety of Idaho’s Private Activity Bond volume cap was allocated during the first quarter of 2024. Please check back in December for more information regarding Idaho’s 2025 volume cap.

## ***What are Private Activity Bonds?***

Private Activity Bonds (PABs) are taxed exempt fixed income instruments. Simply put, it is another way for a business or developer to finance certain types of projects or what the Internal Revenue Service (IRS) calls “Qualified Activities”. Essentially the PAB is a financial contract between an investor and borrower.

## ***Benefits of Private Activity Bond Financing***

For the investor, a PAB is like a municipal bond. In most cases, interest earned on a PAB is exempt from Federal and Idaho income taxes<sup>i</sup>.

For the borrower the benefits may include the following:

- Lower borrowing costs.
- Flexible and longer repayment periods.
- Financing for projects too large for a single lender or investor to take on.
- Financing for projects perceived as too risky that banks may be reluctant to fund.
- A way to leverage other incentives like the Federal 4% Low Income Housing Tax Credit.

Often, but not in all cases, PABs may be used alongside other tax and business incentives. It should be noted that PAB funded projects are not necessarily exempt from other local, state, and federal taxes. Cities and Counties with entities eligible to issue PABs have an additional tool for shaping the impact of a project beyond traditional planning and zoning provisions.

## ***Drawbacks of Private Activity Bond Financing***

Borrowers utilizing PABs give up the right to use accelerated depreciation on their tax returns. There are certain restrictions on the advance refunding of PABs. Setting up a PAB is more expensive than the closing costs associated with a traditional bank loan. As such, PABs may not be suited for projects whose financing need is below \$5 million.

Time may be another drawback to PAB financing. A business or developer must go through a public process to receive PAB approval. If insufficient volume cap is available to cover the project, a business or developer may need to wait till such a time that new volume cap becomes available. It can take between six to twelve weeks for a PAB application to work its way through the process.

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<sup>i</sup>. There maybe some circumstances where PAB interest income maybe taxed. Please consult a tax expert before investing.

**Qualified Activities**

Qualified Activities (QAs) fall into one of two categories: small issue and exempt. Not all QAs count against a state’s volume cap, while others partially count against a state’s cap or fall into a special category that is managed at the federal level.

**Qualified Activities Subject to Volume Cap**

- Mass Commuting Facilities
- Water Facilities
- Private Solid Waste Facilities
- **Low Income Rental Housing**
- Power Generating Facilities
- Redevelopment Bonds
- Hazardous Waste Facilities
- High Speed Rail
- **Single Family Mortgage**
- **Small Issue (Industrial Revenue Bonds)**
- Agricultural (First Time Farmer Loans)

Note: items highlighted in red are those that have a recent history of accessing Idaho’s PAB volume cap.

**Qualified Activities Exempt from Volume Cap**

- Airports
- Docks & Wharves
- Government Solid Waste Facilities
- Government Owned Highspeed Rail<sup>iii</sup>
- Educational Facilities
- Green Building Projects
- Veterans Mortgage Bonds
- Hydro Electric Facilities<sup>ii</sup>
- 501(c) 3 Bonds

The Infrastructure and Jobs Act of 2021 created a new category of Qualified Activities whereby 75% of the PAB is exempt from volume cap with the remaining 25% counting towards a state’s allocation. QAs in this new category include broadband projects serving areas defined as underserved by the Federal Communications Commission and carbon capture projects.

Along with the QAs listed above, there is a special category for highways and surface freight transfer facilities. These projects are subject to a national volume cap that is administered by the Federal Department of Transportation.

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<sup>ii</sup> Only bonds financing environmental retrofits to hydroelectric facilities are excused from volume cap. All other hydro projects are treated as power generating facilities subject to cap.  
<sup>iii</sup> Government ownership presumes the facility will be operated by a private entity. Government owned and operated facilities are covered by traditional municipal bonding.

## ***Public vs Private Activities***

The types of QAs funded with PABs can sometimes blur the border between public and private sectors. To distinguish these boundaries, the IRS uses a four-pronged test to determine whether a project is eligible for PAB consideration. These questions ensure that a project complies with both state and federal laws.

- 1) Is the project an IRS “Qualified Activity”?
- 2) Will the project be operated by a private (for-profit or non-profit) business?
- 3) Will the assets securing the debt be privately owned by a for-profit or non-profit entity?
- 4) Will the debt be repaid with private funds?

Dollars that may be paid by a local government in the form of fees and rents are private funds for the purpose of the private vs public funding test.

## ***Small Issue Private Activity (Industrial Revenue) Bonds***

Small Issue PABs, also called Industrial Revenue Bonds, are for the exclusive purpose of building, equipping, and retrofitting manufacturing facilities. The IRS uses the term “Small Issue” to distinguish that these bonds are limited in size not to exceed a tax-exempt bond issue of \$10 million for a total bond issue not to exceed \$20 million. The IRS defines manufacturing facility through the following tests<sup>iv</sup>:

- The facility must be of a character subject to depreciation.
- The facility must produce tangible personal property.
- There must be a substantial transformation of inputs or raw materials.
- Manual or machine labor must be expended. Natural or accelerated growth, such as what one may see in factory farm, does not meet this test.
- Something new must be created that has a distinctive name, character, or use.

The IRS also places limits on how the funds generated by Small Issue PABs are spent<sup>v</sup>:

- 70% must be spent on core manufacturing assets. This will typically be for equipment and floor space containing the production line.
- 20% of the proceeds may be spent on ancillary assets (storage areas, offices, shipping and receiving areas, etc.)
- 5% may be spent on the administrative, legal and placement costs associated with setting up the bond.

Financing from other sources like equity investors or other types of loans are not subject to the above limitations. Commercial buildings, mixed-use developments, and facilities

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<sup>iv</sup> See [IRC § 144\(a\) – Qualified Small Issue Bonds](#)

<sup>v</sup> [IRC § 144\(a\) – Qualified Small Issue Bonds](#)

dedicated to the development of intellectual property do not meet the IRS definition of manufacturing, and thus are not eligible for Small Issue PAB funding.

### ***Exempt Facilities***

All QAs other than Small Issue are referred to by the IRS as “Exempt” facilities. These projects are called “Exempt” because there are no limits on the size of the bond or project subject to the availability of volume cap, if applicable.

### ***Volume Cap***

Each calendar year the IRS establishes a volume cap that limits the amount of PAB activity that can take place in a given calendar year. For calendar year 2024, the volume cap for small population states like Idaho is \$378,230,000. Any leftover cap each year may be carried forward for up to three years. States are allowed to prioritize certain type of QAs over others. In Idaho the volume cap is dictated by executive order and may be changed at any time through new orders. Due to the expiration of [Executive Order 2018-05](#) it is likely a new executive order will be issued shortly. Historically, this is how Idaho has reserved its volume cap.

<b>Historical Private Activity Bond Allocation</b>	
<b>Category</b>	<b>Range</b>
Small Issue	7%-13%
Single Family	55%-80%
Multifamily	0%-18%
Student Loans	0%-15%
Aggie Bonds	0%-2%
Exempt Facilities	0%-32%

Under previous executive orders these set asides remained in place through August 31st, of the calendar year. On September 1<sup>st</sup> any remaining volume cap in any category could be reallocated to other categories.

### ***Idaho’s 2023 Volume Cap Awards***

In 2023 Idaho issued the entirety of its volume cap. Three certificates for the combined sum of \$82,141,854 were issued for multi-family, low income, Federal 4% tax credit housing projects. Upon completion, these projects will result in the creation of 217 units of income qualified housing. The remaining volume cap (\$276,703,146) was allocated to the Idaho Housing and Finance Association for their Single-Family Mortgage program. Idaho Commerce received inquires for Small Issue and Exempt Facility projects, but those inquires did not result in any volume cap request.

### ***Public Corporations***

Private Activity Bonds are issued by public corporations also known as local industrial development corporations. In accordance with [Title 50, Chapter 27](#) of Idaho Code,

cities and counties are empowered to create and dissolve public corporations. Public corporations may also be created by the Idaho Legislature. State public corporations capable of issuing PABs include the [Idaho Housing and Finance Association](#) and the [Idaho Health Facilities Authority](#).

While issued by public corporations, PABs are not guaranteed debt. It is the investors and not the public corporation nor the government entity that created them, that assume all default risk. Since PABs are not backed by tax revenues, they do not require a bond election. Public corporations are not required to approve qualified projects and may negotiate with developers to ensure that a project conforms with community values and regulations. Business and developers are responsible for all the legal and other costs associated with issuing the bond. A list of the public corporations known to Idaho Commerce may be found on page 9 of this guide.

### ***Creating a Private Activity Bond Team***

The first step in pursuing PAB funding is to assemble a team of experts to help prepare the paperwork and ensure that the project conforms with state and federal requirements. Members of the team should include...

1. **Bond Counsel**— A business or developer should seek legal representation experienced in the areas of business finance and municipal bonding. A bond counsel will typically draft the requisite documents, certify that a PAB issue complies with all state and federal legal requirements, and deliver an opinion regarding the tax-exempt status of the bonds. A bond counsel can aid in the formation of a public corporation and connect the borrower with local officials and lenders. See the list of Experienced Idaho Bond Counsels on page 7.
2. **Underwriter/Purchaser/Lender**—This will be a bank, investment banking firm, financial advisor, or other financial institution. The underwriter is involved only if the bonds are to be marketed to the public rather than privately placed by the company. The underwriter helps structure the financing and ultimately purchases the bonds for resale to the public. A lender is usually found through bond counsel, or a bond placement service. See page 8 of this guide for a list of banks and other financial institutions with a history of working with PAB and municipal bond projects in Idaho.
3. **Governmental Issuer/Public Corporation**—This will be governmental industrial development corporation (public corporation) created by a city or county authorized by law to issue PABs. The local governmental body must formally approve each PAB by issuing an “Inducement Resolution”. The public corporation also coordinates the activities of all the participants in the process. The responsibility for repayment of the bond lies with the borrower. Neither the public corporation nor the government entity responsible for its creation incurs liability for repayment or any other acts of malfeasance caused by the borrower. A list of public corporations known to Idaho Commerce may be found on page 9 of this guide.

4. **The Borrowing Business / Developer** – This will be the business or developer utilizing the proceeds from the PAB. There may be more than one eligible participant, and the eligible participant does not need to be directly or indirectly the user of the project. In most cases the eligible participant will be the principal user of the QA to be financed.

## ***Application Process***

1. **Preliminary Discussions** - A borrower discusses the preliminary project proposal with bond counsel and the public corporation (where in existence) or with city or county officials where a public corporation does not exist
2. **Application Submittal** - If the project is feasible and deemed eligible by bond counsel, an application is submitted to the public corporation.
3. **Preliminary Project Evaluation** - The public corporation reviews the application with assistance from staff, financial institutions, and bond counsel. Project evaluation often will include a credit review conducted by an investment banker or lender.
4. **Substantive Negotiations Begin** - If the project is eligible, negotiations begin between the company/developer, public corporation, bond counsel and the bond purchaser. Once all parties agree to the project scope, size of the bond, and terms for repayment, then the issue will be ready for formal review and approval.
5. **“Inducement Resolution”** – Once agreement is reached on basic terms and conditions, the bond counsel assists the public corporation in preparing an “inducement resolution”. This resolution will stipulate the public corporation’s conditional intent to issue revenue bonds in a certain amount for a specified company and use. The date that this inducement resolution is approved by the public corporation is important to the borrowing company because only the project expenditures made within 60 days of that date are recoverable from the bond proceeds. As such, it is best to work toward an inducement resolution early in the process so that costs of initiating and planning the project can be financed by bond proceeds.
6. **Planning Jurisdiction Approval** - Project approval of the planning jurisdiction, if different from the creating municipality, must be secured.
7. **Final “Bond Issuing Resolution”** - Negotiations may continue until the final bond issuing resolution is approved. This final resolution approves the documents setting forth the terms and conditions of the bond sale, and it is approved by the creating municipality using a resolution or ordinance.
8. **Request IRB Allocation from the Department of Commerce** - Federal law restricts the amount of private activity bonds that can be issued in Idaho each year. The Idaho Department of Commerce allocates the amount of each bond issued to ensure the ceiling is not exceeded. The public corporation submits its

requests to the Idaho Department of Commerce when a buyer for the bond has committed to the purchase. A request for allocation is made with the form on page 9, and an attached inducement resolution.

9. **Bond Counsel Opinion and Issuance of Bonds** -Once the opinion of the bond counsel regarding tax-exempt status of the project is rendered, the sale is closed, and the bonds are purchased. Post-closing reports are made to the Internal Revenue Service and Idaho Department of Finance. The process for bond payment may then vary depending upon whether it is to be a public or private bond placement.
10. **Other Documentation and Procedures Involved** – The bond counsel may be called upon to file additional documentation with local, state, and federal authorities and other financial entities.

**STATE OF IDAHO  
EXPERIENCED BOND COUNSEL<sup>vi</sup>**

MSBT Law  
Ms. Stephanie J. Bonney  
7699 W. Riverside Drive  
Boise, Idaho 83702  
208-331-1800

Skinner, Fawcett  
Mr. Richard A. Skinner  
250 Bobwhite Ct #240,  
Boise, ID 83706  
208-345-2663

Hawley Troxell  
Mr. Nicholas G. Miller  
Wells Fargo Center, Suite 1000  
877 West Main Street  
Post Office Box 1617  
Boise, Idaho 83701  
208-344-6000

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<sup>vi</sup> These are Idaho based legal firms with experience in private activity and/or municipal bonding known at the time of publication. This list shall not be considered as an endorsement of any firms over those not appearing in this publication. The contact information is subject to change.



## BOND PLACEMENT SERVICES<sup>vii</sup>

Mr. Eric Heringer  
Investment Banker  
Piper Sandler  
101 South Capitol Boulevard  
Boise, Idaho 83702  
208-344-8577

US Bank  
Government Banking Center  
Post Office Box 8247  
Boise, Idaho 83733  
503-275-5506

Caitlin Meussner  
Vice President  
Public Finance Investment Banking  
KeyBank Capital Markets  
Seattle, WA 98101  
Office: 303-518-5782

GE Capital  
6510 Millrock Drive, Ste. 200  
Holladay, UT 84121  
801-733-3058  
Fax: 888-867-0031

Shaun Kelley, V.P.  
Zion's Bank  
800 West Main Street  
Boise, ID 83702  
208-501-7533  
Office: 208-501-7575

Cammeron Arial, President, CEO  
Clearwater Financial  
PO Box 505  
Eagle ID 83615

For questions or to submit a Private Activity Bond request, please contact:

[Jerry Miller](#)  
Idaho Department of Commerce  
700 West State Street  
Post Office Box 83720  
Boise, Idaho 83720-0093  
(208) 287-0780

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<sup>vii</sup> These are bond placement entities with experience in private activity and/or municipal bonding in Idaho, known at the time of publication. This list shall not be considered as an endorsement of any firms over those not appearing in this publication. Contact information is subject to change.

## **STATE OF IDAHO CHARTERED PUBLIC CORPORATIONS**

The cities and counties listed below have formed chartered public corporations for the purpose of issuing private activity bonds. Projects financed by PABs can be completed more quickly in these cities and counties because they have completed the necessary groundwork of forming a public corporation. Each of these corporations may issue any number of bonds as long as they do not exceed \$20 million (\$10 million tax-exempt/\$10 million taxable) per project each and \$40 million per beneficiary per year.

Legislation passed in 2007 permits the financing of economic development projects through the issuance of revenue bonds by the Idaho Housing and Finance Association.

Potential PAB users can still pursue PAB projects in places without public corporations. In those cases, the Idaho Department of Commerce will be glad to assist city or county officials in forming a public corporation to expedite the PAB financing process. Businesses attempting to use PAB financing in cities or counties without public corporations should contact local elected officials and inform them of the Idaho Department of Commerce's offer to help them charter a public corporation.

Because public corporations are not centrally registered, the list below may be incomplete. Check with the city and/or county government office to confirm the existence or absence of a public corporation. Also note that many of these entities were created during the 1980s and may be dormant.

### **Cities**

Boise  
Caldwell  
Fruitland  
Garden City  
Idaho Falls  
Lewiston (Port of Lewiston)  
Meridian  
Mountain Home  
Nampa  
Shelley  
Twin Falls

### **Counties**

Ada  
Bannock  
Benewah  
Bingham  
Bonneville  
Bonner  
Camas  
Canyon  
Cassia  
Custer  
Gooding  
Jerome  
Kootenai  
Lincoln  
Madison  
Minidoka  
Nez Perce  
Oneida  
Payette  
Power  
Shoshone  
Twin Falls  
Washington

**IDAHO DEPARTMENT OF COMMERCE**  
Request for Allocation of Private Activity Bond Authority

Date: \_\_\_\_\_

To: Idaho Department of Commerce  
700 West State Street  
Post Office Box 83720  
Boise, Idaho 83720-0093

In accordance with Executive Order No. 2018-05 of the Governor of the State of Idaho, dated May 23, 2018, the Issuing Authority indicated below hereby requests an allocation from the state ceiling of Private Activity Bonds and as evidence of compliance with said Executive Order, hereby files with the Idaho Department of Commerce the attached Bond Inducement Resolution (or similar binding commitment), and the following information:

Issuing Authority Name: \_\_\_\_\_  
Identification number \_\_\_\_\_ Phone: \_\_\_\_\_  
Executive Officer Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Bond Counsel Name: \_\_\_\_\_  
Name of firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone number: \_\_\_\_\_  
Name of project: \_\_\_\_\_  
Location: \_\_\_\_\_  
Description of use: \_\_\_\_\_  
Name of project owner/user: \_\_\_\_\_  
Par amount of obligations (allocation requested): \_\_\_\_\_  
Date of purchase agreement: \_\_\_\_\_  
Purchaser(s): \_\_\_\_\_  
Name of bond issue: \_\_\_\_\_  
Anticipated closing date: \_\_\_\_\_  
Anticipated date for issuing certificates: \_\_\_\_\_  
Applicable Provision of Internal Revenue Code: \_\_\_\_\_  
Request allocation be carried forward to: \_\_\_\_\_  
Evidence of need, economic impact and distribution  
of resources throughout the State: \_\_\_\_\_

(please attach a separate sheet of paper if needed)

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## NOTES

## Addendum A – Broadband Projects

I on behalf of (Insert Public Corporation Name Here) certify the following.

- 1) This project solely serves census block groups in which more than 50% of residential households lack fixed, terrestrial broadband service delivering 25 megabits per second downstream and at least 3 megabits per second of upstream speeds.
- 2) This project will result in internet access to residential and commercial locations at speeds not less than 100 megabits per second of downstream and 20 megabits per second of upstream speeds.
- 3) 90% of the locations served by this project are locations where before the project a broadband service provider either did not offer service or failed to offer service at the minimum speeds described in item 1.
- 4) All broadband providers serving the census blocks included in the project have been notified of the project scope. (Attach a list of census blocks to be served, the notified service providers, and a copy of the notice).

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **Addendum B –Carbon Capture Projects**

I on behalf of (Insert Public Corporation Name Here) certify the following.

- 1) This project utilizes direct air capture or other equipment that results in the capture, treatment, purification, transportation or on-site storage of carbon dioxide produced by an industrial or energy generating facility Or..

Utilizes equipment that is functionally related or subordinate to a process that converts a solid or liquid product from coal, petroleum residue, biomass or other materials that are recovered for their energy or feedstock value into synthesis gas composed primarily of carbon dioxide and hydrogen for direct use of subsequent chemical or physical conversion.

- 2) This project is not an industrial carbon dioxide or geological gasification facility, or any separation unit does not qualify as gasification equipment or is not a necessary component of an oxy-fuel combustion process.
- 3) The facility resulting from this project will have a capture and storage efficiency equal to or greater than 65% or that the percentage of costs of the eligible components identified in item #1 is equal to or less than capture and storage efficiency percentage.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_