

Private Activity Bond Guide

January 2026



What are Private Activity Bonds?

Private Activity Bonds are a type of tax-exempt bond issued by state or local government entities to finance projects that are owned and operated by private interest. These bonds are often used to fund activities that serve a public purpose, such as private hospitals, airports, affordable housing and manufacturing facilities.

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](#).

Although issued by public corporations, Private Activity Bonds (PABs) are not considered guaranteed debt. Investors, rather than the public corporation or government entity that created them, bear all default risk. Because PABs are not supported by tax revenues, they do not require a bond election. Public corporations are not obligated to approve PAB projects and have the ability to negotiate with developers to ensure that a project aligns with community values and regulations. Businesses and developers are accountable for all legal and other expenses related to issuing the bond. A list of the public corporations known to Idaho Commerce may be found on page 9 of this guide.

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 taxesⁱ.

For the borrower the benefits may include the following:

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

Private Activity Bonds (PABs) are frequently utilized in conjunction with other tax and business incentives, although this is not always the case. It is important to understand that projects funded by PABs may still be subject to local, state, and federal taxes. Municipalities and counties that have the authority to issue PABs possess an additional

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

mechanism for influencing the outcomes of a project, beyond the scope of traditional planning and zoning regulations.

Drawbacks of Private Activity Bond Financing

Private Activity Bonds are required to adhere to strict compliance regulations established by the Internal Revenue Service (IRS). These bonds are primarily for capital expenditures and cannot be utilized for inventory, payroll, or research and development expenses. Projects with capital requirements exceeding \$5,000,000 may find PAB financing advantageous. However, for projects requiring less than \$5,000,000, the legal and administrative expenses associated with pursuing PABs likely outweigh the financial benefits.

Qualified Activities

Qualified Activities (QAs) are categorized into two groups: activities that are subject to volume cap and must follow the State of Idaho's application procedures, and activities that are exempt from Idaho's volume cap and do not require approval.

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 Railⁱⁱⁱ
- Educational Facilities
- Green Building Projects
- Veterans Mortgage Bonds
- Hydro Electric Facilitiesⁱⁱ
- 501(c) 3 Bonds

The Infrastructure and Jobs Act of 2021 established two new categories of Qualified Activities. Under this provision, 75% of the Private Activity Bond amount is exempt from

ⁱⁱ 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.

ⁱⁱⁱ Government ownership presumes the facility will be operated by a private entity. Government owned and operated facilities are covered by traditional municipal bonding.

the volume cap, with the remaining 25% counting towards a state's volume cap allocation. Qualified Activities in this category include broadband projects targeting underserved areas identified by the Federal Communications Commission, as well as carbon capture projects.

In addition to the categories mentioned above, there is a distinct category designated for highways and surface freight transfer facilities. These projects are subject to a national volume cap that is managed by the Federal Department of Transportation.

Public vs Private Activities

Private Activity Bond projects often involve a combination of public and private sector elements, creating a need for clear distinctions. To address this issue, the Internal Revenue Service (IRS) utilizes a four-pronged test to determine a project's eligibility.

- 1) Is the project classified as an IRS "Qualified Activity"?
- 2) Will the project be managed by a private entity (either for-profit or non-profit)?
- 3) Will the assets used to secure the debt be privately owned by a for-profit or non-profit organization?
- 4) Will the debt be repaid using private funds?

Funds that may be provided by local government in the form of fees and rents are considered private funds for the purposes of the private versus public funding assessment.

Small Issue Private Activity (Industrial Revenue) Bonds

Small Issue Private Activity Bonds (PABs), also known as Industrial Revenue Bonds, are tailored for the development, equipping, and upgrading of manufacturing facilities. The term "Small Issue" is utilized by the IRS to denote that these bonds are limited in size, with a maximum tax-exempt bond issue of \$10 million and a total bond package not surpassing \$20 million. The IRS sets forth criteria for determining a manufacturing facility through a series of tests.

- The facility must be of 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 farms, 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^{iv}:

- 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.

Commercial buildings, mixed-use developments, and facilities focused on intellectual property development do not meet the IRS criteria for manufacturing, and therefore, are not eligible for Small Issue PAB funding. However, alternative financing options such as equity investments and bank loans can be utilized in conjunction with private activity bonds.

Exempt Facilities

The IRS classifies all eligible activities, excluding Small Issue, as “Exempt Facilities”. These projects are designated as “Exempt” due to the absence of restrictions on the bond or project size, contingent upon the availability of volume cap.

Volume Cap

Each year, the IRS establishes a volume cap that limits the issuance of new Private Activity Bonds (PABs) within a calendar year. In 2025, the volume cap for states with small populations, like Idaho, is set at \$397,625,000. Any unused portion of the cap can be carried forward for up to three years. States also have the flexibility to reserve a percentage or dollar amount of the volume cap for designated projects and qualified activities.

In Idaho, the allocation of volume cap is determined by executive order and can be modified through new executive orders at any time. The latest executive order governing Private Activity Bonds (PABs) is [Executive Order 2024-12](#). The set asides for 2026 under this order are as follows:

Private Activity Bond Allocation 2025			
Category	Range	Low	High
Small Issue	0%-13%	\$0	\$51,691,250
Single Family	45%-80%	\$178,931,250	\$318,100,000
Multifamily	15%-45%	\$59,643,000	\$178,931,250
Exempt Facilities	0%-32%	\$0	\$127,240,000

^{iv} [IRC § 144\(a\) – Qualified Small Issue Bonds](#)

Idaho's 2024 Volume Cap Awards

In 2025 Idaho issued the entirety of its volume cap for the following projects...

Recipient	Amount	Project
Idaho Housing and Finance Association	\$183,829,000	Single family housing mortgages
Idaho Housing and Finance Association	\$174,951,000	Low-income rental housing
Idaho Housing and Finance Association	\$30,000,000	Micron Expansion – Wastewater Treatment
Total	\$388,780,000	

Creating a Private Activity Bond Team

The first step in applying for PAB funding is to assemble a team of experts who can help prepare the required documentation and ensure that the project complies with state and federal regulations. It is essential to have key team members who possess expertise in the relevant areas.

1. **Bond Counsel**— Bond Counsels provide legal advice and guidance and ensure compliance with all applicable laws and regulations. These professionals specialize in public finance law and are responsible for preparing the necessary legal documents, such as bond resolutions and offering statements, as well as reviewing the issuer's financing strategies to maximize efficiency and minimize risk. They also work closely with underwriters, financial advisors, and other key stakeholders throughout the issuance process to facilitate successful transactions. A list of bond counsels known to Commerce at the time of publication may be found on page 8 of this guide.
2. **Bond Underwriter**— A bond underwriter helps companies, governments and nonprofits raise capital through issuing bonds. As a specialized professional, the bond underwriter assesses the creditworthiness of the issuer, structures the terms of the bond issuance, prices securities, and ultimately sells them to investors. With a deep understanding of market conditions and risk factors, underwriters determine interest rates, maturities, and other key features to attract investors while meeting the issuer's financing needs. Additionally, they must comply with regulatory requirements and ensure that all disclosure documents accurately represent the risks associated with the bonds being offered. Through their expertise in financial analysis and relationship-building skills, bond underwriters facilitate successful bond offerings that benefit both issuers seeking capital and investors looking for fixed-income investment opportunities.

See page 8 of this guide for a list of banks and other financial institutions with a history of facilitating PAB and municipal bond projects in Idaho.

3. **Governmental Issuer/Public Corporation**— This entity will be an industrial development corporation, also known as a public corporation, established by a city or county. Once in place, the industrial development corporation has the legal authority to apply for volume cap and issue Private Activity Bonds (PABs). Prior to issuing each PAB, the public corporation must formally approve it by issuing an "Inducement Resolution". The public corporation plays a crucial role in coordinating the activities of all parties involved in the process.

It is important to note that the responsibility for repaying the bonds rests solely with the borrower. Neither the public corporation nor the government entity that created it assumes any liability for repayment, or any other misconduct committed by the borrower. This ensures that the financial risks associated with the bonds are borne solely by the borrower, providing a level of protection for the public corporation and the government entity.

A list of public corporations known to Idaho Commerce at the time of publication may be found on page 9 of this guide.

Application Process

1. **Preliminary Discussions** - A borrower discusses the preliminary project proposal with bond counsel and the public corporation 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 the basic terms and conditions are agreed upon, the bond counsel will assist the public corporation in preparing an "inducement resolution". This resolution will outline the public corporation's conditional intent to issue revenue bonds in a specific amount for a designated company and purpose. The approval date of this inducement resolution by the public corporation is crucial for the borrowing company, as only project expenses incurred within 60 days of that date are eligible for reimbursement from the bond proceeds. Therefore, it is advisable to aim for an early approval of the inducement resolution to ensure that the costs associated with initiating and planning the project can be covered by the 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. **Requesting a PAB Volume Cap Allocation from the Department of Commerce** -Executive Order 2024-12 outlines the process for applying for Private Activity Bond (PAB) volume cap. The application period for PAB volume cap will begin on January 1, 2025, and close at 11:59 PM Mountain Time on February 15th. Any unused volume cap after the initial allocation will be available for application during a second period ending at 11:59 PM on August 31st. Any remaining volume cap after the second deadline may be requested on a first-come, first-served basis. Applicants are required to adhere to the application format specified on page 10 and the inducement resolution.
9. **Bond Counsel Opinion and Issuance of Bonds** - After receiving the bond counsel's opinion on the tax-exempt status of the project, the sale is finalized, and the bonds are acquired. Subsequent reports are submitted to both the Internal Revenue Service and the Idaho Department of Finance. The process for bond payment may differ based on whether it is 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.

Application Schedule

- Application Opens – January 1, 2026
- Application Deadline – February 15, 2026
- Second Application Opens – February 30, 2026 (If remaining volume cap is available.)
- Second Application Deadline – August 31, 2026 (If remaining volume cap is available).
- First Come, First Served Application Opens (If remaining volume cap is available) September 16, 2026.

KNOWN IDAHO BOND COUNSELS^v

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BOND PLACEMENT SERVICES^{vi}

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503-275-5506

Caitlin Meussner
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Public Finance Investment Banking
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Cammeron Arial, President, CEO
Clearwater Financial
PO Box 505
Eagle ID 83615

^v 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.

^{vi} 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
Eagle
Fruitland
Garden City
Idaho Falls
Lewiston (Port of Lewiston)
Meridian
Nampa
Shelley
Twin Falls
Mountain Home

COUNTIES

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

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

[Jerry Miller](#)

Idaho Department of Commerce
700 West State Street
Boise, Idaho 83702
(208) 287-0780

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. 2024-12 of the Governor of the State of Idaho, dated December 12, 2024 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: _____