

Private Activity Bond Authority Manufacturing Facility Application Guidelines

Utah Governor's Office of Economic Development

Introduction of Private Activity Bond Review Board

The State of Utah created the Private Activity Bond Review Board (PAB) for the purpose of allocating tax-exempt private activity bonds (Volume Cap) to finance eligible capital facilities for manufacturing businesses in Utah. The objective of PAB is to provide manufacturers in Utah with an alternative, low-cost source of funds to finance capital expenditures, which will in turn, increase employment or otherwise contribute to economic development.

To this end, PAB carefully reviews the public benefits generated by a proposed project. In addition, PAB maintains a statewide perspective to ensure the economic development of all areas.

Eligibility Guidelines

Both federal and state statutes govern the eligibility of projects for tax-exempt Private Activity Bonds ("Volume Cap" or "Cap"). These restrictions affect the use of proceeds, volume limitations and several technical aspects of bond issuance. Applicants are encouraged to consult with qualified bond counsel at the beginning of the process to ensure the project meets federal and state regulations.

PAB authorizes the issuance of bonds only to assist manufacturing projects. While the exact scope of the phrase "manufacturing facilities" is not fully clear, at the most, facilities will have to relate to some fabrication or processing of goods. A fair starting point is the Standard Industrial Classification (SIC) assigned to a company or project.

Ancillary facilities, such as offices, warehouse space, parking, etc., can be financed only if they are directly related to the manufacturing operation function, and then only to a maximum of 25% of the costs used to build or acquire the "core manufacturing" facilities. Corporate headquarter offices will not qualify to the extent they exceed what is needed to supervise the particular manufacturing facility being financed. This can be a very difficult matter to define, which accounts for the recommendation that the applicant seek qualified bond counsel.

Size Limits

The second eligibility guideline for an exempt small issue relates to the maximum size of the bond issue. Regulations limit the size of an exempt small issue to \$1 million or upon the making of an election by the Issuer, \$10 million.

The \$10 million limit applies to the sum of:

1. The face amount of the bonds to be issued.

2. The remaining principal amount of all prior small issue bonds.
3. All capital expenditures limited to \$20,000,000:
 - a. Made by the User or any “related person” for any facilities located within the political jurisdiction;
 - b. Made by any other “principle user” of the facility being financed, such as a landlord or tenant;
 - c. Made by any person (whether or not a principle user) to benefit the bond-financed facility. These capital expenditures must be made over a six-year period.

The \$10 million small issue private activity bond is truly limited to smaller projects. There are restrictions regarding capital expenditures that exceed \$20 million dollars. Applicants are encouraged to review the rules for eligibility with a qualified bond counsel prior to preparing or submitting an application.

4. Not more than twenty-five percent (25%) of the net bond proceeds can be used to pay for land costs. If land costs exceed twenty-five percent (25%), the user can contribute equity toward the cost of the land without violating the rule.
5. The cost of issuance of the bonds cannot exceed two percent (2%) of the bond proceeds.
6. Ninety-Five percent (95%) of the proceeds must be used for the defined project.
7. To acquire an existing building, a minimum of fifteen percent (15%) of the bond proceeds must be used to renovate the facility.

Public Hearings & Inducement

State law authorizes local agencies, cities, or counties to induce projects that create jobs and provide a public benefit to the community. This process is called “inducement” of the project. Once an inducement resolution has been adopted, the sponsor (user) can use the bond proceeds to reimburse themselves for all project costs paid or incurred after a date which is 60 days prior to the date of the inducement resolution, but prior to the bond issuance. Further, bond proceeds may be used under specific conditions to pay for “preliminary costs.”

Before issuance of bonds, there must be a noticed public hearing, and some elected official or elected body responsible for the bond issue, and with jurisdiction over the project site, must give its approval. This process is commonly referred to as a “TEFRA Hearing” after the title of the tax legislation which enacted it.

While an applicant can apply for small issue tax-exempt bonds prior to a TEFRA Hearing, the applicant **must provide evidence from the jurisdiction** that they are aware of the project and that a TEFRA Hearing is scheduled. Applicants must be aware that the TEFRA process can take longer than anticipated.

Public Benefit

In addition to being a qualified activity, a project must demonstrate public benefits in order to warrant approval from the Private Activity Bond Authority Review Board. The PAB Board has designated job creation as the primary public benefit to be achieved. While the Board has not set a specific requirement as to the number of new jobs created for a specific bond amount, (e.g., one new job for every \$50,000 of bonds) the application process is competitive and applicants are encouraged to minimize the amount of bonds per job.

In addition to the creation of new jobs, PAB also looks favorably on projects that will employ:

1. Workers affected by industrial relocations.
2. New entrants or re-entrants to the work force.
3. Unemployed persons.
4. Persons participating in job training programs.

Other Public Benefits

In addition to employment, PAB looks favorably on projects that are:

1. Paying wages that are between 105% and 125% of the state median for similar jobs and skills.
2. Located in towns, cities or areas of high unemployment defined as 150% of the state average.
3. Located in towns, cities, and areas of high poverty rates defined as 125% of the state average.
4. Offering on-site job training.
5. Offering educational benefits; tuition reimbursement or part tuition.
6. Working with local high schools in job training.
7. Contributing to the community by sponsored employee volunteerism programs.
8. Paying property taxes.
9. Purchasing goods and services from other Utah companies.
10. Exporting their products out of state.
11. Retaining jobs from relocations and plant closings.

Application Process

Sponsors and users interested in applying for PAB financing should contact the Utah Governor's Office of Economic Development, 60 East South Temple, 3rd Floor, Salt Lake City, Utah 84111, (801) 538-8699. Staff will direct interested parties to the appropriate web site and provide information as to the availability of funds and discuss application procedures.

Sponsors should begin discussions with appropriate jurisdiction and issuer of the bonds, regarding the Inducement Resolution and TEFRA Hearing as soon as possible. Sponsors should obtain qualified bond counsel and initiate discussions with financial

institutions willing to issue a letter of credit for the full amount of the bonds to be issued (if public offering). The sponsor's principal bank should be contacted in all instances.

The application process can take from three (3) months to nine (9) months from the date of application to the issuance of the bonds. The length of time is usually dependent upon how long it takes to conclude the bank negotiations.

Applications can be found on-line at www.business.utah.gov/relocate/PAB or through the Utah Governor's Office of Economic Development (GOED). The applicant must be aware of the dates for submission of the application and PAB Board Meetings.

After the application is submitted, staff will review the application as to its completeness, including required exhibits, letters and other required documentation.

Applicants cannot contact staff or any member of the PAB Board once the application is submitted. Failure to abide by this condition can result in disqualification.

If staff needs further information, clarification or other exhibits, they will notify the applicant by e-mail or telephone. The applicant will have ten (10) working days to respond to staff requests. If the applicant fails to respond or responds after ten (10) working days, staff can disqualify the application or use their own conclusions in the evaluation.

The application evaluation by staff is a competitive process. Only those projects that best meet the goals and objectives of the PAB Program will be selected for an allocation.

The evaluation criteria is generally as follows:

1. Creation of jobs - Number of jobs created in the first two years after completion of project.
2. Jobs per bond ratio - The amount of bonds per one new job generated by the project after two years of operation; the lower the amount of bonds per job the better.
3. Project's median and average wages for new jobs generated by project.
4. Reasonableness of construction and equipment costs.
5. Project's training and education programs for workers and students.
6. The percentage of taxable bonds used in the financing. The higher the percent, the more points awarded – e.g. 5 points for 10% taxable, 10 points for 20%, etc.
7. Community participation in the financing, e.g., special loans, deferred fees, providing public infrastructure, etc.
8. Ready to go status including: zoning, TEFRA Hearing, inducement resolution, financing (underwriting, credit enhancement, placement of bonds, terms of bond) and construction readiness (plans, specs approved, permit ready).
9. Participation with local public entity, development, RDA and/or Enterprise Zone.
10. Completeness of application.

Each application will receive a “score” and each score will be ranked and selected accordingly. The score is used by PAB as a guideline to select projects for allocation of tax-exempt bonds.

1. PAB reserves the right to exercise discretion in the selection of the projects and such discretion may not be part of the score.
2. PAB reserves the right to not make any allocation at designated hearings.
3. All awards of tax-exempt bonds shall take place at the public PAB Board Meetings.
4. PAB may allow applicants to address the board, explaining the merits of the project. Presentations can be made by the user or sponsor only and will be limited in time depending on the length of the Board Meeting Agenda.
5. Once the PAB Board votes to give the applicant the amount of volume cap requested, the allocation is final; assuming the applicant has met all requirements of the program and has not misled, falsified or otherwise misinformed the PAB Board.

Fees

There is a fee to submit an application. The fee varies by the amount of the tax-exempt bond volume cap request. **Fees are due at the time of submission.**

If an applicant is awarded an allocation of volume cap there is a confirmation fee of \$300 per \$1 million dollars of cap allocated.

The Certificate of Allocation stating the amount of volume cap awarded to a project is good for a 90 day period. If the applicant is not able to sell the bonds within this 90-day period, they request an extension for another 90-day period. The first extension is free. For all subsequent extensions there are escalating fees. Applicants should refer to the Application Fee Schedule for further information. **All fees are non-refundable.**

Applicants should be aware that volume cap received for a manufacturing facility **must close** in the same year of the allocation; it **cannot** be forwarded to the next year. By Federal Law, if the bonds are not closed by the third Saturday in December, the applicant must relinquish the current year’s allocation. They can resubmit their application in the next calendar year. The fee for a resubmitted application is 50% of the original fee if applying for the same amount of Volume Cap. (Please refer to the Application Fee Schedule for the exact dollar amounts.)

Addendum A
Manufacturing Facility Private Activity Bonds
General Rules and Limitations

(Not intended as comprehensive legal advice. Please seek bond counsel for legal advice.)

I. Qualified Small Issue Bonds

- a. Definition of a “Manufacturing Facility:”** Code Section 144(a)(12)(C) defines a “manufacturing facility” as any facility which is used in the manufacture or production of tangible personal property, including the processing resulting in a change in the condition of such property. A manufacturing facility can also include facilities which are “directly related and ancillary to a manufacturing facility” if such facilities are located on the same site as the manufacturing facility and not more than 25% of the net proceeds of the issue are to be used to provide such facilities. Section 142(b)(2) states that office space cannot be financed unless the office is located on the premises of the facility and not more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations of the facility.
- b. General Rules:** Private activity bonds are not tax-exempt unless they are “qualified bonds.” Code Section 144(a)(1) defines “qualified small issue bond” as any bond issued as part of an issue the aggregate authorized face amount of which is \$10,000,000 or less and 95 percent or more of the net proceeds of which are to be used for the acquisition, construction, reconstruction or improvement of land or property of a character subject to the allowance for depreciation or to redeem part or all of a prior issue which was used for these same purposes.”
- c. 95% Test:** Ninety-Five percent (95%) of the net proceeds must be spent on depreciable property or to redeem the bonds. Net proceeds means the sale proceeds less any amount deposited into a reserve fund and does not appear to include investment proceeds.
- d. Prior Issues:** In addition to the principal amount of bonds that are being issued, the issuer must include all prior qualified small issue bonds that financed facilities in the same incorporated municipality or in the same county (but not in any incorporated municipality), a principal user of which is the same person as a principal user of the facility being financed. The principal user is defined as any person who owns or leases 10% or more of, or purchases more than 10% of the output of a facility.
- e. Capital Expenditures:** With a \$20,000,000 limit, capital expenditures paid or incurred during the six-year period surrounding the bond issue (three years before and three years after) with respect to any facility located in the same incorporated municipality or in the same county (but not in any incorporated municipality), which has the same principal as the

financed facility must also be counted against the \$20,000,000 limit. Capital expenditures can include expenditures made by a local government to assist with the facility. Capital expenditures do not include the following types of expenditures:

- i. Public utility improvements for the facility.
- ii. Leased personal property, provided it is leased by a person in a trade or business of leasing property or by the manufacturer of that property.
- iii. Expenditures required by a change in law or due to a casualty.
- iv. Expenditures up to \$1,000,000 that could not be reasonably foreseen when the bonds were issued.

If the \$20,000,000 limit is exceeded due to a capital expenditure, the bonds become taxable on the date the expenditure is made and not retroactively to the date of issue. This will result in the disallowance of a deduction for interest for the period such bond ceases to be a qualified small issue bond. Code Section 144(a)(4)(A)(ii)

- f. **IRS Bond Audit Program:** Small issue bonds continue to be reviewed under the IRS's bond audit program. The most common problems identified include violations of the \$10,000,000 limit and improper depreciation of bond-financed equipment.

II. **Other Requirements and Considerations Applicable to Qualified Small Issue Bonds**

- a. **State Volume Cap:** Code Section 146 requires that most private activity bonds obtain an allocation of the appropriate State's volume cap. Section 146(d)(2) provides that the volume cap for any particular State shall be the greater of \$291,875,000 or an amount determined by multiplying the State's population by \$95.
- b. **CarryForward:** Code Section 146(f) permits an elective carryforward of unused limitation for a specific purpose for a period of three calendar years. A carryforward purpose is defined to include issuing exempt facility bonds, issuing qualified mortgage bonds, issuing student loan bonds and issuing qualified redevelopment bonds, but does not include qualified small issue bonds (manufacturing).
- c. **Public Approval:** Code Section 147(f) provides that a private activity bond shall not be a qualified bond unless public approval has been obtained with respect to the issuance of such bond.