



INDUSTRIAL DEVELOPMENT BOND APPLICATION

PROGRAM DESCRIPTION

Industrial development bonds (or “IDBs”) have traditionally been part of the general class of municipal bonds. The Oregon Business Development Commission is authorized by statute to issue industrial development bonds for qualified projects throughout Oregon. Bonds can be issued on a tax-exempt basis if federal requirements are met, or on a taxable basis for projects that do not meet these requirements. If a project qualifies for tax-exempt financing, interest paid is exempt from federal, and in some instances, state income taxes. Tax-exempt interest rates are typically 75 to 80 percent of conventional rates.

Industrial development bonds are not direct obligations of the state of Oregon. The entity on whose behalf they are issued is legally obligated to repay them. The state has no obligation to repay the bondholders and does not guarantee the bonds.

Authority for the day-to-day operation of the industrial development bond program has been delegated to the Oregon Business Development Commission’s Finance Committee. Business Oregon provides staff support to the committee.

Federal Requirements

Bonds issued by state and local governments for the benefit of private firms fall in the class of bonds defined by the federal government as private activity bonds. The issuance of tax-exempt private activity bonds is governed by the U.S. Internal Revenue Code of 1986, as amended. There are a number of restrictions on these tax-exempt bonds and, if these restrictions are ignored or exceeded, the bonds may lose their tax-exempt status.

The Internal Revenue Code provides for the issuance of three categories of tax-exempt revenue bonds: bonds issued for projects of exempt persons; bonds issued for exempt activities; and small-issue bonds for manufacturing projects. Exempt persons include governmental units and certain 501(c) (3) not-for-profit organizations. Exempt activities of primary interest to Oregon businesses include solid waste disposal facilities, sewage disposal facilities, and qualified hazardous waste facilities.

To qualify under the small-issue manufacturing exemption, the bonds must be used to finance a manufacturing facility. The Internal Revenue Code defines a manufacturing facility to be “any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change of condition of such property).”

Small-issue manufacturing bonds may qualify in one of two ways. First, the amount of the bond itself must be \$1,000,000 or less. Alternatively, the total of all capital expenditures in the jurisdiction where the project is located, including the bond, cannot exceed \$20,000,000 for a period extending from three years prior to three years after the date of bond issuance. The maximum bond amount is \$10,000,000. For solid waste operations there is no maximum bond amount.

There are a number of other federal requirements that must be met in order to qualify for tax-exempt financing, and to retain tax-exempt status for the bonds. For example, borrowers are required to use “straight-line depreciation” and not “accelerated depreciation” for bond-financed assets. Please consult with bond counsel and department staff to determine whether other restrictions apply to your project.

State Requirements

Generally, eligible activities include manufacturing, processing, warehousing, research and development, natural resource utilization and certain tourism-related facilities. A number of activities are specifically ineligible including retail outlets, shopping centers, food service facilities, athletic clubs, professional corporations and electrical energy facilities. *Projects qualifying for bond financing under these state requirements do not necessarily qualify for tax-exempt financing under federal regulations.*

Before determining that a project is eligible for bond financing, the finance committee must find that the project is cost effective, considering both major public expenses and major public benefits. The department will calculate the cost effectiveness for each application. Major public expenses include an estimate of state and federal income taxes foregone due to the tax-exempt nature of the bonds, as well as any direct expenditures for the project by state and local governments. Major public benefits include new taxes attributable to increased profit and payroll. In the case of taxable bonds, major public expenses will not include a foregone tax component.

The committee also must find that the project will produce goods or services that are sold in markets for which national or international competition exists. If the project is to be operated by a not-for-profit organization, the project must not compete with local for-profit businesses.

The Oregon Business Development Commission has adopted administrative rules to govern operation of the bond program. These rules are available from department staff.

Eligible Purchasers

Industrial development bonds may be sold publicly or privately. Because the bonds are issued by the state, the state Treasurer has a number of requirements governing how and to whom these bonds may be sold.

Private placements of bonds are permitted only to sophisticated investors including insurance companies, banks, pension funds and other institutional investors. These purchasers must agree at the time of purchase that they intend to purchase the bonds for investment and not for resale, except to other sophisticated investors.

Bonds also may be offered for sale to the general public, but only if certain conditions are met. Although the state does not guarantee or stand behind the bonds, the bonds do have the state's name on them and every effort must be made to minimize the risk for any bonds to end up in the hands of members of the public who may not be sophisticated investors.

Program Options

- Regular IDB program—public offering or private placements, generally provides the greatest economic benefit to the borrower for bonds of \$5 million or more.
- Express Bond program—A streamlined, lower cost option for selling industrial development bonds, using standardized documents. The department has selected a bond counsel firm with a pre-approved fee schedule. The bonds are placed with the borrower's bank. Express Bonds may be feasible for borrowings as small as \$500,000.

APPLICATION PROCEDURES

Prospective industrial development bond applicants must answer each section of the attached application and submit it to Business Oregon approximately three weeks prior to a regularly scheduled meeting of the Finance Committee. Application materials must be complete, including four copies of the completed application (one with original signature) and exhibits, two copies of financial information, the application fee and required signatures of company officials.

The county or city (if the project is located in an incorporated area) must certify that the project complies with local land use planning requirements and applicable adopted economic development plans.

After approval of project eligibility by the Finance Committee, the complete application is sent to the state Treasurer for preliminary approval. Tax-exempt bond issues also require the Governor's approval after a public hearing. Department staff will coordinate the public hearing, and obtaining the necessary approval. Once the bond financing structure and documents are complete, the Finance Committee will approve and issue a bond closing resolution. Bonds cannot be sold until this resolution is adopted and the state Treasurer has given final approval.

Private Fees

The financial institutions and other parties involved in the issuance and purchase of an industrial development bond may charge a variety of fees, depending on what services are rendered. Among the more usual are underwriting fees, placement fees, letter of credit fees, remarketing fees, rating agency fees (if the bonds will be rated) and transfer agent fees. Please keep in mind that these fees are in addition to other fees typically charged with commercial loans and with real and personal property transactions such as appraisals, survey, permits, filings, recordings and title insurance. The number of parties involved and associated fees are greatly reduced with the Express Bond program.

Issuance of an industrial development bond requires considerable time and effort on the part of bond counsel who must be compensated by the applicant for services rendered. For the regular IDB program, these fees are negotiated between you and bond counsel with no state involvement. As the complexity of the transactions increases, so will the fee. For Express Bonds, there is a pre-approved bond counsel fee schedule.

Public Fees

Oregon Statutes require an application fee of \$250 for bond issues of \$500,000 or less, and \$500 for bond issues over \$500,000. For the Regular IDB program, the commission charges a closing fee of one-half of one percent of the bond issue amount. For Express Bonds the closing fee is one quarter of one percent. The state Treasurer charges a fee for a bond issues. Their current fee schedule is available on their [Web site](#) or by calling 503-378-4930.

CONFIDENTIALITY STATEMENT

Information in financial statements submitted to the department are subject to public record law, ORS 912.410, 192.420, 192.501, 192.501 and 192.505. Certain information in the department's possession may be made available for public inspection after an application for industrial development bond financing is received. This information includes the names of the applicants, including principals; the amount, types and general terms of the financing; description of project and business benefiting from bond financing; number of job projected or saved in connection with the project; and the names of any financial institutions participating in the process.

Under certain circumstances, the department may keep other information confidential. This includes, but is not limited to: reports obtained in confidence from creditors, employers, customers, suppliers; financial statements, tax returns, business records, employment history and other person data submitted by the applicant; formulas, plans, designs or related information which constitute trade secrets under ORS 192.501 (2); production, sales or cost data; and marketing strategy information.

If an applicant desires confidentiality, the applicant should clearly identify what information or document it wishes to be kept confidential. Although the department will attempt to keep the information submitted confidential, it cannot guarantee confidentiality in all cases. The applicant may wish to consult with their own attorney or discuss applicable public record statutes with department staff.

CONTINUING DISCLOSURE

As municipal securities, industrial development bonds are subject to Securities and Exchange Commission (SEC) Rule 15c2-12. The rule requires, among other things, that bond issuers and obligated persons disclose annual financial information and operating data, and that they provide notice of certain material events. There are a number of exemptions under this rule, and it is possible to structure the transaction so that the industrial development bonds will not be subject to these disclosure requirements, or will be subject to the requirement only if certain events occur. The state of Oregon will require industrial development bond recipients to comply with the requirements of Rule 15c2-12.

FREQUENTLY ASKED QUESTIONS

How long does it take to issue industrial development bonds?

Generally, for the regular IDB program, it takes about six months from the time the application is submitted to Business Oregon until the final closing of the bond use takes place. It can be closed in less time. The length of time depends primarily on how quickly a purchaser for the bonds can be found, and the structure of the financing can be finalized. For Express Bonds, borrowers should plan on about three months. The actual time depends on whether there are delays with the business transaction.

Can I be reimbursed for expenditures on the project made prior to bond issuance?

As a rule, expenditures made more than 60 days prior to the finance committee's approval of project eligibility and declaration of intent to issue bonds may not be included in the proceeds of a tax-exempt bond issue. Therefore, applicants should be prepared to obtain this approval *before* incurring significant expenditures on the project.

What is the interest rate?

Interest rate on industrial development bonds can be fixed or variable, and is dependent on a number of factors including the credit quality of the applicant, and whether or not the bond is secured by a letter of credit from a rated financial institution (for the regular IDB program). The state does not set any limit or negotiate any rates on your behalf. Other terms and conditions will depend on what you are able to negotiate with the purchaser of the bonds.

For how long can bonds be issued?

Generally, the maximum term of a tax-exempt bond is 120 percent of the average economic life of the project assets. For example, if the bonds will finance assets with an average economic life of 20 years, the maximum term is 24 years. Despite this guideline, the bond purchaser may not be willing to finance the project for maximum term. This will be part of the negotiations with the purchaser.

Where should I start first in making an application?

The first question to ask is whether a bank, underwriter, insurance company or other financial institution will buy the bonds. Without a buyer for the bonds, all other efforts are in vain. If there is interest in buying the bonds, you should obtain the necessary approvals and discuss the project with department staff.

How large or small a bond issue can I apply for?

Tax-exempt financing is generally limited to \$10 million. There is no legal minimum, however, costs of issuance may offset any interest rate savings if the issue size is small. If your project is less than this cost-effective minimum size, we suggest that you discuss your project with department staff. We offer a number of other finance programs which may be able to meet your needs.

What can bond proceeds be used for?

Basically, you can purchase land, building, and equipment with bond proceeds. As a rule, industrial development bonds cannot be used to finance working capital, inventory, payroll or similar items, or to refinance existing debt. Tax-exempt bond proceeds can be used to pay issuance costs. There are restrictions on the use of industrial development bonds to acquire land, existing real property and used equipment. We urge you to discuss your project with department staff and bond counsel.

Why do I need bond counsel?

Bond counsel provides a very valuable role in bond financing. They prepare most of the major documents needed to sell a bond such as trust indentures, loan agreements, bond purchase agreements, tax certificates and approval documents. Without bond counsel's legal opinion you will not be able to sell the bonds. Bond counsel also can help you in preparing options to purchase land, building and equipment to meet the Internal Revenue Service's requirements. In short, do not begin the process or make any commitments until you have talked to bond counsel.

What if my project doesn't qualify under your guidelines?

There are a number of other bond issuers in the state. For example, each port district has the authority to issue a variety of bonds, including industrial development bonds. Counties have the authority to issue bonds for solid waste and resource recovery projects. Certain local jurisdictions also issue bonds. Department staff can advise you as to whether another entity in the state can issue bonds for your project.

APPLICATION FOR OREGON INDUSTRIAL DEVELOPMENT BONDS

Each exhibit listed must be attached to the application.

I. Company Information

- A. Name of business, address, phone, fax and e-mail.
 - B. Headquarter location.
 - C. Type of business (corporation, partnership, individual, sole proprietorship, etc.)
 - D. Name and title of chief executive officer.
 - E. Other plant locations.
 - F. Federal taxpayer identification number.
 - G. North American Industry Classification System (NAICS) code.
 - H. Is the company listed on any securities exchanges? If yes, please list the exchange on which the company's stock is traded and the company's stock symbol.
 - I. If the company is not listed on a securities exchange, please list the names and titles of all corporate officers. Also list the names and addresses of all stockholders owning 10 percent or more of the company's outstanding stock and show their ownership percentage. Also indicate whether the company is woman- or minority-owned.
 - J. Attach company financial statement for the past three fiscal years, and the most recent interim statements. In addition:
 - 1. If the company has an operation history of one year or less, include a three year pro-forma balance sheet and income statement and monthly cash flow projection for a period of one year.
 - 2. In the case of a corporate applicant who is not publicly traded and has a net worth of \$2 million or less, include personal financial statements from:
 - a. All persons owning 20 percent or more of the company; and
 - b. All persons having a controlling interest in the applicant.
- If confidentiality is requested, please indicate clearly. However, the department cannot necessarily guarantee confidentiality under all conditions.*
- K. Provide a narrative history of the company and the type of business in which the company is engaged.

II. Project Information

- A. Proposed location of the project (street address including access directions). Is the project in a designated economically distressed area or enterprise zone?
- B. Dates of project start-up and projected completion
- C. Description of project. Include land acreage, proposed building, products, equipment required, etc.
- D. Description of product or service to be produced and users of your product or service.
- E. Bond proceeds:
1. Equipment \$ _____
 2. Buildings \$ _____
 3. Land \$ _____
 4. Other (specify) \$ _____
 5. Total Bond \$ _____
 6. Total Project \$ _____
 7. Bond Issue Amount as a Percent of Total Project _____ %
- F. Describe anticipated market for products(s) including primary market area. Do you export your product(s)? If so, to what countries? What percentage of total sales are export related?
- G. Describe the impact of the proposed project on the local economy, relating to:
1. The locale's ability to provide support services including, among others, roads, sewer, water and schools.
 2. Local need for the project and effect on the local economic base in terms of direct and indirect jobs, diversification, tax base, etc.

III. Labor Force

- A. Number of current employees in the company.
- B. Number employed by the company at the site of the proposed project.
- C. Total number of additional employees to be hired for the project for each of the first three years of operation.
- D. Approximate number of employees to be hired in each labor category at the site of the proposed project for each of the first three years of operation. Examples of labor categories include clerks, assemblers, machinists, etc. Indicate the number of transfer positions for each category, if any. Please be specific.
- E. Does the project have any special labor requirements?
- F. Do you plan any special employee training programs? (Contact the department or the Oregon Employment Department for information about available training programs.)
- G. If the project is an in-state plant relocation, describe the reasons for relocation and the effect of the relocation on the company's existing labor force.

IV. Projected Payroll and Profits

- A. What is the anticipated increase in payroll directly resulting from the project for each of the first three years?
- B. What is the anticipated increase in company profits directly resulting from the project for each of the first three years of operation?
- C. Describe any local government expenditures for public services required specifically for this project.

Note: answers to A and B above should reflect the difference between each year and the pre-project base year.

V. Attach the Following Exhibits to the Applications:

1. Exhibit A: Attach aerial photograph, map, site plan or diagram showing the general location of the project site and the facility proposed to be funded with bond proceeds.
2. Exhibit B: Sign and date Exhibit B. Certification (found on the next page).

Checklist

Please ensure that your application is complete and contains the following items. Business Oregon staff will be unable to process your application until all items are received.

One (1) application fee: \$250 if bond amount is \$500,000 or less; \$500 if more than \$500,000.

Four (4) copies of your complete application, one with original signature. Include Exhibits A and B.

Two (2) copies of financial statements (see section I.J). Please indicate clearly if CONFIDENTIALITY is requested.

Who is your bond counsel? _____

Who is the contact person in your company?

Name:

Title:

Telephone:

Please forward the completed application to:

Business Oregon

Business Finance

775 Summer Street, NE, Suite 200

Salem, OR 97301-1280

CERTIFICATION

All information provided in connection with the application for Oregon industrial development bond financing is, to the best of my knowledge, true, accurate, complete and current. I further certify that, except as described in the application:

1. No litigation is current, pending or threatened in any court or other tribunal or competent jurisdiction, state or federal, in any way contesting, questioning or affecting the eligibility of the applicant to apply for this financing, the ability of the applicant to complete the project, or the validity or enforceability of any covenant of document executed by the applicant in connection with the application of any of the procedures for the authorization of sale, execution, registration or delivery of the bonds, nor are there any unasserted claims outstanding.
2. The applicant has never filed for reorganization or sought relief or been involuntarily declared bankrupt under any provision of the United State Bankruptcy Code.
3. No officer, director, partner or owner of a five percent interest (legal or beneficial) of the applicant has ever filed for reorganization or sought relief or been involuntarily declared bankrupt under any provision of the United States Bankruptcy Code.
4. Neither the applicant nor any officer, director, partner or owner of a five percent interest (legal or beneficial) thereof has ever been indicted or convicted of a felony or a misdemeanor involving moral turpitude.
5. The applicant agrees to provide the department future information on employment and to permit the department access to Oregon Employment Department information now and in the future to obtain employment information.

I agree that material misrepresentation of fact is ground for the finance committee of the Oregon Business Development Commission to deny or withdraw project eligibility at any time.

In addition, the undersigned requests that the Oregon Employment Department provide employment and wage information from the *Oregon Quarterly Tax Report* to Business Oregon for the purpose of program evaluation and performance measurement.

Attest:

Authorized company representative (signature)

Name and title (print or type)

Date





Borrower and Lender Acknowledgement Funding Sources and Promotions

Business Oregon can access and disburse funds from multiple state and federal funding sources. Highlighting successful projects and businesses helps demonstrate to the public the positive impacts of these programs and also helps to attract and encourage new applicants. As part of providing funding, the state of Oregon, Business Oregon and affiliated state agencies may use your company in the future promotion of their programs and services. The following typifies the information used in promotional materials:

- business name
- private lender name
- general description of the project
- total project cost
- amount of the state direct loan, guaranteed or program enrolled loan, or private activity bond issued
- projected number of new jobs created/retained as a result of the funding

Depending on program and project, the sources of funding may include, but are not limited to:

- Oregon State Lottery
- Oregon State General Funds
- Federal Economic Development Agency
- Federal State Small Business Credit Initiative (U.S. Treasury)

Signature (Borrower)

Title

Date

Signature (Lender)

Title

Date