



## Oregon Industrial Development Bond Application

### Program Description

#### *Overview*

Industrial development bonds (or “IDBs”) have traditionally been part of the general class of municipal bonds. The Oregon Economic & Community 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 which 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 revenue bond program has been delegated to the Oregon Economic & Community Development Commission’s Finance Committee. The Oregon Economic & Community Development Department 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 county where the project is located, including the bond, cannot exceed \$10,000,000 for a period extending from three years prior to three years after the date of bond issuance.

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 (a list of qualified bond counsel is included as Attachment 1) 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 profits and payroll. In the case of taxable bonds, major public expenses will not include a foregone tax component.

The Committee must also find that the project will produce goods or services which 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 Economic & Community 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 limited obligations of 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 may also 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.

#### *Application Procedures*

Prospective industrial development bond applicants must answer each section of the

attached application and submit it to the Economic & Community Development Department approximately three weeks prior to a regularly scheduled meeting of the Finance Committee for the Oregon Economic & Community Development Commission. 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 governing body of the county or counties in which the project will be located must first approve the project before the Finance Committee will consider the application. A sample of the required county resolution is included as Exhibit B. In addition, the county or city (if the project is located in an incorporated area) must certify that the project complies with local zoning and the comprehensive plan, and with statewide land use goals.

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 this 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), registrar fees, trustee or depository fees, 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, surveys, permits, filings, recordings, and title insurance.

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. These fees are negotiated between you and bond counsel with no state

involvement. As the complexity of the transaction increases, so will the fee.

### **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. At closing, the commission charges a closing fee of one-half of one percent of the bond issue amount up to a maximum fee of \$50,000. The State Treasurer charges at closing a fee of \$3,000 for bond issues of \$2 million or less, and \$7,000 for bond issues of more than \$2 million.

Information in financial statements submitted to the department are subject to public record law, ORS 192.410, 192.420, 192.501, 192.502 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 benefitting from bond financing; number of jobs 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 personal 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 documents 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 its own attorney or discuss applicable public record statutes with department staff.

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 requirements only if certain events occur. The State of Oregon will require industrial development bond recipients to covenant to comply with the requirements of Rule 15c2-12.

## **Frequently Asked Questions**

### ***How long does it take to issue industrial development bonds?***

Generally it takes about six months from the time the application is submitted to the Economic & Community Development Department until the final closing of the bond issue takes place. It can be closed in only two months. 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.

### ***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 rates on industrial development bonds can be fixed or variable, and are dependent on a number of factors including the credit quality of the applicant, and whether or not the bond are secured by a letter of credit from a rated financial institution. 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 the maximum term. This will be part of the negotiations with the purchaser.

## **Confidentiality Statement**

## **Continuing Disclosure**

***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, there are three things that should be done simultaneously:

- (a) Obtain the necessary approvals from the county (and city) where the project is located.
- (b) Choose qualified bond counsel for the project.
- (c) Discuss your 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 less than \$1.5 million or \$1 million if the financing is only for purchase of equipment. 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. For tax-exempt bonds, no more than two percent of the bond proceeds can be used to pay issuance costs. And 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. A list of qualified bond counsel is included as Attachment 1.

***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. The Portland Development Commission may issue industrial development bonds within the City of Portland. 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, and phone number.
- B. Headquarters 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. Primary standard industrial classification (SIC) 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 statements for the past three fiscal years, and the most recent interim statements. In addition:
  1. If the company has an operating history of one year or less, include a three year pro-forma balance sheet and income statement and a monthly cash flow projection for a period of one year.
  2. In the case of a corporate applicant that is not publicly traded and that 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 buildings, products, equipment required, etc.
- D. Description of product or service to be produced and users of your product or services.
- 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 product(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

### **III. Labor Force**

---

of direct and indirect jobs, diversification, tax base, etc.

- A. Number of current employees in the company.
- B. Number employed by the company at the site of the proposed project.
- C. Number of additional employees to be hired for the project.
- 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? If so, in what job categories? (Contact the Economic & Community Development 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 will be the anticipated increase in payroll directly resulting from the project for each of the first three years of operation?
- B. What will be the 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.

### **V. Attach the Following Exhibits to the Application:**

---

- 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: Attach all local government certifications described under "Program Description, Application Procedures" certification.
- 3. Exhibit C. Sign and date Exhibit C - Certification.

## BOND COUNSEL

ATER WYNNE LLP  
222 SW Columbia, Suite 1800  
Portland, OR 97201-6618  
Tel: 503-226-1191  
Fax: 503-226-0079

BALL JANIK LLP  
101 SW Main St., Suite 1100  
Portland, OR 97204-3219  
Tel: 503-228-2525  
Fax: 503-295-1058

DAVIS WRIGHT TREMAINE LLP  
1300 S.W. 5th Avenue, Suite 2300  
Portland, OR 97201  
Tel: 503-241-2300  
Fax: 503-778-5299

MERSEREAU & SHANNON LLP  
1600 Benjamin Franklin Plaza  
1 S.W. Columbia Street  
Portland, OR 97258  
Tel: 503-226-6400  
Fax: 503-226-0383

MILLER NASH WIENER HAGER &  
CARLSEN LLP  
3500 U.S. Bancorp Tower  
111 S.W. 5th Avenue  
Portland, OR 97204-3699  
Tel: 503-224-5858  
Fax: 503-224-0155

NEWTON, COTTLE &  
WESTENHAVER, P.C.  
4000 Kruse Way Place  
Bldg. 1, Suite 265  
Lake Oswego, OR 97035  
Tel: 503-697-7272  
Fax: 503-636-6995

PERKINS COIE LLP  
U.S. Bancorp Tower  
1211 S.W. 5th Avenue, Suite 1500  
Portland, OR 97204-3715  
Tel: 503-727-2000  
Fax: 503-727-2222

PRESTON GATES & ELLIS LLP  
222 SW Columbia Street, Suite 1400  
Portland, OR 97201-6632  
Tel: 503-228-3200  
Fax: 503-248-9085

STOEL RIVES LLP  
900 SW 5th Ave., Suite 2600  
Portland, OR 97204-1268  
Tel: 503-224-3380  
Fax: 503-220-2480

THE WESTIN LAW FIRM  
1500 SW Taylor  
Portland, OR 97205  
Tel: 503-226-3613  
Fax: 503-226-3568

Sample Resolution

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR THE COUNTY OF \_\_\_\_\_

In the Matter of ISSUANCE OF )  
INDUSTRIAL DEVELOPMENT )  
REVENUE BONDS BY THE ) RESOLUTION  
STATE OF OREGON TO )  
(company)\_\_\_\_\_

WHEREAS, the \_\_\_\_\_ County Board of Commissioners finds that the development of the (project name or description) by (name of company) would foster the economic growth and legislative policy as set forth in ORS 285B.320, and

\*WHEREAS, the board finds that the (name of company) project is consistent with the comprehensive plan acknowledged by the Land Conservation and Development Commission pursuant to ORS chapter 197, and

WHEREAS, the Board finds that the project complies with the provisions of (name of local economic development plan), and

WHEREAS, ORS 285B.332 requires, before the issuance of revenue bonds by the State of Oregon, that the governing body of the County endorse the project, and

WHEREAS, the Board finds that the completion of a (project name or description) in the (name of city or community) of \_\_\_\_\_ County would be in the best interests of the citizens of \_\_\_\_\_ County,

IT IS HEREBY RESOLVED:

1. That \_\_\_\_\_ County requests the Oregon Economic & Community Development Commission and the State of Oregon to assist in the financing of the \_\_\_\_\_ project within (name of city or community) in \_\_\_\_\_ County, through the issuance of revenue bonds as provided by ORS 285B.320 to ORS 285B.377.

\*\*2. That the Chairman of the \_\_\_\_\_ County Board of Commissioners be authorized to sign and act for the Board in any future action necessary by \_\_\_\_\_ County to promote the project.



Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_ COUNTY BOARD OF COMMISSIONERS

Chairperson

Commissioner

Commissioner

\* Oregon Administrative Rule 123-11-0030 (4): "If the project is located within a county or city having a comprehensive plan approved by the Land Conservation and Development Commission, the appropriate local unit of government must certify that the project is consistent with such comprehensive plan. If the project is located within a county or city not having such a comprehensive plan, the appropriate local unit of government must certify that the project is consistent with statewide Goals and Guidelines as adopted by the Land Conservation and Development Commission."

\*\* Desirable but not essential sections of the resolution.

Sample resolution supplied by:

Oregon Economic & Community Development Department  
Business Finance  
775 Summer Street N.E., Suite 200  
Salem, Oregon 97301-1280,  
503-986-0172

(rev. 2/2000)

# CERTIFICATION

All information provided in connection with this 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 this 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 or document executed by the applicant in connection with the application or 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 State 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 of 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 grounds for the Finance Committee for the Oregon Economic & Community 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 the Oregon Economic & Community Development Department for the purpose of program evaluation and performance measurement.

Attest:

\_\_\_\_\_  
Authorized Company Representative (Signature)

\_\_\_\_\_  
Name & Title (Print or type)

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

# CHECKLIST

## STATE OF OREGON

### INDUSTRIAL DEVELOPMENT BONDS

Please ensure that your application is complete and contains the following items. The Economic & Community Development Department staff will be unable to process your application until all items are received.

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

\_\_\_\_\_ Four (4) copies of your completed application, one with original signature. Include Exhibits A, B (if completed), and C.

\_\_\_\_\_ 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:

Oregon Economic & Community Development Department  
Business Finance  
775 Summer Street N.E.  
Salem, Oregon 97301-1280  
Telephone: 503-986-0172  
Fax: 503-378-6850



775 Summer Street N.E, Suite 200  
Salem, OR 97301-1280