Private Activity Bonds (PABs)

Innovative Program Delivery

Transportation Finance Innovations

Quick Facts

- ➤ Provides low-cost financing to projects with private involvement.
- ➤ Aims to increase private sector investment in U.S. transportation infrastructure.
- ➤ As of today, bonds have been issued for sixteen projects, totaling just over $5.9 billion. Allocations have been approved for six projects, totaling $5.7 billion.

Contact

Technical Assistance
Mark Sullivan
202-366-5785
mark.sullivan@dot.gov

Applications
Paul Baumer
202-366-1092
paul.baumer@dot.gov

www.fhwa.dot.gov/ipd/finance

U.S. Department of Transportation
Federal Highway Administration

PRIVATE ACTIVITY Bonds (PABs) are debt instruments issued by State or local governments whose proceeds are used to construct projects with significant private involvement.

How Do They Work?

PABs have long provided a low-cost financing option for various types of public-benefit infrastructure projects, such as ports and water and sewer projects; however, highways were not eligible for PAB financing until the passage of SAFETEA-LU. Section 11143 of Title XI of SAFETEA-LU amended Section 142(a) of the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which PABs may be issued. This change allows private activity on these types of projects while maintaining the tax-exempt status of the bonds.

The law limits the total amount of such bonds to $15 billion and directs the Secretary of Transportation to allocate this amount among qualified facilities. The $15 billion in exempt facility bonds is not subject to any individual State's volume cap. State and local projects receiving a PAB allocation must also receive assistance under Title 23 or Title 49, U.S. Code (U.S.C.).

What Are the Benefits?

Passage of the private activity bond legislation reflects the Federal Government's desire to increase private sector investment in U.S. transportation infrastructure. Providing private developers and operators with access to tax-exempt interest rates lowers the cost of capital significantly, enhancing investment prospects. Increasing the involvement of private investors in highway and freight projects generates new sources of money, ideas, and efficiency.

A technical paper prepared for the National Surface Transportation Policy and Revenue Study Commission estimates, in present value terms, the Federal tax-exemption subsidy for PABs to be approximately 15–20 percent of the amount borrowed.

Capital Beltway/I-495 high-occupancy toll lanes was the first project to utilize PABs.

How Is It Used?

With approval from the U.S. Department of Transportation (USDOT) to issue PABs, the State or local government issues tax-exempt debt on behalf of the private entity undertaking the project. The private entity finances and delivers the project and is responsible for debt service on the PABs. As of August 2015, over 72 percent of the authorized $15 billion in PAB allocations had been approved by USDOT for 20 projects. The first project for which bonds were issued was the Capital Beltway/I-495 high-occupancy toll (HOT) lanes project.

The legislation requires that at least 95 percent of the net proceeds of bond issues be expended for qualified highways or surface freight transfer facilities within a 5-year period from the date of issue. If this does not occur, the issuer must use all unspent proceeds to redeem bonds of the issue within 90 days after the conclusion of the 5-year period. As an alternative, the issuer may request an extension of the 5-year period if it can establish that the failure to expend the funds was due to circumstances beyond its control.

continued on side 2 ▶

◀ continued from side 1

PAB Allocations and Issues (April 14, 2016)

Project	PAB Allocation (USD)
Bonds Issued	
Capital Beltway HOT Lanes, Northern Virginia	$589,000
North Tarrant Expressway, Fort Worth, TX	$400,000
IH 635 (LBJ Freeway), Dallas, TX	$615,000
RTD Eagle Project (East Corridor & Gold Line), Denver, CO	$397,835
CenterPoint Intermodal Center, Joliet, IL	$150,000
CenterPoint Intermodal Center, Joliet, IL	$75,000
Downtown Tunnel/Midtown Tunnel, Norfolk, VA	$675,004
I-95 HOT/HOV Project, Northern Virginia	$252,648
Ohio River Bridges East End Crossing, Louisville, KY	$676,805
North Tarrant Express 3A & 3B, Fort Worth, TX	$274,030
Goethals Bridge, Staten Island, NY	$460,915
U.S. 36 Managed Lanes/BRT Phase 2, Denver Metro Area, CO	$20,360
I-69 Section 5, Bloomington to Martinsville, IN	$243,845
Rapid Bridge Replacement Program, PA	$721,485
Southern Ohio Veterans Memorial Highway, Portsmouth, OH	$227,355
I-77 Managed Lanes, Charlotte, NC	$100,000
Subtotal	**$5,879,282**
Allocations	
Knik Arm Crossing, AK	$600,000
CenterPoint Intermodal Center, Joliet, IL	$700,000
SH 288, Houston Metro Area, TX	$600,000
Purple Line, MD	$1,300,000
All Aboard Florida	$1,750,000
I-70 East Reconstruction, CO	$725,000
Subtotal	**$5,675,000**
GRAND TOTAL	**$11,554,282**

Potential Advantages

- Enable innovative procurement by providing lower cost financing to projects with private involvement.
- Assist projects that are of public benefit but that may have too much private involvement to qualify for tax-exempt financing.

Potential Limitations

- USDOT allocation only provides a "license to issue." On receipt of allocation, the project sponsor must still identify the public sector issuer for PABs and follow all requirements for issuance of PABs.
- Depending on market demand, PABs may be significantly more expensive as a form of financing than are traditional tax-exempt bonds or other alternatives.

Considerations

- In general, PAB projects must receive Federal assistance under Title 23 or Title 49, U.S.C.
- Project elements funded with Federal funds must follow all Federal-aid requirements; however, not all elements of the PAB project may have to follow all Federal-aid requirements.
- PAB allocation recipients must retain bond counsel to ensure that all IRS requirements for PABs are followed. ■

Qualified Highway or Surface Freight Transfer Facilities Include:

▶ Any surface transportation project that receives Federal assistance under Title 23, U.S.C., as in effect on August 10, 2005, the date of the enactment of Section 142(m).

▶ Any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and that receives Federal assistance under Title 23, U.S.C. (as so in effect).

▶ Any facility for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) that receives Federal assistance under Title 23 or Title 49, U.S.C.

PROGRAM AREAS OF THE OFFICE OF INNOVATIVE PROGRAM DELIVERY

IPD provides a one-stop source for expertise, guidance, research, decision tools, and publications on program delivery innovations. Our Web page, workshops, and other resources help build the capacity of transportation professionals to deliver innovation.

PROJECT DELIVERY

IPD's project delivery team covers cost estimate reviews, financial planning, and project management and assists FHWA Divisions with statutory requirements for major projects (e.g., cost estimate reviews, financial plans, and project management plans).

PROJECT FINANCE

IPD's project finance program focuses on alternative financing, including State Infrastructure Banks (SIBs), Grant Anticipation Revenue Vehicles (GARVEEs), and Build America Bonds (BABs).

PUBLIC–PRIVATE PARTNERSHIPS

IPD's P3 program covers alternative procurement and payment models (e.g., toll and availability payments), which can reduce cost, improve project quality, and provide additional financing options.

REVENUE

IPD's revenue program focuses on how governments can use innovation to generate revenue from transportation projects (e.g., concessions, value capture, developer mitigation fees, air rights, and road pricing).

TIFIA

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides credit assistance for significant projects. Most surface transportation projects—highway, transit, railroad, intermodal freight, and port access—are eligible for assistance.

U.S. Department of Transportation
Federal Highway Administration