
Federal Infrastructure Tax Credit Legislation Makes Key Changes from 2015 Proposal.

Sens. John Hoeven, R-N.D., and Ron Wyden, D-Ore., reintroduced bipartisan legislation May 25 to establish a program to spur infrastructure investment through the creation of Move America Bonds and Move America Credits. The major benefit of the Move America Act of 2017 is that it includes the use of public-private partnerships, or P3s, to assist in financing infrastructure. The primary benefits of using P3s include:

- Private equity providers will generally be sophisticated institutional investors exercising a high level of asset management.
- In-depth financial underwriting of projects before development.
- Construction and/or reconstruction risk borne by private equity investors.
- The performance risk transfers to private parties.

The two concepts behind the bill include expanding the available tax-exempt financing for infrastructure and creating credits to harness additional private sector investment. In this bill (revised from a 2015 version), the Move America Bond volume cap will be 50 percent of the state ceiling under cap for tax-exempt private activity bonds. In order to receive Move America Credits, states may elect to trade in all or a portion of their Move America Bonds for Move America Credits at a 25 percent rate. In other words, the credit limitation for each state for each calendar year is a dollar amount equal to 25 percent of the Move America Bond volume cap. For example, if a state has $100 in Move America Bonds, it may trade that $100 for $25 in Move America Credits. According to Sen. Hoeven, about $226 billion would be the annual volume cap for Move America Bonds over the next 10 years. That means that up to $56 billion, or 25 percent of the Move America bond cap, would be available annually for Move America Credits over the next 10 years.

This bill was first introduced by Sen. Wyden in 2015 as the Move America Act of 2015. With the reintroduction, there are a number of changes to the bill, discussed below.

The overall structure borrows heavily from both the Low-Income Housing Tax Credit (LIHTC) program and the New Markets Tax Credits (NMTC) program. Permitting these alternative structures provides greater flexibility in matching the right financing mechanism with the needs of individual infrastructure project.

Summary of Revisions

Expanding a List of Qualifying Infrastructure Projects

The previous version of the bill included airports, mass transit, freight and passenger rail, roads, bridges, flood projects, and inland and costal waterway improvements. The new version includes everything that was previously included, as well as water and sewage projects and rural broadband.

Traditional Investment Credit Structure

The revised provision dealing with Move America Credits would follow a structure similar to the LIHTC for equity investments in infrastructure projects. Investors would be able to directly invest in a qualified project, meaning that the investor's credit would equal the percentage of the direct investment in a qualified project, subject to limitation discussed below. The investors would receive tax credits equal to 10 percent of their equity investment each year over a 10-year tax credit period.

Credit Levels

The credits available for equity investments in an infrastructure project cannot exceed 20 percent of the qualified project's total costs, which is retained from the previous version. However, the cap related to private investment would be eliminated. In the revised draft, designated state agencies are also required to set the credits allocated to each project at the minimum amount for the project to achieve financial viability.

Capitalizing Infrastructure Funds

The 2017 Move America Act also provides that if states wanted to set up a structure that mirrors the NMTC, states would be permitted to use the credits to capitalize a state infrastructure bank or other infrastructure loan funds. States would be permitted to allocate credits to entities (e.g., state infrastructure banks, which are typically difficult to capitalize) and the entities could offer the credits to investors in order raise capital necessary to fund qualified projects. This is similar to the structure of community development entities (CDEs) in the NMTC program, and indeed, if designated by the state, CDEs could receive Move America credits to establish infrastructure funds. Under this option, the investors would be eligible to claim a tax credit equal to 5 percent of their equity investment in the Infrastructure Fund. There would be compliance requirements that share similarities to the NMTC compliance requirements.

Conclusion

This bill provides a mechanism to encourage more P3s to be used for infrastructure investment. President Donald Trump campaigned on using a federal infrastructure tax credit and this bill may also gain additional traction with White House support.

Novogradac & Company LLP is working on a white paper exploring the various design specifics of a federal infrastructure tax program. We have also authored posts related to the reasons to hope for a federal infrastructure tax credit and the benefits of a federal infrastructure tax credit. Additionally, please be sure to keep an eye on our infrastructure credit page.

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