Bond Case Briefs

Municipal Finance Law Since 1971

NABL Urges Creation of New PABs, Direct-Pay Bonds to Finance Infrastructure.

WASHINGTON – The National Association of Bond Lawyers has recommended the creation of new categories of tax-exempt private activity bonds and taxable, direct-pay bonds to help finance bridges, tunnels, roads, water facilities, schools and other infrastructure projects.

The new bonds are among eight recommendations that NABL submitted this week to the Trump administration and to the tax-writing committees in Congress to spur infrastructure development.

The proposals follow President Trump's plan to spend $1 trillion on infrastructure over the next decade.

Also among NABL's suggestions are allowing greater use of tax-exempt bonds for manufacturing facilities and elimination of a mortgage prohibition in bond financing for charter schools.

At the top of NABL's list of recommendations is a new category of exempt facility private activity bond that could finance the construction, expansion or rehabilitation of existing or new qualified road, tunnel and bridge facilities regardless of private business use as long as they are publicly used and state or local governments retain control over the setting of any tolls.

These PABs would not be subject to state volume caps and could be current refunded, but not advance refunded. The hope is that they could be more easily used in connection with public private partnerships for infrastructure projects.

Also near the top of the list is NABL's recommendation for a new kind of taxable direct-pay bond that would be called Enhanced Infrastructure Bonds or EIBs. These would be, similar to Build America Bonds that were issued in 2009 and 2010 under the American Recovery and Reinvestment Act. The issuers of these bonds would receive subsidy payments from the Treasury Department that would not be subject to sequestration.

The federal subsidy payments of EIBs would amount to 40% of interest costs for the first 10 years, dropping to 28% in the eleventh year. EIBs could be used for any purpose for which tax-exempt bonds could be used, except to advance refund tax-advantaged bonds. EIBs issued for private activity, other than qualified 501(c)(3) purposes, would be subject to the state volume caps that exist for PABs issued for the same purpose.

Clifford M. Gerber, NABL's president, sent the recommendations were included in identical letters sent to Treasury Secretary Steve Mnuchin, National Economic Council Chairman Gary Cohn and the top Republicans and Democrats on the Senate Finance Committee and House Ways and Means Committee.

The letter, signed by Gerber, highlighted the importance of using state and local bonds in financing the nation's infrastructure.

“Federal assistance is limited to the revenue foregone on the untaxed interest, estimated to be approximately $50 billion per year on approximately $3.8 trillion of outstanding state and local tax-exempt bonds,’’ Gerber wrote. “That is money well spent. Because the interest on state and local bonds is exempt from federal income tax, investors are willing to accept lower interest payments than they would otherwise.”

NABL also recommended increasing the qualified small issuer limit to $30 million from $10 million for bank-qualified bonds and applying the revised amount to conduit deals by treating conduit borrowers as issuers. Under this proposal, banks could deduct 80% of the cost of buying and carrying tax-exempt bonds from issuers, or borrowers in conduit deals, that have issued or borrowed $30 million or less of tax-exempt bonds in a calendar year. The conduit borrower provision would help qualified 501(c)(3) bonds become bank-qualified.

The new $30 million limit would apply to 501(c)3s such as hospital systems, higher education institutions and some housing projects.

NABL also recommended higher authorized amounts for New Clean Renewable Energy Bonds, Qualified Energy Conservation Bonds, Qualified Zone Academy Bonds, and Qualified School Construction Bonds and allowing these bonds to be issued in a direct-pay mode, with the subsidy payments exempt from sequestration.

In addition, NABL wants to exempt bonds for water and sewer facilities from state volume caps.

The bond lawyers group recommended several changes to allow greater use of tax-exempt bonds to finance manufacturing facilities. The limit on issuance size would be increased to $30 million from $10 million and the limit on capital expenditures would rise to $40 million from $10 million.

The group also wants the definition of a manufacturing facility to be changed to include a facility that manufactures intangible property, such as software, copyrights, licenses, and trademarks, as well as tangible property. In addition, the definition of manufacturing would be changed from “directly related and ancillary facilities” to a more flexible definition under the tax law that covers “functionally related and subordinated facilities.’’

Also among NABL’s suggestions is the elimination of a mortgage prohibition in bond financing for charter schools.

NABL also wants to eliminate the unrelated or disproportionate component of the private business use test for private activity bonds along with the dollar limits on private business use.

Municipal and state governments generally face a 10% cap on private business use and a 5% cap on facilities where use is unrelated to the government under current law.

The group called for permitting refundings of bonds where less than 85% of the proceeds have been spent.

The Bond Buyer

By Brian Tumulty

08/23/17