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Bill Would Restore Advance Refunding, Create New Direct-Pay Bond.

The municipal finance market is rallying behind legislation that Rep. Terri Sewell, D-Ala., introduced this week that hits all the market's top priorities: restoring tax-exempt advance refunding, creating a new taxable direct-pay tool and lifting the cap for small borrower bank-qualified bonds.

Sewell, a former public finance attorney and senior member of the House Committee on Ways and Means, introduced on Tuesday the Local Infrastructure Financing Tools, or LIFT, Act.

"By restoring and expanding these proven tools, we can lower borrowing costs, bring additional investors to the table, and provide long-term, efficient financing for these critical investments across Alabama and the United States," Sewell said in a press release.

Sewell introduced the same bill in 2021, which failed to gain traction. The provisions were incorporated into an early version of President Joe Biden's Build Back Better bill, but were later stripped out.

Sewell reintroduced the bill now in part because "we know that the summer months are when most infrastructure projects typically occur in many cities and towns," said Sewell's communication director Christopher Kosteva. "We are reminded that often the largest obstacle faced by municipalities is the lack of access to capital that allow for these projects to commence."

Kosteva added that restoration of tax-exempt advance refunding and expanding the small borrower exception are "two of the most discussed policy changes that come up when meeting with constituents and stakeholders on this issue. We know that the same message is being shared with other Democrats and Republicans on the Hill and we are hopeful that it will generate bipartisan momentum and make these policies part of the overall tax dialogue."

The bill will be referred to the House Ways and Means Committee, which oversees all tax-related measures in the House. It comes as Congress is expected next year to take up major tax measures as several provisions in the Tax Cuts and Jobs Act expire.

The bill has "very little chance of enactment but it sets the table for a likely big tax bill next Congress, where we will need to be on defense as well as offense with this type of legislation," said Charles Samuels of Mintz Levin, who is counsel to the National Association of Health & Educational Facilities Finance Authorities. The measure is an "important symbol of the continuing interest to improve municipal financing for the benefit of government, nonprofits and the citizens they serve," Samuels said.

In a May 15 blog, Mintz Levin said advocates "will be working to identify a potential pathway for consideration of the bill in the remaining months of the current 118th Congress. Given the increasingly limited number of legislative days and the ramping up of the election season, advocates will also use the introduction of the bill to build support for tax-exempt bonds in the 119th Congress when much of the 2017 Tax Cuts and Jobs Act will sunset, creating an opportunity for a major tax

package to advance.”

The bill would restore tax-exempt advance refundings, which were eliminated under the TCJA, and would lift the cap on bank-qualified debt to \$30 million from \$10 million, a cap that was set in 1986. For non-profit conduit issuances, the cap would be expanded to apply to the borrower-beneficiary rather than the conduit issuer, Mintz noted. The direct-pay provision would create a taxable tool that features a direct-pay interest subsidy from the government.

Top bond advocates like the National Association of Bond Lawyers, Government Finance Officers Association, National Association of Counties, and the Bond Dealers of America all applauded the legislation.

The GFOA said “restoring tax-exempt advanced refunding and expanding the small borrower exception are top priorities for our 24,000 members and with Congresswoman Sewell’s leadership, we look forward to advancing these issues through Congress.”

The bill is “critical legislation” that would make “capital more accessible and affordable for issuers, in turn creating more affordable infrastructure nationwide,” the BDA said. “We look forward to working with Rep. Sewell and her colleagues in Congress to get this legislation across the finish line.”

By Caitlin Devitt

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