
Proposed Bonds to Encourage Public Private Partnerships and Improve Infrastructure: Butler Snow.

The nation's infrastructure is in need of dire repair. On February 2, 2015, to encourage private investments in infrastructure through public-private partnerships ("P3s") and as part of his 2016 proposed budget, President Barack Obama presented the concept of qualified private infrastructure bonds ("QPIBs").1 On May 4, 2015, also in an effort to encourage private investments in infrastructure through P3s, United States Senators Ron Wyden and John Hoeven proposed Move America Bonds ("MABs") as part of the Move America Act of 2015 (the "Act")2. Neither QPIBs nor MABs have been authorized by Congress, and both are still pending. These are only two alternatives to address infrastructure, but more legislation may be proposed in the future.

In addition to their similar purpose of encouraging private investments in infrastructure through P3s, QPIBs and MABs have a few other similarities. They are both tax exempt bond financing. Unlike Build America Bonds, they do not have a direct pay feature. The interest on both QPIBs and MABs are not subject to the alternative minimum tax.

However, there are some differences between QPIBs and MABs including the types of projects that each will finance. QPIBs will be used to finance seven types of facilities including (i) airports, (ii) docks and wharfs, (iii) mass commuting facilities, (iv) facilities furnishing water, (v) sewage facilities, (vi) solid waste disposal facilities, and (vii) qualified highway or surface freight transfer facilities.3 MABs will be used to finance nine types of facilities including (i) airports, (ii) docks and wharfs, (iii) mass commuting facilities, (iv) railroads, (v) surface transportation projects, (vi) projects for international bridges and tunnels, (vii) facilities for transfer freight from trucking-to-rail or rail-t--trucking, (viii) flood diversions, or (ix) inland waterways. Thus, MABs will finance more types of facilities than the QPIBs, including facilities, such as railroad, that cannot currently be financed as tax exempt facility bonds under Section 142 of the Internal Revenue Code of 1986, as amended.

Governmental ownership will be required for airports, docks and wharves and mass commuting facilities financed with QPIBs, but the safe harbor rules regarding ownership will be expanded in instances where the facilities are leased or subject to concession or management contracts. However, governmental ownership of the facilities will not be required for facilities financed with MABs, but the facilities must be available for general public use.

There will not be a volume cap for QPIBs, but MABs will have a separate volume cap, which will be 50% of the state's current private activity bond volume cap. MABs volume caps can be carried forward for a period of three years. After the three year carryforward, the unused volume cap can be reallocated to states that have fully used their MABs volume cap. MABs will increase the amount of the bond proceeds to be spent on land acquisition from 25% to 50% and the time to complete the construction of a rehabilitation from two years to five years. The Act also includes enlargements as qualified rehabilitations and allows states to exchange a portion of a state's MABs volume cap for the Move America tax credit ("Tax Credit").4

Footnotes

1. QPIBs are part of the President's budget, which includes only general concepts as to how the QPIBs will work. It is believed that QPIBs will operate in the existing tax exempt bond framework.

2. The Act is Senate Bill No. 1186. As of June 10, 2015, the Act has been referred to the Senate Finance Committee. If the Act is enacted, it will be codified as Section 142A of the Internal Revenue Code of 1986, as amended. The Act also provides for the Move America tax credits, which are discussed below in footnote 5 below.

3. All facilities that will be finance with QPIBs can currently be financed as tax exempt facility bonds under Section 142 of Internal Revenue Code of 1986, as amended, but they are subject to the private activity bond volume cap and the interest on these bonds are subject to the alternative minimum tax.

4. The state may exchange 25% of their MABs allocation for the Tax Credits. The value of the Tax Credit shall not exceed 20% of the estimated project costs or 50% of the total private investments in the qualified projects. The Tax Credit can finance the same type of projects as the MABs. The credit amount is 10% of the value of the MABs certificate per year over a period of ten years

Last Updated: June 23 2015

Article by Ashley N. Wicks

Butler Snow LLP