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Lawmakers, Bankers Discuss How to Ease Tax Laws for P3s.

WASHINGTON – Municipal finance leaders and a bipartisan group of lawmakers met Wednesday on Capitol Hill to discuss how tax laws might be eased so that more public-private arrangements could be used to finance public infrastructure projects.

The event, hosted by the Securities Industry and Financial Markets Association, included policymakers and industry executives with expertise in P3s. Some of the discussion focused on whether there should be more kinds of public infrastructure projects that can be financed with tax-exempt private-activity bonds and P3 arrangements.

At the roundtable discussion, several executives from investment banks provided information about P3s to members of Congress. They included Chris Hamel, the managing director and head of municipal finance for RBC Capital Markets; Stephen Howard, the director and head of infrastructure project finance for Barclays Capital; Howard Marsh, the managing director of municipal securities for Citigroup; and Michael Decker, a managing director and co-head of municipal securities for SIFMA.

Following the roundtable discussion, which was closed to the press, Decker told The Bond Buyer the roundtable was a "constructive discussion" with input both from industry officials and members of Congress.

"There seems to be a lot of interest from members of Congress here, who asked a lot of questions like, 'What can Congress do to encourage this type of financing?'" he said.

Legislators who attended the discussion included Reps. Steve Stivers, R-Ohio; Terri Sewell, D-Ala.; and Randy Hultgren, R-Ill., all of whom serve on the House Financial Services Committee.

Hultgren said afterward that infrastructure financing is a subject that "needs to be discussed," adding that is a broader issue than just maintaining the tax-exempt status of bonds. He said the timing of the discussion does not mean there is imminent legislation, but it does follow the bipartisan Municipal Finance Caucus he launched earlier this month that would protect the tax-exempt status of municipal debt.

"There are so many times where it has worked well and a few times where it hasn't," Hultgren said. "We have to figure out what we can do to build on [the P3s that worked well and] to make sure bad decisions aren't made that would harm something that effective."

In an election year where leading presidential candidates have called infrastructure "crumbling" and "decimated," Stivers cited the $3.98 billion plan to replace the 61-year-old Tappan Zee Bridge connecting Nyack and Tarrytown, N.Y., as an example of a successful P3 that saved $1.1 billion in construction costs and 18 months of construction time.

Stivers said, "The threat to municipal bonds and capping of the benefit of the tax exemption would make tax-free bonds partially taxable and therefore make infrastructure projects more expensive and harder to complete."

"We just need to expand opportunities for public-private partnerships to be a viable means of financing along with the regular municipal financing that comes from state and local governments," he said.

Decker said much of the discussion at the roundtable centered on incentivizing states to adopt Design-Build policies to a greater extent and to use private sources of capital for infrastructure projects. Design-Build policies allow a state or local government or an authority to enter into a contract with a private partner that takes on the responsibility for both the design and the construction of a project.

Though the tax code generally prohibits the use of tax-exempt bonds for certain projects when there is a more de minimis level of private financing, Decker said there are exceptions such as for airport projects, which can be financed with tax-exempt PABs.

For "social infrastructure" projects, including city halls, courthouses and public parks, tax-exempt financing cannot be used if there is more than a de minimis level of private participation in the project, a hurdle Decker needs to be addressed.

Under federal tax law, a project must be financed with private-activity bonds if more than 10% of it is used by a private party and more than 10% of the debt service is paid or secured by a private party. But PABs are not tax-exempt unless the projects they are financing fall into specific categories, one of which includes airports.

President Barack Obama has proposed eliminating barriers in the tax code to private use of tax-exempt bonds for public infrastructure projects.

"You can make a strong case that the tax code can be agnostic with regards to infrastructure projects when there is public access to the project and where there is local government oversight," he said.

The roundtable was held the same day as the Flint Water Advisory Task Force released its final report on the water crisis facing Flint, Mich., which it called a "story of government failure, intransigence, unpreparedness, delay, inaction, and environmental injustice."

Sewell, who represents both Birmingham and several rural communities in Alabama, said that many of the rural areas also face water and sewer issues. She said the U.S. Department of Agriculture helps with financing for these issues, calling them "the only game in town."

"It's not a capital problem. It's a funding problem," she said. "We need to figure out a better ways of trying to fund these infrastructure projects."

Going forward Decker said he hoped discussions with legislators will continue, especially before a new administration enters the White House in 2017.

"Our focus is just raising awareness with the issues," Decker said. "Like we did today, we just want to make sure policymakers in Washington understand the techniques being employed or can be employed for financing infrastructure in a broader array of investments and projects."

The Bond Buyer

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