

Bond Case Briefs

Municipal Finance Law Since 1971

Bill Would Create New \$5B Category of PABs for Government Buildings.

WASHINGTON – A bipartisan bill introduced in the House would allow state and local governments to issue up to \$5 billion in private activity bonds to finance the construction and upkeep of certain publicly owned buildings.

The Public Buildings Renewal Act (H.R. 5361), introduced by Rep. Mike Kelly, RPa., would create a new category of private activity bonds for governments to join with private parties to help finance schools, medical facilities, police stations and other social infrastructure.

The recently introduced bill, which has nine co-sponsors, would amend the federal tax code to provide another layer of tax-exempt financing that would encourage the use of public-private partnerships.

Section 142 of the federal tax code includes 15 categories of “qualified” PABs, one of which is qualified public educational facilities. Kelly’s legislation would add a 16th category for qualified government buildings.

Kelly, a member of the House Ways and Means Committee, said his legislation would help resolve an “ongoing infrastructure crisis” that exists in public schools.

Kelly’s bill defines qualified government buildings as an elementary or secondary school; public university buildings used for educational purposes; public libraries; courts; hospitals, health care facilities, laboratories and research buildings; public safety buildings including police and fire stations, medical facilities and jails; and government offices.

Tom Qualtere, a spokesman for Kelly, said the bonds would be exempt from state volume cap restrictions generally applied to PABS, and instead would be subject to a new, national cap of \$5 billion.

State and local governments would be required to submit a funding application to the Treasury Department that includes the amount requested; the governmental unit that will own the project; and a project description and timeline.

Governments would also be required to provide anticipated funding sources and uses of funds for the project. Entities would be required to issue bonds in the amount allocated by Treasury within two years after the allocation date. If they fail to do so, the unused portion of the allocation would be revoked.

The bill would exclude any retail food or beverage facilities or buildings used for recreation and entertainment, including private golf courses, country clubs, convention centers and sports arenas.

Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America, said the organization supports the proposed legislation because of the new financing

routes it could provide municipalities.

“BDA would be supportive of this effort as yet another tool to provide state and local governments additional flexibility to build and rebuild important infrastructure projects, coupled with the benefits of leveraging private expertise,” Giroux said. “It is important to remember that tax-exempt bonds have been the cornerstone by which local governments have been able to keep taxes and utility rates lower for ratepayers for over 100 years and it is critical that we maintain this important avenue for growth.”

Under current tax regulations, public entities often must choose between taxable P3 financing or a non-P3 structure using tax-exempt bonds. If the legislation were to be enacted, P3 deals could use tax-exempt financing, thus expanding municipalities’ ability to take advantage of the P3 structure for public building projects. Qualified PABs are also commonly used to fund transportation and public works projects.

Linda Schakel, a partner at Ballard Spahr in Washington, said there is a “fair amount” of privatization that currently exists in jail and correctional facilities as well as government offices, but is not sure if such private arrangements are common in public schools. She also supported Kelly’s bill, but said it was yet to be seen if the partnerships would be based on a lease or a management contract.

“I think it’s a great idea to get private parties to come in and do particularly renovations that are needed,” Schakel said.

Still, Schakel said some private entities may have hesitations about entering into these agreements because they would not receive depreciation on the government-owned facilities.

“It may narrow the number of private parties interested in participating in the program,” she said. “Or it may end up being mainly private parties want to enter into long-term management contracts.”

Kelly’s legislation was referred to the House Ways and Means Committee on May 26.

The Bond Buyer

By Evan Fallor

June 14, 2016