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Bill in Senate Would Boost Tribes' Ability to Issue Bonds.

WASHINGTON — A bill introduced in the Senate by Republicans would put Indian tribal governments more on a par with state and local governments for bond financings, giving them better access to capital to support infrastructure and local economic development.

The Indian Community Economic Enhancement Act of 2016 (S. 3234), introduced this summer by Sen. John Barrasso, R-Wyo., chairman of the Senate Committee on Indian Affairs, and Sen. John McCain, R-Ariz., would create an Indian Economic Development Fund to support the Bureau of Indian Affairs' loan guarantee and the Community Development Financial Institutions bond guarantee program for Indian tribal communities.

The Senate Committee on Indian Affairs is scheduled to hold a hearing on the bill on Wednesday.

"Accessing capital is paramount for economic development in tribal communities," Barrasso said. "This bill will break down existing barriers for growth, support loan and bond guarantee programs … and increase opportunities for tribal members."

In a joint release, the Senators said the legislation was based on input they had received from Indian tribes and businesses. The bill would amend several pieces of existing legislation, including: the Native American Business Development, Trade Promotion, and Tourism Act of 2000; the Native American Programs Act of 1974; the Indian Trader Act; and the Buy Indian Act. The Republican Senators said the bill would also spur tribally owned businesses by improving and expanding on these current laws.

"Many Indian reservations across my home state of Arizona and the western United States continue to struggle with high unemployment rates and few business opportunities," McCain said. "We must do more to change this."

Kathleen Nilles, a partner at Holland & Knight in Washington, said the bill is "trying to do a lot of different things," but added the effort to make the loan guarantee program more effective could be positive for tribal governments.

"One of the biggest problems for tribes in getting tax-exempt financing is just establishing to a regular lender their credit worthiness," Nilles said. "Loan guarantees are really good for struggling tribal governments. They can result in getting a loan versus not."

An area of the bill Nilles said struck her was a provision that states, "for purposes of financing and economic or community development, the essential governmental functions of an Indian tribe shall be considered to include any function that may be performed or financed by a state or unit of local government with general taxing authority."

Indian tribal governments have long called for a repeal of tax law restrictions that limit them to only issuing governmental bonds if the proceeds are used for "essential governmental functions" such as schools or roads. Unlike state and local governments, tribes cannot issue private activity bonds. The

vague nature and implicit reference to repealing the essential governmental function in the bill does raise additional questions, Nilles said.

“I’m somewhat skeptical that it would be effective since it overrides a tax code provision without even citing it,” Nilles said. “I’m wondering if it would really be that effective because it says for purposes of financing and economic or community development, yet doesn’t even mention tax-exempt financing.”

Barrasso and McCain’s bill, introduced on July 14 and referred to the Senate Committee on Indian Affairs, would establish an Indian Economic Development Fund that would allow Indian tribes to deposit funds beginning one year after the enactment of the measure.

Funding would be allocated beginning two years after the enactment of the act by the Secretary of the Treasury and administered through the Secretary of the Interior, according to the bill.

For each fiscal year, the Assistant Secretary for Indian Affairs would provide up to either $7.5 million or 40% of fund amounts in credit subsidies to the loan guarantee program of the Bureau of Indian Affairs under the Indian Financing Act of 1974.

No more than 5% of the fund can be used for administrative purposes each fiscal year. A reserve fund would also be created within the fund.

Nilles called the fund an “interesting” concept because of the access it allows tribal governments in depositing their own funds to an account.

“Tribes have gaming money, investment income on holdings or excess cash they could put into this fund and it could be used to support financing for other Indian tribes,” Nilles said. “It sounds like a really novel idea.”

In a statement put in the Congressional Record in July, Barrasso said remote locations and a lack of infrastructure are just two of the problems affecting the quality of life for tribal communities as well as the ability to build “strong sustainable economies.”

“Indian tribes could engage in more cohesive community development and infrastructure building,” Barrasso said. “Federal bureaucracy is diminished, thereby reducing the costs of economic development.”

The Barrasso bill follows the bipartisan Tribal Tax and Investment Reform Act of 2016 (H.R. 4943) introduced by Rep. Ron Kind, D-Wis., in April, which would remove the special status for tribal government and establish a volume cap for their tax-exempt bonds. That bill, which also would effectively place tribal governments more on par with state and local governments under the federal tax law, is currently before the House Education and the Workforce Committee.

Under The American Recovery and Reinvestment Act passed in 2009, Tribal Economic Development (TED) bonds were created to ease restrictions on tribes’ abilities to issue bonds.

Although TED bonds are not subject to the “essential governmental function” requirement, many tribes are hesitant to access them because they cannot be used for projects on trust land. The Kind bill would remove the location restriction that deters many tribes from utilizing TED bonds.

In August, the Internal Revenue Service published a notice saying the volume cap limit for TED bonds is $191.51 million and the amount of available cap is $957.54 million.

The Bond Buyer

By Evan Fallor

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