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The Moving Forward Act's Public Finance Provisions: Butler Snow

On June 22, 2020, members of the United States House of Representatives Committee on Transportation & Infrastructure released the details and full text of the [Moving Forward Act \(H.R. 2\)](#). The Moving Forward Act is proposed legislation that represents more than \$1.5 trillion of infrastructure investment and includes significant provisions affecting the public finance industry, including:

- Authorization of Qualified Infrastructure Bonds;
- Restoration of Tax-Exempt Advance Refunding Bonds;
- Increases to Annual State Volume Cap on Private Activity Bonds;
- Modification of Qualified Small Issue Bonds, Agricultural Bonds, and Exempt Facility Bonds;
- Restoration of Qualified Zone Academy Bonds and Authorization of Qualified School Infrastructure Bonds

This post summarizes the public finance provisions contained in the Moving Forward Act as released on June 22, 2020.

Qualified Infrastructure Bonds ("QIBs")

The Moving Forward Act authorizes QIBs, a new type of bond modeled after Build America Bonds that may be issued within thirty (30) days of being enacted.

Issuers of QIBs receive a tax credit equal to an applicable percentage of the interest the Issuer pays on the QIBs. The applicable percentage of the QIBs interest subsidy is phased as follows:

- 2020 through 2024 - 42%
- 2025 - 38%
- 2026 - 34%
- 2027 and thereafter - 30%

State and local governments may claim the above credit for QIBs whose interest would otherwise be eligible for tax-exempt status in the Internal Revenue Code of 1986, as amended (the "Code"), and the entirety of whose net proceeds are used for capital expenditures or the operation and maintenance of capital expenditures. If the credit is subject to sequestration, the credit amount will be grossed up to equal the applicable percentage of the interest payments.

Restoration of Tax-Exempt Advance Refunding Bonds

Tax-Exempt Advanced Refunding Bonds allow states, local governments, nonprofit organizations, and other eligible entities to refinance their existing tax-exempt debt at the lowest possible costs.

When interest rates drop, state and local governments often seek to refinance their outstanding debt. In some cases, previously-issued bonds have "call protections" that prevent the debt from

being paid off immediately. Tax-Exempt Advanced Refunding Bonds allow issuers to enjoy interest savings by issuing new bonds on a tax-exempt basis that are placed in escrow until the prior bonds' call protections expire.

Prior to 2017, Tax-Exempt Advanced Refunding Bonds were allowed under the Code and eligible issuers saved billions of dollars in financing costs using this financing tool. The Moving Forward Act would restore Tax-Exempt Advanced Refunding Bonds within thirty (30) days of being enacted.

Increases to Annual State Volume Cap on Private Activity Bonds

Private Activity Bonds are issued on a tax-exempt basis under Subpart A of the Code by certain non-governmental entities (including but not limited to nonprofit corporations) and for specific purposes described in the Code). Annually, each state is allotted a population-based allocation of volume cap for the issuance of Private Activity Bonds in that respective state under Section 146 of the Code.

The Moving Forward Act revises Section 146 of the Code to increase the annual state volume cap on Private Activity Bonds from the greater of \$75 per capita or \$225,000,000 to the greater of \$135 per capita or \$402,220,000.

Modification of Qualified Small Issuer Bonds, Agricultural Bonds, and Exempt Facility Bonds

Qualified Small Issuer Bonds

Present law allows for a deduction of tax-exempt interest received by holders (including financial institutions) of certain tax-exempt obligations issued by qualified small issuers, defined (in part) as issuers that are not reasonably expected to issue more than \$10 million in tax-exempt obligations during a calendar year.

The Moving Forward Act increases the \$10 million limit to \$30 million and indexes the limit to be revised annually for inflation. In addition, qualified 501(c)(3) bonds as tax-exempt obligations for purposes of the small issuer exception, and makes permanent certain rules related to qualified financings.

Agricultural Bonds

The Moving Forward Act increases the limitation on the exemption of the use of private activity bond proceeds for first-time farmers from \$450,000 to \$552,500, indexed annually for inflation.

Exempt Facility Bonds

Exempt Facility Bonds are issued under Section 142 of the Code where ninety-five percent (95%) or more of the net proceeds are used for certain eligible uses (such as airports, qualified residential rental facilities, and several others).

The Moving Forward Act makes two primary changes related to Exempt Facility Bonds:

- First, a new category of eligible use is added for zero-emission vehicle infrastructure, which is defined as any depreciable property (not including a building and its structural components) used to charge or fuel zero-emissions vehicles.
- Second, Section 146 of the Code is revised so that wastewater infrastructure is no longer be subject to state volume cap limits.

Restoration of Qualified Zone Academy Bonds and Authorization of Qualified School Infrastructure Bonds

Restoration of Qualified Zone Academy Bonds (“QZABs”)

QZABs are a type of tax credit bond that were authorized under Sections 54A, 54E, and 6431 of the Code. Prior to repeal in 2017, QZABs were allowed to be issued by state and local governments within a qualified zone academy to rehabilitate or repair public school facilities; to provide equipment for use; to develop course materials; and to train teachers and other school personnel. QZABs were not allowed for new construction. QZABs were subject to volume cap allocations and required that the issuer must have received written commitments from private entities having a present value of not less than 10% of the proceeds of the bonds.

The Moving Forward Act proposes to restore the QZABs program and make several changes to the QZABs program that would:

- Allow proceeds from QZABs to be used for construction and retrofitting of public school facilities;
- Permanently increase the national limitation for QZABs from \$400 million annually to \$1.4 billion annually; and
- Remove the 10% private business contribution requirement for local educational agencies to participate in the QZAB program.

Authorization of Qualified School Infrastructure Bonds (“QSIBs”)

The Moving Forward Act would authorize the issuance of \$30 billion of QSIBs over three years (\$10 billion in fiscal years 2020, 2021, and 2022). QSIBs would provide a 100% tax credit on the interest of any QSIB, which may be issued as a tax credit to the bondholder or a direct payment to the bond issuer. QSIB allocation would be based on Title I education formulas in each state. Additionally, states would be allowed to distribute up to ten percent (10%) of their total QSIB allocation to expand broadband access through existing public programs or public-private partnerships.

Other Development Finance Provisions in the Moving Forward Act

The Moving Forward Act contains several other important development finance provisions, including:

- Permanently extending and expanding New Market Tax Credits (please see [this post](#) by Butler Snow attorneys Jet Hollingsworth and Sam Noblin for additional details);
- Temporarily increasing Historic Tax Credits to 30% from 2020 to 2024;
- Establishing a permanent minimum 4% Low Income Housing Tax Credit (“LIHTC”) and increasing the annual 9% LIHTC allocation amount;
- Creating a Neighborhood Investment Tax Credit to rehabilitate vacant homes and build new affordable housing;
- Delaying the phasedown of the Production Tax Credit and Investment Tax Credit; and
- Appropriating billions of dollars for broadband, water, hospitals, housing, childcare, and other projects.

Next Steps and Other Materials

- The Moving Forward Act is expected to be brought to a formal committee vote next week.
- The full text of the Moving Forward Act can be found [here](#).
- A section by section summary of the Moving Forward Act can be found [here](#).
- A summary released by the United States House of Representatives Committee on Transportation & Infrastructure can be found [here](#).

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Butler Snow LLP

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