Recent Bipartisan Actions to Restore Tax-Exempt Advance Refundings and Authorize American Infrastructure Bonds: Butler Snow

The “Lifting Our Communities through Advance Liquidity for Infrastructure (LOCAL Infrastructure) Act” (the “***LOCAL Infrastructure Act***”) and the “American Infrastructure Bonds Act of 2020” (the “***AIBs Act***”) were recently introduced in the Senate in a bipartisan effort to assist local governments as they respond to the COVID-19 pandemic. If enacted, the LOCAL Infrastructure Act would restore tax-exempt advance refundings for municipal bonds and the AIBs Act would create a new class of “direct-pay” taxable municipal bonds. This post summarizes both items as introduced.

Advance Refunding Bonds and The LOCAL Infrastructure Act

When interest rates decrease, issuers often seek to refinance their outstanding debt. In some cases, previously-issued debt has call protections that prevent the debt from being paid off immediately until such call protections expire. Advance Refunding Bonds allow states, local governments, and other eligible issuers to refinance their existing debt at the lowest possible costs when market conditions favor refinancing. Under this structure, the proceeds of the Advance Refunding Bonds are used to purchase certain types of United States Treasury Securities that are deposited into a restricted escrow account until the prior bonds’ call protections expire and the previously-issued debt is redeemed.

Prior to 2017, Advance Refunding Bonds were allowed to be issued on a tax-exempt basis under the Internal Revenue Code and saved states, local governments, and other eligible issuers billions of dollars in financing costs. The LOCAL Infrastructure Act is a two-page piece of legislation that reinstates the ability of states, local governments, and other eligible issuers to issue Advanced Refunding Bonds on a tax-exempt basis.

United States Senators Roger Wicker, R-(MS), Debbie Stabenow, D-(MI), Shelley Moore Capito, R-(WV), Michael Bennet, D-(CO), John Barrasso, R-(WY), Bob Menendez, D-(NJ), Jerry Moran, R-(KS), and Tom Carper, D-(DE) introduced the LOCAL Infrastructure Act (Senate Bill 4129) on Wednesday, July 1, 2020. To read the full text of the bill, click here.

The LOCAL Infrastructure Act has received support from several national organizations, including The National League of Cities, United States Conference of Mayors, National Association of Counties, National Conference of State Legislatures, American Hospital Association, American Public Power Association, American Society of Civil Engineers, American Public Works Association, National School Boards Association, Government Finance Officers Association, the National Association of Bond Lawyers, the Securities Industry and Financial Markets Association (SIFMA), and the National Association of Towns and Townships.

American Infrastructure Bonds and the AIBs Act

On Wednesday, July 8, 2020, United States Senators Roger Wicker R-(MS) and Michael Bennet D-

(CO) introduced the AIBs Act (Senate Bill 4203). The AIBs Act proposes the creation of a new class of "direct-pay" taxable municipal bonds known as American Infrastructure Bonds. To read the full text of the AIBs Act, click here.

As proposed, American Infrastructure Bonds would be "direct-pay" taxable bonds where the United States Treasury Department pays a percentage of the interest due directly to a state or local government issuer of American Infrastructure Bonds to offset the difference in the costs of borrowing on a taxable basis. All direct payments under the program would be exempt from sequestration. The proposed amounts of the direct payments would be as follows:

- For American Infrastructure Bonds issued ***prior to*** January 1, 2026, the United States Treasury Department would make direct payments to the issuer at 35% of interest payable on the bonds
- For American Infrastructure Bonds issued ***after*** December 31, 2025, the United States Treasury Department would make direct payments to the issuer at 28% of interest payable on the Bonds (estimated to be a revenue-neutral rate).

American Infrastructure Bonds would allow states and local governments to access a much larger universe of taxable bond investors that want to invest in infrastructure (including pension funds) that are not eligible to receive the tax advantages associated with traditional tax-exempt municipal debt. Further, American Infrastructure Bonds would be available to ***all*** state and local government issuers that want to issue American Infrastructure Bonds and that can find a bond buyer in the taxable bond market. There would be no allocation among the states and no application to a federal agency would need to be made.

As proposed, American Infrastructure Bonds could be issued for any public expenditures that would otherwise be eligible for financing on a tax-exempt basis, including roads, bridges, tunnels, canals, ports, water systems, sewage treatment facilities, storm water management systems, pipelines, utility system expansions and environmental and safety upgrades, long-term natural gas supplies for municipal utility gas distribution systems and electric generation facilities, long-term supplies of electricity for municipal electric utility systems including renewable energy projects, broadband and other telecommunications systems, rail facilities, subways, and other purposes.

The AIBs Act has also received support from several groups, including the National League of Cities, the National Association of Counties, the Government Finance Officers Association, the American Public Gas Association, the National Association of Bond Lawyers, the Bond Dealers of America, the American Society of Civil Engineers, the American Council on Education, the Securities Industry and Financial Markets Association, and the American Planning Association.

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