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Whiteford Client Alert: Financing the Data Center Boom: Public Finance Tools and Traps for Issuers

The rapid expansion of data centers is reshaping demand for public infrastructure. Hyperscale and AI-driven facilities require reliable power, along with water for cooling, upgraded roads and expanded fiber. States and localities competing to attract these projects are discovering that the electricity grid buildout accompanying them may rival the data centers themselves in cost. For public finance professionals, that means grappling with private business use limits on tax-exempt bonds and the public infrastructure needs these projects generate.

Who Owns and Uses the Asset?

Any tax-exempt financing analysis starts with private business use. Data centers are almost always privately owned and operated commercial facilities. That profile generally disqualifies the facility itself from governmental tax-exempt bonds, which impose strict limits on private business use and private security or payment. Trying to force a private data center into a governmental bond structure invites taxability and reissuance risk that few issuers should accept.

The publicly owned infrastructure surrounding these projects, however, often tells a different story. Electrical transmission and distribution upgrades, water and wastewater capacity, and public roadways, when owned and operated by a governmental unit or public power utility may remain eligible for tax-exempt general obligation bond or revenue bond financing. The analysis turns on ownership, control and the allocation of output and payments, not on the fact that a data center happens to be the primary load.

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