Two Bills Introduced in the U.S. Senate to Aid Bond Issuers

By Eugene G. Bernardo II and David M. DiSegna

Two bills have recently been introduced in the U.S. Senate to help state and local bond issuers deal with the financial hardships caused by COVID-19. The Lifting Our Communities through Advance Liquidity for Infrastructure Act (S.4129) (the "LOCAL Infrastructure Act") would reinstate tax-exempt advance refunding bonds, which were eliminated by the Tax Cuts and Jobs Act of 2017 (the "TCJA"). A second bill, the American Infrastructure Bonds Act of 2020 (S.4203), would allow state and local governments to issue direct pay taxable bonds similar to the Build America Bonds ("BABs") that Congress authorized following the 2008 financial crisis.

LOCAL Infrastructure Act (S.4129)

The LOCAL Infrastructure Act would amend Section 149(d) of the Internal Revenue Code to once again permit advance refunding bonds to be issued on a tax-exempt basis. Advance refunding bonds are bonds which are issued more than 90 days before the redemption of the bonds which they refund. Having the ability to issue advance refunding bonds on a tax-exempt basis allows issuers to take advantage of low interest rates and refinance debt prior to its stated redemption date. This increases the total amount of debt that can be refinanced to take advantage of lower, tax-exempt interest rates, thereby increasing the potential debt service savings for bond issuers. However, the TCJA eliminated the ability for state and local governments to issue advance refunding bonds on a tax-exempt basis.

While the short, two-page LOCAL Infrastructure Act would simply reverse the effects of the TCJA with respect to advance refunding bonds, the implications of the bill could be significant. If the bill is enacted, state and local governments would again be able to take advantage of historically low interest rates on a greater amount of their outstanding bonds.

American Infrastructure Bonds Act (S.4203)

The American Infrastructure Bonds Act would create a new type of government bond called American Infrastructure Bonds or AIBs. AIBs would be largely modeled after direct pay BABs that were created in the wake of the 2008 financial crisis, with some key differences. AIBs would allow state and local governments to issue taxable bonds for which the Treasury Department would make direct payments to the issuer for 35% of the interest payments on the bonds. This figure would be reduced to 28% for AIBs issued after December 31, 2025.

Unlike with BABs, refunding bonds and certain private activity bonds could be issued as AIBs and be eligible for the direct payments from the Treasury. Additionally, direct payments from the Treasury for interest on AIBs would be explicitly exempt from sequestration. AIBs, like BABs, however, could not be issued with more than a de minimis amount of premium over the stated principal amount of the bonds.

Both S.4129 and S.4203 have been referred to the Senate Committee on Finance.

Please contact Eugene G. Bernardo II or David M. DiSegna at Partridge Snow & Hahn LLP if you have questions about the LOCAL Infrastructure Act or the American Infrastructure Bonds Act.

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