Digesting the Moving Forward Act's expansive public finance provisions

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On June 26, 2020, we published an article discussing and summarizing the general provisions of the Moving Forward Act. The newly proposed legislation was introduced on June 22, 2020, by the House of Representatives Committee on Transportation and Infrastructure and includes $1.5 trillion to overhaul and rebuild American infrastructure. In addition to providing funding for the improvement of America's roads, bridges, transit systems and renewable energy initiatives, the Moving Forward Act contains several new and expanded public finance provisions.

Qualified Infrastructure Bonds

The Moving Forward Act authorizes new Qualified Infrastructure Bonds (QIBs), which provide a tax credit equal to an applicable percentage of the interest, providing direct financing support for infrastructure investments made by state and local governments. QIBs are based on Build America Bonds which were initially enacted by the 2009 American Recovery Reinvestment Act. The percentage of the credit for interest paid on a QIB is based upon the year the bonds are issued:

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

State and local governments may claim the credit for QIBs whose interest would be eligible for tax-exempt status under the Internal Revenue Code (Code) and whose net proceeds are used for capital expenditures or the operation and maintenance of capital expenditures.

Tax-Exempt Advance Refunding Bonds

Prior to its repeal in the 2017 Tax Cuts and Jobs Act, interest on advance refunding bonds was exempt from taxation. Advance Refunding Bonds allow state and local governments to hold the proceeds of a refunding issue for longer than 90 days before paying off a refunded issue, which allows state and municipal governments to take advantage of lower interest rates to refinance long-term debt obligations. The Moving Forward Act would again allow interest on advance refunding bonds issued by state and local governments to be tax exempt.

Qualified Small Issuer Definition

The definition of Qualified Small Issuer is being proposed to be revised to increase the $10 million limit to $30 million (indexed annually for inflation).

Private Activity Bonds

The Code allows Private Activity Bonds to be issued on a tax-exempt basis by state or local governments for qualified projects. Qualified projects most commonly include projects of a private user that provide some type of public benefit, such as funding and refinancing student loans, airports, private universities, hospitals or rental housing. Currently, the Code provides for an annual population-based allocation of volume cap for the issuance of Private Activity Bonds in each state. However, the Moving Forward Act would revise the Code to increase the annual state volume cap on Private Activity Bonds from the greater of $75 per capital or $225,000,000 to the greater of $135 per capita or $402,220,000.

Qualified Small Issue Bonds

The Moving Forward Act seeks to expand the definition of eligible manufacturing facilities eligible for financing through Qualified Small Issue Bonds. Under the new legislation, facilities used for the creation or production of intangible property and facilities related and subordinate to facilities used for the manufacturing, creation, or productions of tangible or intangible property would be eligible. Additionally, the new provisions would increase the aggregate cap for prior issues from $10 million to $30 million.

Exempt Facility Bonds

Under the Code, Exempt Facility Bonds include any bonds where at least 95 percent of the net proceeds are used to finance certain types of facilities, including but not limited to, airports, docks, mass commuting facilities, sewage facilities, qualified residential rental facilities, and qualified public educational facilities. The new provision in the Moving Forward Act expands the definition of eligible facilities to include zero-emission vehicle infrastructure. Zero-emission vehicle infrastructure is defined as any depreciable property (not including a building and its structural components) used to charge or fuel zero-emissions vehicles. In addition, the new bill revises the Code so that wastewater infrastructure is no longer subject to state volume cap limits.

Qualified Zone Academy Bonds

Qualified Zone Academy Bonds (QZABs) were initially authorized under the Code before being repealed in 2017 and allowed state and local governments within a qualified zone to issue bonds to rehabilitate or repair public school facilities, provide equipment for use, develop course materials, and train teachers and other school personnel. The Moving Forward Act would reinstate QZABs, allow QZAB proceeds to be used for new construction or retrofitting public school facilities, permanently increase the national limitation of QZABs from $400 million annually to $1.4 billion annually, and remove the 10 percent private business contribution requirement for local educational agencies to participate in the QZAB program.

School Infrastructure Bonds

The new legislation would designate a total national bond limitation of $30 billion ($10 billion each for fiscal year 2020, fiscal year 2021, and fiscal year 2022) for Qualified School Infrastructure Bonds (QSIBs). The federal government would be required to provide a 100 percent tax credit on the interest of any QSIB. In addition, states would be authorized to distribute up to 10 percent of the total bond limitation to enable local educational agencies to leverage existing public programs or public-private partnerships to expand access to high-speed broadband for digital learning.

Broadband Tax Credit

The Moving Forward Act creates a 30 percent tax credit for state, local and tribal governments for the operation and maintenance costs of government owned broadband systems. The broadband service must be able to be downloaded at a minimum of 25 Mbps and an upload speed of at least 3Mbps. Expenses for purposes of the new credit are capped at $400 per newly subscribed household living within a low-income community. The credit phases down to 26 percent in 2026, 24 percent in 2027, and expires in 2028.

Child Care Infrastructure Grants

This provision seeks to allocate $10 billion from 2020 through 2024 to finance grants to improve child care infrastructure, including constructing, renovating, and improving facilities. Funding would be allocated to areas of high need, based on a needs assessment, and in a way that increases availability of quality child care for poor children, young children, and children of essential workers. The funds would also be available to providers to assist in complying with new public health rules and remaining open. State, tribal and territorial grants would be capped at $35 million per year and three percent of funding would be reserved for Indian tribes and U.S. territories.

New Markets Tax Credit

The New Market Tax Credit program was initially authorized in 2000 to encourage investment and economic growth in low-income neighborhoods and rural communities in order to grow the economy and create jobs. The program provides private investors with a federal tax credit for qualifying investments made in economically distressed neighborhoods throughout the country. Under the Moving Forward Act, the New Markets Tax Credit program would not sunset in 2019 and would become a permanent program. Further, an additional $500 million would be allocated in 2019 (increasing the total allocation from $3.5 billion to $4.0 billion), $7 billion would be allocated in 2020, and $6 billion would be allocated in 2021. Finally, the allocation amount for 2022 and all years thereafter would be set at $5 billion.

Rehabilitation Tax Credit (HTC)

The current Rehabilitation Tax Credit offers an incentive to owners to encourage the renovation and restoration of old or historic buildings. In order to qualify for the credit, the property must be substantially rehabilitated and rehabilitation expenditures must exceed the greater of the adjusted basis of the building and its structural components or $5,000. The Moving Forward Act seeks to expand upon and change several requirements to qualify for the Rehabilitation Tax Credit, including:

- Increases the historic rehabilitation tax credit percentage from 20 percent to 30 percent for 2020 through 2024. The credit would phase down to 26 percent in 2025, 23 percent in 2026 and return to 20 percent in 2027 and thereafter.
- Permanently increases the historic rehabilitation tax credit percentage from 20 percent to 30 percent for certain smaller projects to ensure rural and non-urban areas have a better ability to take advantage of the credit.
- Changes the threshold to qualify for use of the historic rehabilitation tax credit by reducing the rehabilitation investment from 100 percent to 50 percent of the adjusted basis.
- Temporarily extends the period for completing rehabilitation by twelve months to ensure that projects impacted by the pandemic do not fail to qualify for the credit.
- Amends disqualified lease rules in order to allow non-profits and other tax-exempt entities to access the historic rehabilitation tax credit.

The Moving Forward Act contains numerous public finance provisions, which if passed, could prove to be extremely beneficial to state and local governments. McDonald Hopkins has a dedicated public finance team that has the experience and knowledge to help navigate and leverage these new provisions to be most beneficial. If you need assistance or have any questions with respect to the Moving Forward Act or how its provisions could affect you, please contact one of the attorneys listed below.

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