Published on *The National Law Review* https://natlawreview.com

# New Legislation Would Expand the Use of Municipal Bonds

Article By:

R. Neal Martin

Charles A. Samuels

Matthew O. Page

Christie L. Martin

Meghan B. Burke

Poonam Patidar

## Local Infrastructure Financing Tools (LIFT) Act

Legislation reintroduced by US Rep. Terri Sewell (D-AL) has the potential to significantly expand the use of tax-exempt municipal bonds while creating a new “direct pay” bond. The Local Infrastructure Financing Tools (LIFT) Act calls for policy changes and types of bonds that could be used by governments and nonprofits nationwide for a range of public infrastructure and capital improvement projects, such as libraries, schools (including nonprofit higher education institutions), roads and road improvements, water systems, mass transit, affordable housing, public and nonprofit hospitals, and other government-owned facilities.

## Expanding the Use of Bonds

The LIFT Act was first introduced by Rep. Sewell, a senior member of the US House Committee on Ways and Means and a former bond lawyer, in the previous Congress. The reintroduced legislation would:

- **Restore the ability to advance refund municipal bonds.**
- **Enhance small borrower rules for bank qualified bonds.**
- **Create a new taxable direct pay bond known as the American Infrastructure Bond.**

Advance refunding of tax-exempt municipal bonds (refinancing more than 90 days prior to the call date of the bonds being refunded) was eliminated in the 2017 Tax Cuts and Jobs Act. Restoration of advance refunding would allow states and localities to refinance existing debt with the greatest flexibility, resulting in substantial reductions in borrowing costs.

Enhancement of the small borrower rules for bank qualified bonds would benefit many small nonprofit health and educational institutions and other small charities, as well as many small local governments. Specifically, the LIFT Act increases the maximum bond issuance of eligible bonds to $30 million from the current level of $10 million, which was set in 1986 and is no longer adequate in the current economy. In the case of nonprofit conduit financings, the cap would be expanded to apply to the borrower-beneficiary rather than to the conduit issuer.

The proposed new American Infrastructure Bonds are like the previous Build America Bonds, which were briefly available in 2009 – 2010. The new direct pay bonds proposed by the LIFT Act would decrease borrowing costs for governments by allowing the government borrower to receive a direct payment from the federal government to cover a percentage of the interest costs associated with the bond issuance. Taxable bonds are thought to have a broader investor base than tax-exempt bonds, which can be beneficial to government issuers.

## Next Steps

The LIFT Act will be referred to the House Committee on Ways and Means, which has jurisdiction over all matters related to tax policy. Advocates of the changes proposed by the LIFT Act will be working to identify a potential pathway for consideration of the bill in the remaining months of the current 118th Congress. Given the increasingly limited number of legislative days and the ramping up of the election season, advocates will also use the introduction of the bill to build support for tax-exempt bonds in the 119th Congress when much of the 2017 Tax Cuts and Jobs Act will sunset, creating an opportunity for a major tax package to advance.



National Law Review, Volume XIV, Number 136