ML STRATEGIES

New Legislation Would Expand the Use of Municipal Bonds

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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.

Our Work in Public Finance & Tax-Exempt and Taxable Municipal Bonds

The **Federal Government Relations team at ML Strategies**, including Chuck Samuels and Neal Martin, has been working to build support on Capitol Hill for advance refunding and small borrowers on behalf of our client the National Association of Health & Educational Facilities Finance Authorities (NAHEFFA), which is made up of 41 state finance authorities from 35 states that focus on conduit financing for nonprofit health care and higher-ed entities.

“The advance refunding and small borrower policy changes in the LIFT Act have the potential to make a real and tangible difference in communities across the nation and have our wholehearted support,” says Chuck Samuels, a member of the Mintz law firm and long-time Washington advocate for NAHEFFA at ML Strategies, a Mintz subsidiary.

The **Public Finance Practice at Mintz**, which includes **recently appointed Chair Matt Page**, **Christie Martin**, **Meghan Burke**, **Poonam Patidar**, and others, has a national practice working with governmental and nonprofit entities of all sizes to address their capital financing needs through the issuance of tax-exempt and taxable bonds, with investment banks and other financial institutions who underwrite or purchase such bonds, and with bond trustees and bondholders. Mintz is involved in financings supporting a wide array of sectors, including housing, transportation, education, and utility infrastructure. Mintz enthusiastically supports the LIFT Act's reintroduction of advance refunding and its update to the bank qualification limits, which would restore crucial supports to local governments and nonprofits nationwide.

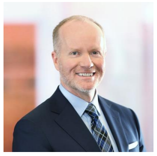
Next Steps

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.

How We Can Help

If your organization is interested in learning more about the work of ML Strategies and Mintz on issues related to public finance, including tax-exempt and taxable municipal bonds, please reach out. We would welcome the opportunity to start a discussion with you!

Authors



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R. Neal Martin is a Senior Director of Government Relations at ML Strategies. He focuses on transportation, infrastructure, clean energy, trade, and federal appropriations, leveraging his many years of experience in government and government relations.

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