Remove Private Activity Bond Volume Cap on Water Projects

ISSUE

Aging and deteriorating public water systems threaten economic vitality and public health; communities nationwide are faced with massive fiscal challenges to replace critical water/wastewater infrastructure. Removing water projects from the annual volume cap to private activity bonds (PABs) is one way to offer local governments tax-exempt financing to meet an essential public need. Currently, the volume cap limits the amount of tax-exempt PABs that may be issued annually in a state.

- According to the US EPA, a total of $684 billion is needed to repair and, when necessary, replace drinking water and wastewater treatment systems across the country. The private sector plays a vital role in addressing these needs.

- A PAB is an effective financing tool offered by the federal government which provides for long-term, capital-intensive infrastructure projects that meet a public need. Often this is used in public-private partnership (P3) financing.

- PABs spur capital investment in public-purpose projects during a time when government budgets are severely constrained. The PAB and partnership approach (P3) make infrastructure repair and construction more affordable for municipalities and ultimately for customers, as P3s spread risk and encourage innovation.

- Airport, high-speed rail, and solid waste disposal industries are exempt from existing PAB volume caps, which provides these types of projects with valuable financing flexibility.

- Historically, most of the tax-exempt funding has been allocated to projects that do not require a lot of lead time to implement, such as housing and education loans.

    - Water and wastewater projects are multi-year, and due to the lag time between project planning to actually requesting the PABs from the state, the volume cap can hinder P3 water projects due to uncertainty of their availability at the end of a multi-year project schedule. This uncertainty makes water systems less likely to plan projects that rely on PAB financing, and therefore only a small percentage of PABs are issued to water and wastewater projects.

POLICY RECOMMENDATION

Amend Internal Revenue Code (26 USC 146) to remove private activity bonds used for public-purpose water and wastewater facilities from the annual volume cap requirement. Removing this volume cap will increase private investment to help communities meet their infrastructure needs.

POLICY BENEFITS

- Generates capital investment and tax revenue at all government levels
  - $5-6 billion annually in private capital can likely be generated, allowing local communities to leverage private capital markets in combination with other finance mechanisms.
    - ➢ would generate up to $50 billion in private investment in a starving market over the next 10 years the federal government;
    - ➢ would yield $412 million in state and local tax revenue, and
    - ➢ would have a nominal cost to the Federal government (the most recent budget score developed by the Joint Committee on Taxation stated a $354 million cost over 10 years) – while at the same time infusing up to $50 billion in additional private sector investment and supporting more than 142,500 jobs.
- Low cost to local governments - ensures lower water rates for customers
  - The lower cost of debt is passed through to the customer by state public utility commissions and other governing bodies.
  - Reduces local government's project management burdens, and make multi-year projects more feasible.
  - Prevents significant costs associated with deferred maintenance, repair and replacement.
    - ➢ Broken and leaking pipes result in a loss of nearly two trillion gallons of drinking water/year at an annual cost of $2.6 billion.

LEGISLATIVE HISTORY

Legislation to remove water and wastewater infrastructure from under the state volume cap on PABs has had broad support both on and off Capitol Hill for several Congresses. The Sustainable Water Infrastructure Investment Act of 2011 (HR 1802/S 939) received the most legislative traction and bipartisan support in 2012 when it was passed in the Senate after the Senate Finance Committee added it to the highway bill. Though, the provision was cut during the conference process. Interest in this issue remains and legislation has been reintroduced in the 113th and in the current Congress as HR 499.

- **Supporters and Stakeholders**
  Primary Sponsors: Senators Robert Menendez (D-NJ), Mike Crapo (R-ID), Rep. Bill Pascrell (D-NJ), Rep. Geoff Davis (R-KY)—now retired—John Duncan (R-TN). Dozens of groups support the legislation.