

PUBLIC FINANCE BULLETIN

HIRE Act Provisions to Stimulate Municipal Bonds

On March 18, 2010, President Barack Obama signed into law the \$17.6 Billion jobs bill, known as the Hiring Incentives to Restore Employment Act (“HIRE Act”), which, among other things, allows issuers of certain tax credit bonds to receive direct subsidy payments, not unlike those already available to issuers of Build America Bonds (BAB’s).

This bulletin highlights some important Hire Act provisions that will affect our clients and friends. It is not comprehensive, nor does it try to address all the subjects. However, issues pertaining to the structuring and issuance of tax exempt and taxable municipal bonds are summarized below.

In General

On February 17, 2009 the American Recovery and Reinvestment Act of 2009 (commonly referred to as the Stimulus Act) was enacted. The Stimulus Act created a new section

of the Internal Revenue Code (“Code”) that governs BAB’s, a new category of hybrid tax credit obligations. Under the Stimulus Act, municipal agencies are entitled to issue taxable bonds and either (i) allow their bondholders to receive a federal income tax credit (“Tax Credit Bonds”) or (ii) elect to receive a payment themselves from the federal government (“Direct Pay Bonds”).

Direct Pay Bonds are a form of taxable governmental bond for which an issuer elects to receive a direct payment from the federal government equal to a certain percent (35% for BAB’s) of each interest payment on the bonds.

Direct Pay BAB’s have proven to be one of the most successful programs under the Stimulus Act, largely due to the benefit derived from the direct (35% for BAB’s) subsidy. Conversely, Tax Credit Bonds have experienced far less success due to their lack of demand by potential investors for the Tax Credits.

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Barack Obama

Presidential Support

During a bill signing ceremony in the Rose Garden at the White House, President Barack Obama said “we’ll reform municipal bonds to encourage job creation by expanding investment in schools and clean energy projects. Say a town wants to put people to work rebuilding a crumbling elementary school or putting up wind turbines. With this law, we’ll make it easier for them to raise the money they need to do what they want to do by using a model that we’ve called Build America Bonds -- one of the most successful programs in the Recovery Act. We’ll give Americans a better chance to invest in the future of their communities and of the country.”

HIRE Act Changes

Under the new law of the Hire Act, municipal issuers of (i) Qualified School Construction Bonds (“QSCBs”), (ii) Qualified Zone Academy Bonds (“QZABs”), (iii) new Clean Renewable Energy Bonds (“CREBs”), and (iv) Qualified Energy Conservation Bonds (“QECCBs”) may now elect to be issued as Direct Pay Bonds instead of the previously mandated, Tax Credit Bonds.

For QSCBs and QZABs, the federal payments are 100 percent of the lesser of the interest payments on the bonds or the otherwise available tax credits. For CREBs and QECCBs, the

federal payments are 70 percent of the lesser of the interest payments on the bonds or the otherwise available tax credits.

Generally speaking, the proceeds of each type of bond are available to be used as follows:

QSCB’s

The proceeds of QSCB’s are used for the construction, rehabilitation or repair of a public school facility; or for the acquisition of land on which a public school facility will be located; or for the acquisition of equipment to be used in the portions of the public school facility being financed with QSCB proceeds.

QZAB’s

The proceeds of QZAB’s are used for rehabilitating or repairing a public school facility in which a “qualified zone academy” is established, providing equipment for use at the academy, developing course materials for education to be provided at the academy, and training teachers and other school personnel in the academy. QZAB’s also require that certain private contributions be raised.

CREB’s

The proceeds of QREB’s are to be used for a qualified renewable energy production facility owned by a public utility, governmental body or cooperative electric company.

QECCB’s

The proceeds of QECCB’s are generally used for: (i) capital expenditures incurred to reduce energy consumption in publicly owned buildings by at least 20 percent, to implement green community programs, for rural development involving the production of electricity from renewable energy resources or for any qualified energy production facility; (ii) research expenditures to support the development of alternative fuels or technologies to reduce energy use in buildings; (iii) mass commuting facilities and related facilities that reduce the consumption of energy including expenditures to reduce pollution from vehicles used for mass commuting; (iv) demonstration projects designed to promote the commercialization of green building technology, conversion of agricultural waste into energy, advanced battery manufacturing technologies, technologies to reduce peak use of electricity or technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity; or (v) public education campaigns to promote energy efficiency.