

Municipal & Public Entities and Public Finance Law Legal Alert: New Bond Provisions Under the Bipartisan Infrastructure Act

Infrastructure Investment and Jobs Act (H.R. 3684) (the “Infrastructure Act”) signed by President Biden on November 15, 2021, contains three amendments to the Internal Revenue Code that expand private activity bonds (“PABs”). These provisions include two new categories of PABs, which could significantly assist rural communities and efforts against climate change.

New Bond Provisions

Two new types of PABs were created by the Infrastructure Act: “Qualified Broadband Projects” and “Carbon Dioxide Capture Facilities.”

“Qualified broadband projects” are intended to bring broadband service to rural areas where at least 50% of the residential households do not have access to fixed service, as well as projects designed to provide higher speed broadband services in areas where no service is provided or the current service falls below certain minimum requirements. Privately owned qualified broadband projects bonds will be subject to the volume cap, but 75% and government-owned broadband projects will not be subject to volume cap. This amendment will go into effect in 2022 and apply to all bonds issued after Dec. 31, 2021.

“Qualified carbon dioxide capture facilities,” are either stand-alone facilities that capture carbon dioxide from ambient air, or equipment installed at industrial facilities that emit carbon dioxide as a result of their operations. This technology is currently viable, but has been commercially questionable, and the hope is that access to low-cost financing will make investment more attractive. Qualified carbon dioxide capture facilities will also be 75% exempt from volume cap. This amendment will likewise go into effect in 2022 and apply to all bonds issued after Dec. 31, 2021.

Increase for Highway and Freight Projects

In addition, the Infrastructure Act increases the nationwide volume cap for qualified highway or surface freight transportation facilities bonds from \$15 billion to \$30 billion.

To be clear, the above provisions allow for both governmental and private financing opportunities immediately after January 1, 2022. Local governments and private parties considering these projects would be wise to consider tax-exempt debt for these purposes.

If you have any questions on these provisions or any other issues related to [public finance](#), please contact one of our experienced attorneys.
