The Move America Act of 2015

Senators Ron Wyden (D-OR) and John Hoeven (R-ND)

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<u>Section-by-Section Summary</u>

Sec. 2 – Move America Bonds

Current Law:

Under current law, if more than 10 percent of the proceeds of a bond are used for a private business use, or if more than 10 percent of the payments on the principal and interest of the proceeds are paid or secured by payments from private businesses, the bonds are deemed private activity bonds, and interest income from the bonds is included as taxable income.

There are several exceptions, notably for qualified private activity bonds, which include exempt facility bonds. Qualified private activity bonds are treated similarly to traditional state and local tax-exempt bonds, with a few notable exceptions. Most categories of qualified private activity bonds are subject to an annual state volume cap, and the interest income, while exempt from income taxes, is subject to the alternative minimum tax.

Exempt facility bonds (sec. 142), include airports, docks and wharves, mass commuting facilities, facilities for furnishing water, sewage facilities, solid waste disposal facilities, qualified residential rental projects, facilities for the local furnishing of electricity or gas, local district heating or cooling facilities, qualified hazardous waste facilities, high-speed intercity rail facilities, environmental enhancements of hydro-electric generating facilities, qualified green building and sustainable design projects, and qualified highway or surface freight transfer facilities.

Airports, docks and wharves, and mass commuting facilities must be owned by the government. All exempt facility bonds are subject to similar arbitrage and issuance restrictions as traditional state and local tax-exempt bonds (sec. 103). The amount of qualified private activity bonds available for various facilities is not uniform, as some facilities, such as airports, are not subject to any cap, while others, such as mass commuting facilities, are subject to an annual state volume cap, set equal to $100 multiplied by the State's population, with a $300 million minimum cap. The minimum cap and the $100 multiplier are both indexed to inflation. Still other bonds, such as the qualified highway and surface freight transfer facility bonds, are subject to a one-time $15 billion cap.

No more than 25 percent of proceeds from an issue of exempt facility bonds can be used for land acquisition, and, if the bonds are being used on existing property, 100 percent of the cost of acquiring the property must be used on rehabilitation expenses, or the bonds lose their tax-exemption. Any rehabilitations must also be completed within two years of acquisition of the property. Additionally, several rehabilitation expenditures are disallowed, including enlargements of property and the extent to which property is owned by a tax-exempt partner.

Proposal:

This section establishes Move America Bonds. Move America Bonds would generally be treated as exempt facility bonds under current law, with several exceptions. So long as facilities are generally available for public use, the government ownership requirements for exempt facility bonds do not apply to Move America Bonds. This retains the restriction to public-use infrastructure, while allowing more flexible ownership and management arrangements. It also allows private partners to benefit from depreciation deductions, should they take ownership of the facility either directly or through a long-term leasing arrangement.

The interest income on Move America Bonds is excluded from the alternative minimum tax. This eliminates the interest rate penalty placed on states for public projects with private partners.

As the 25 percent land acquisition rule restrains development in higher-cost urban areas, Move America Bonds allows up to 50 percent of proceeds to be spent on land acquisition in connection with a qualified project.

For rehabilitations, the rules requiring that rehabilitation expenditures equal at least 100 percent of the cost of acquisition are retained. However, as the purpose of Move America is to encourage partnerships among private parties and the government, the restrictions on tax-exempt partners is repealed for Move America Bonds. Additionally, enlargements are included as qualified rehabilitations, and taxpayers are allowed up to five years to complete rehabilitations.

Qualified facilities for Move America Bonds are limited to publicly-available transportation infrastructure, including airports, docks and wharves, mass commuting facilities, freight and passenger rail, highways and freight transfer facilities, flood diversion projects, and inland and coastal waterway improvements. The qualifying projects for docks and wharves is expanded to include waterborne mooring infrastructure and landside road and rail improvements that integrate modes of transportation.

Move America Bonds are subject to a uniform volume cap, set equal to 50 percent of a State's current private activity bond volume cap. As some projects have long lead times or may require more bond volume than a State receives in a single year, States may carryforward volume cap for up to three years. Any carried over volume cap not used after three years is reallocated to States that have fully utilized their cap, ensuring that the program is fully utilized. States are required to report to the U.S. Treasury Department the amount of unused volume cap that is being carried forward each year.

Sec. 3 – Move America Credits

Current Law:

Under current law, there are several tax credits provided to encourage investment in property or services that can otherwise be unattractive or expensive for private capital. These include the historic rehabilitation tax credit (HTC, sec. 47) and the low-income housing tax credit (LIHTC, sec. 42). These credits provide states the ability to use tax credits to leverage private investment. However, both credits also require the taxpayers to have tax-ownership of the facilities in question in order to claim the credit. This can result in complicated partnership arrangements with high transaction costs.

Proposal:

This section creates Move America Credits, which are designed to attract equity investment in public infrastructure and to lower the cost of using private equity. Move America Credits would be available to the extent there is private equity investment and would provide a flexible structure whereby the State could sell the credits to raise capital, or could allocate the credits to a project sponsor. The project sponsor could then claim the credits themselves or sell them to raise capital. This flexible arrangement allows the option of creating partnership arrangements similar to those seen with the LIHTC, or, alternatively, of using the credit to raise capital outside of the project.

The credit would be available to taxpayers once the project has been placed in service. The taxpayer could then claim the credit at 10 percent per year for 10 years. If, during this 10 year period, the project ceases to be a qualifying project (e.g. no longer open to the public, or destroyed or inoperable), the credits are recaptured at a rate of 10 percent for each year remaining in the 10 year credit period.

Move America Credits can be used on any project that qualifies for Move America Bonds. The amount of credits a state can use is limited by three factors. First, to use Move America Credits, a state must trade in all or a portion of their Move America Bond volume cap. For every dollar of bond volume a state trades, they receive $0.25 of credit allocation. Thus, a state receiving $100 of Move America Bond volume could alternatively trade in that $100 for a $25 allocation of Move America Credits.

Second, the amount of Move America Credits on a given project cannot exceed 20 percent of the project's estimated cost. Lastly, the amount of Move America Credits is also restricted to 50 percent of the total private investment in a project – this ensures the credits are used to leverage additional equity.

Move America Credits can be combined with Move America Bonds and other federal or state funding, including TIFIA loans or FHWA grants.

To ensure compliance, states must report to the U.S. Treasury Department who the credit certificates were sold to, the amount sold, and the project to which the credits are related. Once the credits have been sold, they cannot be transferred.