THE BOND BUYER

New Jersey bill would spur municipal bonds for commercial real estate development

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Published

March 09, 2018, 11:03am EST

New Jersey lawmakers are tackling legislation that would create an easier path for developers to finance large-scale economic development projects with bonds.

The state assembly approved a bill last month designed to let developers issue bonds through host municipalities backed by the New Jersey Economic Development Authority. The measure, called the Economic Redevelopment and Growth Financing Bond Act, passed the assembly 65-6 and is headed to the state senate this spring.

“It’s another tool in the toolkit for developers and municipalities to work together to secure financing and get projects off the ground,” said Michael McGuinness, chief executive for the New Jersey chapter of the National Association for Industrial and Office Parks, a commercial real estate advocacy group that is promoting the proposed legislation. “It’s another tool that would make a big difference for projects that have spanned many years.”

The legislation would help builders get projects off the ground faster by allowing developers to issue bonds backed by the NJEDA’s Economic Redevelopment and Growth Program. It would also grant tax credits to multiple-phased projects beginning at the time they are completed and operational rather than during the construction process.

“The hope is that with that extended time period we are going to be able to be able to go after difficult challenging projects,” said Stephen Pearlman, a public finance attorney and founding partner at Pearlman & Miranda LLC in Bloomfield, N.J. “If you are a developer it helps you greatly to have capital stock upfront.”

Previous attempts in the assembly to empower New Jersey localities with ways to spur development through private activity bonds stalled under previous Assembly Speaker Vincent Prieto, D-Secaucus. New Assembly Speaker Craig

Coughlin, D-Fords, was primary sponsor of the new bill while State Sen. Joe Vitale, D-Woodbridge Township, is sponsoring a senate version. Vitale and Coughlin didn't respond to requests for comment.

Proponents of the new legislation want to mirror the state's Redevelopment Area Bond law passed in 2001, which gives local governments the ability to generate upfront funds for bonds that fund construction projects backed by long-term payments In lieu of taxes. The RAB law came into play last year during a $1.1 billion tax-exempt revenue bond transaction led by Goldman Sachs to fund completion of the long-stalled American Dream Meadowlands megamall project. The issue was backed by a PILOTs agreement between the developer, Triple Five Group, and borough of East Rutherford.

"With these big transformative projects banks will only loan to a certain loan-to-value ratio," Pearlman said. "These tools fill the gap."

Anthony Pizzutillo, public affairs counsel for NAIOP New Jersey, said the state was able to use ERG incentives to help with construction costs because the American Dream project is within the Meadowlands district, which is operated by the New Jersey Sports and Exposition Authority. Municipalities are unable under current New Jersey current public finance law to aid developers with ERG-backed bonds like they can with PILOTs.

"It allows for flexibility to deal with the larger projects we would like to see get off the ground," said Pizzutillo. "This is expanding an existing program and making it more flexible."

The NJEDA declined to comment on the legislation. The agency, like localities that are home to large-scale developments, would not be on the hook if projects go bust or if they fail to bring in enough revenue.

Pearlman said the proposed legislation would protect municipalities from exposure to the bonds unless they decide to take separate action to back the debt. Though bondholders would face risks if projected state sales tax revenues generated by the projects that backstop annual ERG payments are less than expected, Pearlman said many investors are receptive.

"The bondholders who buy an ERG bond are taking on project finance risk," said Pearlman. "This is the kind of risk that the traditional marketplace is used to."

Municipal Market Analytics analyst Lisa Washburn said the bill enables local governments with another mechanism to encourage economic development by facilitating developers with access to the tax-exempt market through ERG grants or securing bonds with PILOT payments. She noted that a positive of the legislation for bondholders is provisions assuring that the pledge of PILOTs are subject to a statutory lien.

“The presence of a statutory lien gives investors some comfort that their claim to the PILOT payments should survive a hypothetical chapter nine,” said Washburn. “They will be a secured versus an unsecured creditor thus improving recovery prospects.”

Washburn said there are risks associated with the proposal since bonds are non-recourse unless specifically guaranteed by the municipality. While local governments can be immune from the bonds, Washburn noted that some localities may feel pressure to eventually step in and specifically guarantee the debt to assure completion.

“Financings for some projects may be speculative and that may result in trying to get the municipality to guarantee the debt to allow it to secure better rates, which would be a risk factor to the municipality should the project sour,” said Washburn. “These would likely increase the amount of riskier debt issued in the state.”

McGuinness said he is confident that there is enough support in the state senate to pass a bill similar to the legislation that the assembly passed last month by a 65-6 vote. He said a wild card in play is a Jan. 19 executive order signed by Gov. Phil Murphy to audit the NJEDA tax incentives program, but is “cautiously optimistic” that the Democratic governor will approve of the measure.

“It won’t be a slam dunk since I think the governor will have a lot of questions,” said McGuinness. “I think ultimately this bill will get signed.”