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Conduit issuers contemplate a world without private activity bonds

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PHOENIX – Conduit issuers would lose the major reason for their existence if Congress terminates future issuance of private activity bonds.

Conduit issuer officials told The Bond Buyer that an inability to issue the bonds they sell for healthcare, higher education, affordable housing, and other types of projects would result in a new reality both for issuers and the borrowers who have relied on them. In some cases they would virtually blink out of existence except to manage their existing debt portfolios, but others would fall back on secondary missions or possibly assume additional responsibilities at the discretion of legislators.

The Republican tax bill pending in the House would eliminate PABs.

"It'd be a setback, I'm not going to kid you, because this is our business," said Harry Huntley, executive director at the South Carolina Jobs-Economic Development Authority. "This is what we do."

The Senate GOP's initial tax proposal would keep private activity bonds.

Conduit issuers are the vehicle that non-governmental private activity bond issuers, such as 501(c)(3) nonprofits and businesses using PAB allocations, use to issue tax-exempt bonds.

South Carolina's JEDA, created more than 30 years ago, is the statewide issuer for industrial development revenue bonds, 501(c)(3) deals, and other types of issuance that stand to go away under H.R. 1, the Tax Cuts and Jobs Act.

Huntley said JEDA issued more than $1 billion last year, but most years is roughly in the $500 million neighborhood. Huntley said he expects many conduit issuers would cease to exist, though his would continue.

“We’re not going to evaporate and go away,” said Huntley, noting that JEDA has statutory authority to run taxable bond programs and provide small business loans. But those conduit issuers with more specialized roles would be in a different situation, he said.

“Some of the authorities would probably go away,” said Huntley.

One of those more narrowly-tailored conduit issuers is the Washington Health Care Facilities Authority, which fills a specific role in Washington State.

“We’re the only issuer of not-for-profit 501(c)(3) healthcare bonds,” said Donna Murr, executive director at WHCFA.

WHCFA would exist only to monitor its existing debt, Murr said. She said WHCFA has issued over $16 billion since its 1980 creation with about $5.5 billion currently outstanding. The authority saved borrowers about $68 million last year, she said.

Since its inception in 1997, the Louisiana Local Government Environmental Facilities and Community Development Authority, or LCDA, has helped finance more than $6 billion of economic and infrastructure projects for municipalities, nonprofits, and eligible for-profit companies as a political subdivision of the state.

Executive Director Ty Carlos said the proposal to end tax-exempt private activity bonds came as a surprise because it wasn’t known to be on the table.

“I think it’s going to have pretty significant implications here for economic development,” he said. “It’s very concerning.”

Carlos said he scrambled to notify LCDA’s members and board of directors “to make them aware of what we understand is going on.” He suggested that they contact Louisiana’s representatives in Congress to “air their concerns.”

“I hope this gets resolved before [tax reform] is passed,” he added.

In Florida, a state-created conduit issuer is helping a charter school in Doral fast-track its bond issue to market because of the proposed tax bill in the House, said Florida Development Finance Corp. Executive Director Bill Spivey.

“They were going to close in January, but now they are trying to get it done by December,” Spivey said Thursday. “We can accommodate that and are just accelerating the process as much as we can to try to help.”

In California, where several conduit issuers operate under the umbrella of the treasurer’s office, State Treasurer John Chiang has some specific concerns.

“The most important thing to the treasurer is how does the elimination of PABs impact affordable housing,” Tim Schaefer, the deputy treasurer for public finance. “The second factor is to what extent does the elimination of PABs have as a direct, and trickle down impact, on the healthcare industry.”

The California Health Facilities Authority was the fourth-largest municipal bond issuer by volume through the first nine months of 2017, according to Thomson Reuters data, credited with more than $3.3 billion of debt.

The state deployed more than $6 billion of tax-exempt PAB authority for multifamily and single family homes in 2016, according to a letter Chiang sent to U.S. House Majority Leader Rep. Kevin McCarthy, R-Calif., in early November.

“As of September, we had issued $16 billion in healthcare facilities debt in the state of California,” said Vince Brown, a deputy state treasurer. “It’s across the board from childrens' hospitals to some of the big players like Sutter and Kaiser. So this will impact the whole hospital financing structure from conduits.”

If they lose the ability to sell tax-exempt debt to fulfill their missions, Schaefer said, the conduits might have to reinvent themselves and go into the business of selling taxable debt.

Huntley, who recently traveled to Capitol Hill to lobby against the termination of PABs, said he thought members of Congress heard the conduit issuers’ message but that PABs are a “low-hanging fruit” for lawmakers looking to provide tax benefits elsewhere in the code.

“It’s picking off the low-hanging fruit like our private activity bonds to provide for a maybe outsized corporate tax break,” he said, adding this clashes with the Trump administration’s stated goals of encouraging private infrastructure investment and charter schools.

“I hope that politics doesn’t get in the way of doing what’s right,” he said.