THE BOND BUYER

Final tax bill will likely preserve private activity bonds

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WASHINGTON – The final tax bill is likely to retain tax-exempt private activity bonds, which are used for multi- and single family housing, airports, water and sewer facilities, as well as nonprofit hospitals and universities, several sources said Wednesday.

But Republicans are still negotiating the PAB provisions and have been considering eliminating the ability of issuers to carry forward for up to three years any of their unused allocations of PABs as well as scrapping the smaller categories of tax-exempt PABs such as agriculture bonds, the sources said.

Senate Majority Whip John Cornyn, R-Texas, told The Bond Buyer that he's "optimistic" PABs will be retained in the final bill when it's filed for public scrutiny at the end of the week. But he added, "I am not going to go through chapter and verse of the whole conference report."

A large institutional investor said the conference committee has adopted the Senate's bid to preserve PABs, according to lobbyists who had spoken with a conference committee member. The House bill would have terminated them as of Dec. 31.

Members of the House and Senate conference committee met Wednesday afternoon after Republicans reached what Cornyn called "an agreement in principle of a framework" of the final tax bill.

But Democrats were angry that they had not been consulted as conferees and will have no opportunity to vote on the final bill produced by the Republicans until it reaches the floor of each chamber.

The meeting was filled with sharp, bipartisan bickering. Republicans insisted the tax bill will provide economic growth, create jobs, and cut taxes, while Democrats complained the bill is a give-away to corporations, will mostly benefit the wealthy, and will hurt the middle class. They also faulted the bill for increasing the federal deficit.

A final tax bill that keeps the major categories of PABs would be a huge win for the municipal bond market. Lawmakers have said they wanted to get rid of abuses. But muni market participants said that PAB abuses were shut down by the Tax Reform Act of 1986. The majority of PABs currently being issued are 501(c)(3) bonds, which are used by nonprofit organizations such as hospitals and universities.

Barbara Thompson, executive director of the National Council of State Housing Agencies, said that if carry-fowards of PABs are eliminated that would "be a major change that will hit deeply into housing resources.”

She said it would not be a small change because it would hamper the ability of states to reallocate their PAB volume when a particular project falls through. Multifamily housing is often the beneficiary of those reallocations, she said

Bonds are private activity bonds if more than 10% of the proceeds are used by a private party and more than 10% of the debt service is paid or secured by private parties. PABs are only tax-exempt if they fall within one of several “qualified” categories in the tax law.

Non-501(c)(3) PABs are subject to state volume caps that are calculated each year based on a formula published by the Internal Revenue Service that uses annual U.S. Census Bureau population data and inflation estimates. The volume cap for each state in 2016 was the greater of $100 per capita or $302.875 million.

A survey released by the Council of Development Finance Agencies in September that was based on PAB data for 2016 that was provided by the states showed that the total volume cap for states for that year was $35.14 billion.

The amount of unused PAB volume cap that was carried forward for three years, from 2012 through 2015, was $63.90 billion. And the amount of unused cap being carried forward into 2017 was $62.44 billion. The amount of unused volume cap that was abandoned in 2016 was $9.57 billion.

CDFA’s annual surveys can be used as rough guides to gauge trends but are somewhat flawed, by the group’s own admission, because every year some states fail to provide PAB information.

Sources had not heard whether the final tax bill will include transition rules to delay the effective date for termination of tax-exempt advance refundings.

The House and Senate bills would put a halt to these bonds after the end of the year. Muni market groups were pushing for a delay of six months to a year to avoid the rush to market of these transactions this month.

It also could not be determined whether the final tax bill will prohibit tax-exempt bonds from being used for professional sports stadiums and arenas after Nov. 2. The House bill contained that provision, the Senate measure did not. If tax-exempts are banned for stadiums, the question is whether the final tax bill will exempt stadium deals underway from that ban.