THE BOND BUYER

Outlook 2021: a banner year for muni law changes?

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Johnny Hutchinson, a partner at Squire Patton Boggs in Houston and former chair of NABL's Tax Law Committee, said the outlook for tax changes favorable to the municipal bond sector will brighten if Democrats win both U.S. Senate runoff races in Georgia. **Squire Patton Boggs**

Public finance groups are optimistic 2021 will be a breakthrough year for the enactment of federal tax law changes to help grow the use of tax-advantaged bonds.

The National Association of Bond Lawyers recently sent a letter to President-elect Joe Biden's transition team highlighting "a series of proposals that will allow state and local governments immediate access to much-needed capital."

The Dec. 15 letter signed by NABL President Teri Guarnaccia said the proposals would help support a national economic recovery from the pandemic related recession.

The recommendations include both regulatory relief that could be quickly implemented and changes in tax law that NABL officials are hoping will be included in infrastructure legislation in 2021.

“Tax-exempt bonds finance necessary capital infrastructure and other projects that clearly, directly, and efficiently support and serve the American people,” Guarnaccia said in the letter. “State and local government bonds have financed a substantial portion of our country’s schools, roads and highways, bridges, hospitals, universities, and public utilities, while tax-exempt private activity bonds (PABs) finance critical projects such as hospitals, institutions of higher education, airports, seaports, mass transit, and other transportation facilities, and affordable housing.”

NABL told the incoming administration it supports the House-passed Moving Forward Act, which contains many of the bond provisions the group favors.

Among them: preserving and enhancing private activity bonds, creating a new direct-pay bond model, reinstating tax-exempt advance refunding, and encouraging banks and other financial institutions to purchase bonds that benefit governmental and charitable entities under the “bank-qualified bonds” provisions of section 265 of the Internal Revenue Code.

The National Association of Counties said in an analysis of the $1.5 trillion bill last summer that it “bundles a surface bill with funding for additional infrastructure projects, including clean water and energy projects, broadband, ports and airports, public schools, public housing, hospitals.”

The legislation would permanently reinstate Build America Bonds and tax-exempt advance refunding bonds as well as increase and expand the issuance of private activity bonds.

One provision would increase the minimum annual state volume cap for issuing private activity bonds to $402.2 million from $225 million.

There’s also $30 billion in new bond authority for improvements to high-poverty schools through the authorization of qualified school infrastructure bonds (QSIBs) through annual increments of $10 billion.

The bonds would require the federal government to provide a tax credit of 100% of the interest to the bondholder or as a direct payment to the bond issuer.

The QSIB bond authority would be allocated to states proportionate to their allocation of funds under Title I of the Elementary and Secondary Education Act in the prior fiscal year. States could also distribute up to 10% of their total bond limitation to enable local education agencies (LEAs) to support existing programs or public-private partnerships focused on expanding access to high-speed broadband to support digital learning.

The House Ways and Means Committee predicted the legislation also would unlock more tax-exempt bond financing for water infrastructure projects by exempting bonds funding these projects from state allocation caps for PABs.

Johnny Hutchinson, a partner at Squire Patton Boggs in Houston and former chair of NABL's Tax Law Committee, said the outlook for tax changes favorable to the municipal bond sector will brighten if Democrats win both U.S. Senate runoff races in Georgia.

That would give Democrats control of both chambers of Congress as well as the White House for the next two years.

"Under unified control, something on infrastructure is likely to happen no matter what," he said.

Hutchinson predicted that outcome would pave the way for legislation similar to February 2009 when the American Recovery and Reinvestment Act which was enacted when Democrats had control of both chambers of Congress.

The ARRA created direct-pay Build America Bonds and temporarily increased the limit on bank-qualified issuance to $30 million.

Even if Republicans keep their Senate majority, Hutchinson said there's hope that Congress will reinstate advance refunding for tax-exempt bonds.

"There is actually some bipartisan support for doing that, but that particular topic is not one that's easy to get people focused on because it's a difficult concept," he said.

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