Muni Groups, Upset by House Tax Bill, Pin Hopes on Senate.

WASHINGTON – Municipal market participants turned their attention to the Senate for a better outcome after the House voted 227 to 205, mostly along party lines, on Thursday to pass a tax bill that would put an end to private activity bonds and advance refundings after this year.

The House bill would also eliminate the deduction for state and local income and sales taxes as well as cap the deduction to $10,000 for property taxes. That led 13 Republicans, mostly from high-tax states like New York, New Jersey, California to defect from their party and vote no on the House bill.

Muni market groups said they will now focus their fight on the Senate and any negotiations between the two chambers over a final bill.

The bill in the Senate would save PABs and also enhance them by eliminating the alternative minimum tax. However, it would also completely repeal the SALT decision and stop advance refundings after this year.

"We have only just begun the process of a battle that we have come prepared to fight," said Emily Brock, director of the Government Finance Officers Association's federal liaison center.

She said the House vote was not unexpected but "represents a vote on legislation that untangles a century-long federal-state-local partnership and places significant burdens on state and local governments' revenues which provide public services."

The House bill "could have calamitous effects on infrastructure and local economies across the country," Brock said. "Clearly the time is now to help the Senate understand the potential impacts to public infrastructure that these provisions wield."

New Orleans Mayor Mitch Landrieu, president of the U.S. Conference of Mayors blasted the House for passing a "dangerous" tax reform bill and called on the Senate to end the "assault on cities."

Bond Dealers of America CEO Mike Nicholas said the group is "disappointed" that the House passed its bill with the provisions to terminate PABs and advance refundings.

"While a comprehensive reform of the tax code is needed, the reform should encourage state and local governments to invest in infrastructure, housing, hospitals, and senior living facilities, not limit the tools it has available to provide these needed investments, while hurting issuers ability to manage risk and invariably raising costs for all taxpayers," he said.

Nicholas said that while BDA members applaud the bill in the Senate for retaining PABs, Senators must "retain current law with regards to municipal advance refundings in any package brought to debate on the Senate floor."

Some Democrats on the Senate Finance Committee have complained that the tax bills pending in both chambers would fall under the Pay-As-You-Go Act of 2010 and force the Office of Management and Budget to sequester billions of dollars in across-the-board spending cuts in Medicare and other federal mandatory programs, zeroing out subsidy payments for direct-pay bonds such as Build America Bonds.

The Congressional Budget Office confirmed the bills would be a problem under the PAYGO Act in a letter to House Democratic Whip Rep. Steny Hoyer, D-Md. But Senate Finance Committee chairman Orrin Hatch, R-Utah, rebuffed the idea that PAYGO would hold up the tax bill. He told committee members on Wednesday there has never been a single sequester ordered under the PAYGO statute.

Budget experts said that in order to waive the tax bills from the PAYGO Act, Congress would have to pass a separate bill, apart from the reconciliation process, that would require 60 votes, rather than a simple majority, in the Senate.

But long-time legislative observers said the Republicans may have the upper hand on the PAYGO issue. They can just pass a tax bill and then offer a bill to waive the PAYGO Act, putting Democrats on the spot to either support the waiver or trigger OMB-mandated billions of dollars of cuts to mandatory federal programs.

Some municipal market groups are putting their hopes for more favorable action in a conference between the House and Senate tax bills. The Senate Finance Committee approved the bill Thursday night. It will then release the text of the bill next week so the full Senate can vote on it after Thanksgiving. The House could both take up and vote on the Senate bill or the two chambers could try to resolve their differences in conference.

Sandy MacLennan, president of the National Association of Bond Lawyers, said, “We remain optimistic that the municipal bond and related tax credit provisions in the House bill will be revised in conference.”

The House bill would eliminate tax credit bonds after this year.

“It is especially important to retain the favorable tax treatment for private activity bonds and advance refundings which are important financial tools for municipal issuers and non-profit organizations,” MacLennan said. “Elimination of either of these tools will ultimately either reduce investment in capital projects or increase costs paid by local taxpayers, ratepayers, and users of these facilities.”

Chuck Samuels, a member of Mintz Levin who is counsel to the National Association of Health and Higher Education Facilities Authorities, said he is “disappointed but not surprised” that the termination of PABs was left in the House bill.

“But House Ways and Means Committee Chairman Brady has made clear the House still has work to do on its bill in preparation for conference and we are working hard on House members as well as keeping Senate bill clean,” he said.

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