[Bond Case Briefs]

Municipal Finance Law Since 1971

[Muni Market Participants Applaud PABs in Purported Infrastructure Plan.]

Muni market participants are pleased that the latest purported version of the Trump administration's infrastructure plan would expand and ease restrictions on private activity bonds so that they could play a major role in helping to finance infrastructure projects.

The six-page plan was circulated on Monday by lobbyists and publications such as Axios. It makes no mention of the Trump administration and is not dated.

Sources had mixed views on its veracity.

"It's clearly an early draft put together before tax reform, so I would caution against reading too much into it," said Matt Fabian, managing director at Municipal Market Analytics.

Bud Wright, executive director of the American Association of State Highway and Transportation Officials said he is taking the document "with a grain of salt" because it "could be an earlier document that has been modified since that time."

But Jeff Davis, a senior fellow at Eno Transportation Center, said the document "is a faithful summary of the full 60-some page summary that the National Council of Economics has been toiling to produce for at least six months."

Several sources said they saw this plan before the tax reform debates on Capitol Hill and were shocked back then at the House tax bill's proposal to eliminate PABs in light of this plan.

The six-page plan sets forth PAB recommendations in a section called "Funding Principles."

The plan says the tax law should be amended to allow broader categories of public-purpose infrastructure, including reconstruction projects, to take advantage of PABs and encourage more private investments in projects to benefit the public.

The plan would eliminate the alternative minimum tax as well as the prohibition on advance refundings for PABs used for infrastructure. Additionally, It would remove the state volume cap on these PABs. It would also remove the transportation volume cap and expand eligibility in this category to ports and airports.

This is a reference to the $15 billion cap created for highway and surface freight transfer facilities under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) that was enacted in August 2005.

Congress or regulators would provide change-in-use provisions governing the change of use of tax-exempt bond-financed facilities to preserve the tax-exempt status of governmental bonds, according to the plan. "Change-of-use cures" would be provided for private leasing of projects to ensure the preservation of the tax exemption for core infrastructure bonds.

Joseph Krist is a Partner at Court Street Group Research, said that overall he sees the plan as positive for the muni market.

“We see lots of references to private activity bonds. The ability to advance refund private activity bonds,” he said. “This document clearly sees the municipal bond market as really, in our view, central to what they want to get accomplished.”

Brett Bolton, Bond Dealers of America’s vice president for federal legislative and regulatory policy, said BDA is encouraged by the administration’s infrastructure proposal.

“The protections for outstanding governmental tax-exempt bonds and the substantial expansion of the ability to issue tax-exempt private-activity bonds will bolster issuers and other infrastructure industry participants nationwide,” Bolton said. “Restoring the ability to advance refund PABs will save the American taxpayer money and improve our nation’s infrastructure but should be coupled with the ability to advance refund governmental bonds as well.”

Emily Brock, director of the Government Finance Officers Association’s Federal Liaison Center, said, “Some of the details of the ‘leaked’ plan in some ways are not surprising because we have heard these general themes on infrastructure from the White House for the past six months – including rural infrastructure, transformative plans and grant funding.”

“Other parts are a bit more specific and surprising,” she said. “For example, the outline seems to suggest the White House will push a significant expansion of private activity bonds, which is a big swing away from some of the discussions with House leaders during the development of H.R.1” – the tax reform legislation.

“It shows that in their preliminary plans that they realize the policy objectives of the tool – advanced refunding creates savings which free up capital for future infrastructure investment,” said Brock. “We look forward to working with the administration to expand that exemption to municipal bonds as they continue to develop this infrastructure plan.”

The plan also makes no mention of the level of federal funding that is to be made available for infrastructure.

Most sources assume that the administration is still planning to provide $200 billion to leverage up to $1 trillion or $1 8 trillion of investment in infrastructure over a 10-year period. The $200 billion figure was included in the administration’s budget proposal for fiscal 2018 and is expected to be in the next budget request for fiscal 2019, which typically would be released the first Monday in February.

“It’s hard to assume that a bill of this type will be funded enough, in particular in the early years, to make a meaningful difference in issuer behavior,” said Fabian. “It may help extend some projects and may possibly pull a few projects forward on the calendar, but because of the state-by-state limits, it’s unlikely to have a large permanent net effect on total issuance. This is less about stimulating infrastructure investment, more about giving Washington more influence over what state and local projects are built.”

The “Funding Principles” section of the document says 50% of the total appropriated amount would be for incentive grants, with the federal share to be up to 20%. A federal agency would administer the grants and would solicit applications every six months. The agency would define eligible costs and conduct audits to ensure funds are used appropriately. Grant awards can’t exceed 20% of total project cost. No one state could receive more than 10% of the amount available.

“The question is, Can state and local governments combine this federal money with federal funding from other programs?” asked Davis.

Another 10% of appropriations would be for transformative projects and the Commerce Department would administer this program.

An additional 25% of appropriations would be for rural infrastructure projects and states would be responsible for projects funded under this program. About 80% of funds made available would be provided to the governors based on a formula.

About 7.05% of appropriations would be for federal credit programs under under the Transportation Infrastructure Finance and Innovation Act and the Water Infrastructure Finance and Innovation Act as well as Railroad Rehabilitation and Improvement Financing programs and U.S. Department of Agriculture Rural Utilities Lending Programs.

Another 5% would be used for a Federal Capital Financing Fund that would allow appropriations committees in Congress to finance General Services Administration real estate deals over 15 years with repayment spread out over the those years.

Under a section called “Principles for Infrastructure Improvements,” the plan would give states the flexibility to toll on interstates and reinvest toll revenues in infrastructure.

The plan also would expand qualified credit assistance and other capabilities for state infrastructure banks.

The Clean Water State Revolving Fund would be authorized for privately owned public purpose treatment works, under the plan. And WIFIA would eliminate the requirement for borrowers to be community water systems. WIFIA also could be used for flood mitigation, navigation and water supply.

The plan includes a few proposals for streamlining specific environmental regulations. It makes no specific mention of public-private partnerships, but often refers to private investment.

Wright said the document “doesn’t deal much with regulatory reform” but added that “we’re hopeful” of seeing regulatory reform.

“Probably our biggest concern with what we see here is that this document does not address the solvency of the Highway Trust Fund for long-term sustainable funding and funding predictability for transportation investment,” he said.

Wright said, “We will continue to say two things. One, there’s no replacement for direct federal funding even though private sector investment is important. Secondly, we need to fix the Highway Trust Fund. That’s going to continue to be out top priority.”

Asked about the plan, Sen. John Barrasso, R-Wyo., chair of the Senate Committee on Environment and Public Works, said, “President Trump has been a champion of upgrading America’s aging roads, bridges, dams, and ports. This infrastructure is critical to the country’s success. I agree that this is a priority.”

Barrasso added,” Any infrastructure plan should include streamlining so that projects get started and finished faster. I will continue to work with the president, the members of our committee, and the House of Representatives as we continue this important process.”

BY SOURCEMEDIA | MUNICIPAL | 01/22/18 07:10 PM EST