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Bill Includes AMT Exemption for PABs, But Also 28% Cap.

WASHINGTON – A lengthy tax relief and job creation bill recently introduced in the House would exempt private-activity bonds issued from 2015 through 2018 from the alternative minimum tax, repeal sequestration, and create an infrastructure bank. But it also would cap the value of the municipal bond tax exemption at 28%.

Muni experts were disappointed to see the 28% cap, saying it contradicts the bill's aim of increasing employment while improving the nation's infrastructure.

"It's very commendable that these members of Congress are proposing concrete, meaningful actions to promote infrastructure financing," said Chuck Samuels, a member of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo. "Unfortunately, the 28% proposal may take away with one hand what they are trying to give with the other hand."

The 299-page bill, H.R. 3555 called "Jobs! Jobs! Jobs! Act of 2015," was introduced by Rep. Frederica Wilson, D-Fla., and has more than 30 Democrats as co-sponsors. It has been referred to nine committees, including the House Ways and Means Committee and the House Transportation and Infrastructure Committee.

The bill includes a number of provisions aimed at tax relief for workers and businesses, putting workers back on the job while rebuilding and modernizing the country and providing pathways for job-seeking Americans to get back to work. Several of these provisions relate to infrastructure.

The measure also would repeal federal spending cuts known as sequestration. The sequestration cuts have included reductions in the subsidy payments issuers receive from the Treasury Department for their direct-pay bonds, such as Build America Bonds.

But one of the offsets for the bill would be a 28% limit on certain deductions and exclusions, including the exclusion for tax-exempt interest. This offset is similar to a proposal in recent budget requests from President Obama.

Other offsets include taxing carried interest in investment partnerships as ordinary income, closing the loophole for corporate jet depreciation and repealing oil subsidies.

The bill would exempt PABs issued from 2015 through 2018 from the AMT. Generally, these types of bonds are subject to the AMT, increasing their yields, but PABs issued in 2009 and 2010 were exempted from the AMT under the American Recovery and Reinvestment Act.

By exempting PABs from the AMT, but subjecting all bonds to the 28% cap, PAB issuers may not be better off than they are under current law, and issuers of other types of bonds would be worse off, said Bill Daly, director of governmental affairs for the National Association of Bond Lawyers. The bulk of the muni market is governmental and 501(c)(3) bonds, which are not subject to the AMT.

"For the market as a whole, it is a negative," Daly said.

Jessica Giroux, general counsel and managing director of federal regulatory policy for the Bond Dealers of America, said, “BDA believes the best way to finance infrastructure is to provide state and local governments access to numerous, cost-effective financing options and municipal bonds have been the best option for over a century and private-activity bonds also play an important role in many communities. However, Rep. Wilson’s recommendation to put limitations on the value of the federal tax-exemption tied to municipal bonds runs counter to the intent of her legislation and would drive-up not only the cost of bonds to state and local governments but also the billions of dollars in infrastructure financed by the bonds in the past year alone.”

The Council of Development Finance Agencies, whose members include issuers and borrowers in PAB transactions, does not support the bill on balance, said Jason Rittenberg, CDFA director of research and advisory services.

“Tax-exempt bonds are a proven and effective tool for infrastructure finance, and a cap on the exemption would cause unknown impacts on the market at a time when states and municipalities need access to stable and affordable financing,” he said.

Micah Green, co-chair of Steptoe & Johnson’s government affairs & public policy group, said that either the bill has an unintended consequence that needs to be fixed, or an intended consequence that makes it “far less attractive” to the muni market.

The bill also would create an infrastructure bank called the American Infrastructure Financing Authority that would provide loans and loan guarantees to facilitate transportation, water and energy infrastructure projects of regional or national significance.

Projects would generally need to have anticipated costs of at least $100 million to be eligible for assistance from the AIFA, but rural infrastructure projects would only need to have costs that are expected to be $25 million or more.

The AIFA could make up to $10 billion of loans and loan guarantees in each of its first two fiscal years of operation, up to $20 billion in each of fiscal years three through nine of its operations, and up to $50 billion in years after that.

The bill would appropriate $10 billion to the AIFA. In each of fiscal 2016 and 2017, no more than $25 million of those funds could be used for administrative costs, and in fiscal 2018, no more than $50 million could be used for administrative costs.

Also, the bill would make available $2 billion to the Secretary of Transportation to carry out airport improvements; $27 billion for certain surface transportation, passenger and freight rail, and port infrastructure projects; $4 billion for grants for high-speed rail and intercity passenger rail projects; $3 billion for grants for transit capital assistance; and $5 billion for capital investments in surface transportation infrastructure that would be distributed under a competitive grant program.

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