Bill Would Create Clean Energy Tax-Advantaged Bonds.

WASHINGTON — An energy bill offered by Senate Democrats would create Clean Energy Bonds that could be used as either tax-credit or direct-pay bonds with an initial 28% subsidy rate and that would not be subject to volume cap.

The bill, S. 2089 or the "American Energy Innovation Act," was introduced late last month by Sen. Maria Cantwell, D-Wash., the ranking minority member of the Senate Energy and Natural Resources Committee. It is co-sponsored by 30 Senate Democrats, including Senate Finance Committee ranking minority member Ron Wyden, D-Ore., and Senate Minority Leader Harry Reid, D-Nev.

The bill contains a number of provisions, including some aimed at encouraging investment in clean energy technologies.

The measure's proposed creation of Clean Energy Bonds would build upon current law. At present, several tax-advantaged bonds can be used to finance certain clean renewable energy facilities and conservation improvements. These include Clean Renewable Energy Bonds, Qualified Energy Conservation Bonds, tax-exempt bonds for public power providers and tax-exempt private-activity bonds for certain green buildings.

Like New CREBs, the proposed Clean Energy Bonds would be tax-advantaged bonds that could be issued by state, local and tribal governments, public power providers and electric cooperatives. But there would be some differences between the two types of bonds. A key difference is that Clean Energy Bonds would not be subject to volume cap. New CREBs have a national volume cap, and issuers have to request allocations of it from the Internal Revenue Service. Congress has not provided any new national volume cap for New CREBs since 2009, so issuers can only issue these bonds from allocations of the existing cap.

The American Public Power Association is appreciative that Cantwell and Wyden created a program that's longer-term and has no volume cap. The bill is a "step in the right direction," said John Godfrey, senior government relations director for the group.

He added that APPA also likes the fact that Clean Energy Bonds would supplement, rather than replace, tax-exempt bonds.

However, the bill does not appear to address the sequester cuts to subsidy payments to issuers of direct-pay bonds. Given how long it will take to pass an energy bill, "it would be a shame for it to be undermined from the start by the threat of sequestration," Godfrey said.

Clean Energy Bonds could be used for both facilities that produce clean electricity and those that produce clean transportation fuels. New CREBs are to be used for renewable energy projects. They cannot be used to finance clean transportation fuel projects.

The credit and subsidy rate for Clean Energy Bonds would start at 28% of interest costs, which is less than the 70% subsidy rate for New CREBs. If federal officials determine that the annual greenhouse gas emissions from electrical production or transportation fuel produced and sold at retail are equal to or less than certain percentages, the credit rate would be phased out for bonds issued for facilities producing that type of product in calendar years after the determination is made. The credit and subsidy rate would be zero for any bond issued more than three calendar years after the determination is made. Regardless of the emission levels, the phase outs would start in 2026.

Susan Collet, president of H Street Capitol Strategies, pointed out proposals to revive the Build America Bond program would do so at a 28% subsidy rate. That percentage is thought to be revenue neutral.

While issuers might choose to issue tax-exempt bonds over Clean Energy Bonds because tax exempts are simpler, the bill recognizes that there is a need for financing tools that can be used by nonprofit electric utilities, which can't take the production tax credit or investment tax credit.

Collet said that the legislation is “a message bill at this point” and reflects the priorities of Democrats. The Senate Energy Committee has approved a bipartisan energy bill, and the Democrats' bill includes items that the Senators could not get included in the bipartisan bill, she said.

The energy committee doesn't have jurisdiction over taxes, so Godfrey said he would expect Cantwell to offer an amendment to the bipartisan bill that includes tax provisions when the bill is considered on the Senate floor. However, the specifics of that amendment are unclear, he said.

The Democrats' energy bill could also be discussed in the context of a bill that would renew expired tax provisions known as extenders, Godfrey said. Some of the expired provisions relate to energy.

THE BOND BUYER

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