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PABs Would get Boost, but Can Trump Sell His infrastructure plan?

WASHINGTON — Less than three months after the House tried to kill tax-exempt private activity bonds, President Trump has released an infrastructure plan that proposes to expand and use them as a way to leverage financing for public-purpose infrastructure projects.

The plan calls for $6 billion to go toward tax-exempt PABs for public infrastructure. But the $6 billion would represent federal revenue losses over 10 years so the actual amount of additional of PABs issued under the plan would be much greater, sources said.

The PAB proposal is part of a major effort by the administration to place more funding responsibility on the private sector and on state and local governments, rather than the federal government.

"President Trump's infrastructure plan is less important for the funding it may provide, but rather is significant because of its bold and sweeping proposals to move federal policy toward the involvement of the private sector in the provision of public infrastructure," said Chris Hamel, former head of muni finance at RBC Capital Markets who now focuses on infrastructure policy.

The plan, for example, would authorize the federal divestiture of assets that it says would be better managed by state, local or private entities, including Ronald Reagan Washington National and Dulles International Airports, regional transmission systems, and the George Washington and Baltimore Washington Parkways.

Muni market groups applauded the proposed expansion of PABs.

A group of state and local officials met with the president on Monday and Columbia, S.C. Mayor Steve Benjamin, who heads the Municipal Bonds for America Coalition, thanked Trump for supporting tax-exempt PABs in the plan.

Bond Dealers of America CEO Mike Nicholas said, BDA "applauds the focus on utilizing governmental municipal bonds and private-activity bonds to upgrade our nation's infrastructure. For over a century, bonds have been a bedrock investment tool for state and local governments to produce and maintain critical infrastructure."

Emily Swenson Brock, director of the Government Finance Officers Association's federal liaison center, said GFOA has been pushing for the expansion of the use of tax-exempt PABs for public infrastructure projects like airports and seaports for two decades.

Can Trump sell plan to stakeholders, lawmakers?

But many sources questioned whether Trump can sell his plan to stakeholders and lawmakers, who are already complaining it doesn't propose enough federal spending and places too much of the funding responsibility on state and local governments.

"It is a fantasy to assume that states and local governments have the kind of available capital that the Trump plan demands they spend without federal help," said Senate Democratic Whip Steny Hoyer, D-Md.

Some muni market sources worry that, even if lawmakers eventually take up some sort of infrastructure legislation, it might be dangerous to put any PAB-related proposals before the House Ways and Means Committee again given their willingness to terminate them last year.

The U.S. Chamber of Commerce, the American Trucking Associations and many transportation groups want an infrastructure plan to increase federal fuels taxes to fix the ailing Highway Trust Fund, the main source of grants for highway and mass transit programs for states.

Rep. Bill Shuster, R-Pa., chair of the House Transportation and Infrastructure Committee, did not address the president's plan directly but rather talked about an infrastructure bill needing "to be bipartisan, fiscally responsible, and make real long-term investments in our Nation."

Shuster also talked about the importance of "addressing the long-term sustainability of the Highway Trust Fund." The president's plan is virtually silent on the HTF, with only one mention.

Rep. Peter DeFazio, D-Ore., the ranking minority member of the committee, on Thursday called the plan "fake" and said it would place too much reliance on funding from state and local governments and would result in higher tolls.

Rep. Ron Wyden, D-Ore., the ranking minority member of the Senate Finance Committee blasted the president's plan as "another broken promise to rebuild America's aging infrastructure" that caters to "wealthy investors who only care about wasting taxpayer dollars to fund their privatization schemes."

Wyden also complained that, "$200 billion is a drop in the bucket compared to the $1.5 trillion Republicans in Congress just spent to slash taxes for multinational corporations and the donor class."

National Association of Bond Lawyers' president Sandy MacLennan, said, "A recurrent theme throughout the administration's broad infrastructure proposal is the facilitation of private investment in public projects and also the removal of impediments in existing federal law to tax-exempt financing of these projects. While that looks good on the surface for the municipal market, particularly the expanded list of private activity bond-eligible projects and expanded remedial action for change in use, there may be state law restrictions on public-private endeavors that will need to be reviewed, as well as state restrictions on local financing."

"The total proposed dollar investment seems small in comparison to reported needs," she said.

PAB Details

The president's infrastructure plan would remove state volume caps, and the $15 billion transportation volume caps for tax-exempt PABs used for public infrastructure projects, which would be expanded to include ports and airports.

The alternative minimum tax would also be removed for PABs. Historically the AMT has led to higher interest rates on many PABs, making them more costly for state and local governments to issue.

Public-purpose infrastructure projects would have to be owned by state or local governments, with some exceptions. Projects could be owned by private parties but only under arrangements in which the rates charged for services or the use of the projects are subject to state or local regulatory or contractual control and approval.

Also the projects would have to be available for general public use or to provide services to the general public.

A project would be treated as governmentally owned if a state or local government leases it to a private business if: the term of the lease is no longer than 95% of the reasonably expected economic life of the project; the private lessee agrees not to take depreciation or the investment tax credit with respect to the project; and the private lessee has no option to purchase the project other than at fair market value.

The plan would allow longer-term leases and concession arrangements for projects financed with tax-exempt PABs.

Public infrastructure projects would include the existing tax-exempt PAB categories of: airports; docks, wharves, maritime and inland waterway ports, and waterway infrastructure, including dredging and navigation improvements; mass commuting facilities; facilities for the furnishing of water; sewage facilities; and solid waste disposal facilities.

In addition such projects would include modified or new categories of: surface transportation facilities, including roads, bridges, tunnels, passenger railroads, surface freight transfer facilities, and other facilities that are eligible for federal credit assistance under the Transportation Infrastructure Finance and Innovation Act; hydroelectric power generating facilities, including new construction; flood control and stormwater facilities; rural broadband service facilities; and environmental remediation costs on Brownfield and Superfund sites.

The plan calls for modifying so-called change-of-use tax rules to more easily preserve the tax-exempt status of governmental bonds when the bond-financed project is either used, or purchased, by one or more private parties. It would also provide change-of-use cures for private leasing of infrastructure projects to ensure preservation of the tax exemption of the bonds.

Overall plan details

Overall, the infrastructure plan proposes $200 billion in federal funding over $10 years, which could be used to leverage $1.5 trillion in new infrastructure investment, mostly through incentive grants and the enhancement of several federal loan programs.

The $200 billion would be paid for from cuts in existing programs, such as transit and Transportation Investment Generating Economic Recovery (TIGER) grant programs where “this administration thinks funds haven’t been spent that efficaciously,” a senior White House official told reporters this weekend.

Asked about an increase in federal gasoline tax, the official said, “The president has said he’s open to new sources of funding. This is the start of a negotiation to find best solution for the U.S.”

“We’re not proposing eliminating the Highway Trust Fund, or changing the state revolving funds,” he said. “So to the extent that communities are eligible for federal funds already, that eligibility remains.”

Of the $200 billion, $100 billion would be spent on incentive grants for state and local governments that identify projects and revenue streams, such as property taxes, sales taxes, or user fees, to fund them. These governments can then apply to federal agencies – the Transportation Department, the

U.S. Army Corps. of Engineers, and the Environmental Protection Agency — for some percentage of matching funds to complete the financings.

An incentive grant could not exceed 20% of new revenue. An individual state could not receive more than 10% of the total amount available under the incentives grant program.

The White House official took umbrage at the notion that the president wants to reverse funding ratio so that state and local governments will now get only 20% instead of 80% of federal funds for projects.

“It’s wildly inaccurate,” he said, adding that kind of match is currently only available for federal-aid highways.

Currently the federal government only funds 14% of infrastructure costs, the official said. The remaining 86% of costs is evenly split between state and local governments and the private sector.

Many programs involve far less of a federal match than 80%, he said. Water projects, for example, on average involve a 4% federal share and a 96% state or local government share.

Additionally, a Rural Infrastructure Program would be established and provided $50 billion for capital investments in rural infrastructure investments. A portion of these funds would be set aside for Indian tribal governments and territories.

Governors would receive 80% of the funds via a formula based on rural lane miles and rural population adjusted to reflect policy objectives. The governors, in consultation with a designated federal agencies and state directors of rural development, would choose the infrastructure projects in which to invest.

Another $14 billion will be spent on the expansion of federal loan programs such as TIFIA for transportation projects, the Water Infrastructure Finance and Innovation Act (WIFIA) for water projects, and the Railroad Rehabilitation and Improvement Financing (RRIF) for rail projects.

Also $20 billion will also be used for transformative projects . “Funding under this program will be awarded on a competitive basis to projects that are likely to be commercially viable, but that possess unique technical and risk characteristic that otherwise deter private sector development,” the plan states.

The Commerce Department would chair the program and could request other federal agency employees to be temporarily assigned to it. Funding could cover eligible costs of up to: 30% for demonstration; 50% for project planning; and 80% for capital construction.

And $10 billion will be put into a capital financing fund and used for federal office building infrastructure.

Permitting

The president wants to shorten the environmental permitting process to two years by establishing a new ‘one agency/one decision’ process, the White House official said.

A federal agency with the most expertise will be designated as the lead agency and it will work with other agencies to coordinate the permitting process to reach a collective decision over a 21-month period. The agencies would all sign a “record of decision.” They will then issue permits over a three month period, he said.

“The process we have in the U.S. just takes way too long,” the official said. “It’s not really focused on the outcome in terms of making sure we build projects responsibly. It’s focused more on litigation and building up massive documents.”

“We are not touching any of the fundamental requirements of the core environmental acts [but rather] the process to be used to do the analysis,” the White House official said on Saturday.

The plan will also include plans to remove obstacles and disincentives for individuals to go into the trades to work on infrastructure projects, he said. For example, the administration will call for the licensing process to be more flexible so that licenses can be transferred easily from one state to another. And programs will be set up to expand apprenticeships for workers to more easily develop skills.

Administration officials have spent weeks talking about the infrastructure plan and trying to get some ideas and consensus from lawmakers on Capitol Hill and industry groups. President Trump called on Congress in his State of the Union speech to come up with an infrastructure package.

It won’t be easy. White House officials noted there are five to six committees with jurisdiction in each of the House and Senate. Senate Democrats have already called for the federal government to spend $1 trillion on infrastructure, apart from any leveraging.

President Trump asked the state and local officials he met with on Monday to lobby their Senate and House members to support his plan.

The Bond Buyer

By Lynn Hume

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