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Final Defense Bill Includes New Muni Disclosure Standards.

Congress unveiled a final version of the 2023 defense bill Tuesday night that includes, as feared by municipal market issuers, a closely watched and controversial financial disclosure mandate.

The mandate is slightly altered from the original version, which the House passed in July, in that it shifts rulemaking and enforcement to the Securities and Exchange Commission and away from the Municipal Securities Rulemaking Board.

That opens a path to more direct communication through Congressional oversight, said Emily Brock, federal liaison for the Government Finance Officers Association.

“We certainly didn’t hope for this to happen, but this is a new opportunity to work with the SEC to help them better understand our financial reporting requirements and to have a sequence of events that allows for Congressional oversight,” Brock said.

Muni issuer groups like the GFOA pushed hard against the disclosure standard provision, which would move municipal issuers and other financial entities toward a financial reporting standard like eXtensible Business Reporting Language, or XBRL. Issuers argue it’s a costly unfunded mandate that fails to recognize the wide variety of governments that make up the market.

The House is expected to take up the 2023 National Defense Authorization Act as soon as today. The Senate could vote on it next week.

The disclosure provision requires that no later than two years after the bill’s enactment, the SEC must issue rules to adopt the new data standards.

The provision assigns to the SEC the responsibility to “scale” the standards “to reduce any unjustified burden on smaller regulated entities” and “to minimize disruptive changes to the persons affected by those rules,” which could include small issuers or other types of issuers, Brock said.

The provision also requires the SEC to “consult market participants in establishing data standards.”

It also features expanded language that prohibits any new disclosure information requirements beyond what is already required.

Muni issuers have always been free of direct regulatory requirements on the presentation and delivery of their financial disclosure, though the SEC since 2009 has required private companies to use XBRL on their financial statements.

Shifting the data standards rulemaking and oversight away from the MSRB is a “key distinction,” Brock said.

“With the SEC, we at least know there are administrative procedures that have to be followed, and we can stay in touch with Congressional delegates and they can communicate with the SEC,” she said.

Negotiations over the bill were briefly hung up on whether it would include various non-defense related amendments, including Sen. Joe Manchin’s permitting provision for energy infrastructure projects, which ultimately was not included in the final version.

By Caitlin Devitt

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