

Bond Case Briefs

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Senate-Passed Bill Does Not Change Ability to Claim Energy Tax Credits Through Elective Payment

The One Big Beautiful Bill Act of 2025 (H.R. 1) passed by the U.S. Senate on July 1 will not change the ability to claim energy tax credits through elective payment and also leaves intact the tax exclusion for municipal bonds.

The American Public Power Association on July 1 noted that the Senate Finance Committee draft of the tax title would have repealed the statutory exception to the domestic content requirements for elective payment. However, the provision was dropped due to the vocal advocacy from APPA members in coordination with allied stakeholders.

The bill also leaves intact the tax exclusion for municipal bonds, again thanks to the work of public power utilities and allied stakeholders, APPA said.

The House Committee on Rules met on Tuesday to consider the rules under which the House will debate H.R. 1.

If passed by the House, President Trump has said he will sign the bill into law.

Senate-Passed Bill Continues Aggressive Phaseout of ITC, PTC for Wind and Solar Projects

The Senate-passed bill continues the aggressive phaseout of the investment tax credit (ITC) and production tax credits (PTC) for wind and solar projects but does provide some relief (compared to an initial version of the bill) to projects currently under development.

As passed by the Senate, the ITC and PTC for wind and solar projects would be unavailable for a project placed in service after 2027.

However, this new deadline would only apply to projects the construction of which begins more than 12 months after the date of enactment. The original version of the Senate bill would have imposed the new 2027 placed in service deadline on any project construction of which began after the date of enactment.

The Senate also dropped a proposed federal excise tax on wind and solar projects.

The bill would also delay the effect of foreign entity of concern (FEOC) provisions – including restrictions on ownership and “material assistance.”

The material assistance provisions are most likely to be relevant to public power utilities seeking to claim energy tax credits, but the ownership provisions could also be.

Specifically, there is a provision that would deny energy tax credits to a taxpayer with more than 15 percent of its debt held by a specified foreign entity.

APPA said that it has heard conflicting guidance as to how readily an issuer can determine the

owners of its debt, but the real issue may be in proving that bond holders are not specified foreign entities.

APPA was unable to obtain a clarification in the bill that public offerings are excluded from the FEOC debt test. If enacted, it will seek regulatory guidance doing so.

Pay-as-You Go Sequestration

Of concern to public power is how the bill will be scored for Statutory Pay-As-You-Go Act (PAYGO) purposes, APPA said.

Under PAYGO, tax cuts and spending increases which are not offset by tax increases or spending cuts must be offset with across-the-board spending cuts (sequestration) that would begin in the January of the year following enactment.

This would affect federal payments for direct payment bonds and energy tax credit elective payments.

Under normal PAYGO scorekeeping conventions, the roughly \$3.4 trillion in deficits caused by H.R. 1 would effectively require the elimination of such payments through 2034. Congress could later pass legislation to waive PAYGO as it has in the past.

However, early in the Senate's debate of H.R.1, Republicans successfully defended a ruling of the parliamentarian authorizing the use of a "current policy" baseline instead of a "current law" baseline.

APPA said that it is too early to say how this will play out, but noted that if H.R. 1 is enacted, it is possible this could help avoid PAYGO sequestration.

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