Bond Case Briefs

Issue 41

Municipal Finance Law Since 1971

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- Florida High Court Makes It Harder to Challenge Bond Validations.
- Swift Descent to Junk Shows Buried Risk as Municipal Loans Surge.
- MSRB Rule G-15 Webinar.
- NABL Municipal Bankruptcy Teleconference.
- And finally, BCB's Department of Comically Pyrrhic Victories this week brings you *Acciona Windpower North America, LLC v. City of West Branch*, in which turbine manufacturer was granted specific performance of its TIF contract with city. Hooray! However, prior to ordering specific performance, the court had ruled that the city's only contractual obligation was to "consider" whether or not it wanted to appropriate funds for a tax rebate. So that's what the city was ordered to do – sit there and "consider." And so it did. Hooray!

CLAIMS - CALIFORNIA

J.M. v. Huntington Beach Union High School District

Court of Appeal, Fourth District, Division 3, California - September 30, 2015 - Cal.Rptr.3d - 2015 WL 5722839

Student petitioned for relief from the Government Claims Act presentation requirement for his claim against school district. The Superior Court denied petition. Student appealed.

The Court of Appeal held that:

- Student's application to present late claim was deemed denied when district failed to act on it within 45 days, and
- District's failure to give written notice of denial of application to present late claim did not estop district from invoking six-month limitation period.

PUBLIC UTILITIES - TENNESSEE

Town of Smyrna, Tenn. v. Municipal Gas Authority of Georgia

United States District Court, M.D. Tennessee, Nashville Division - September 10, 2015 - F.Supp.3d - 2015 WL 5306058

Town brought action against gas authority under the Tennessee Consumer Protection Act (TCPA) and the Tennessee False Claims Act (TFCA) and asserted claims for breach of fiduciary duty and breach of contract, arising out of gas authority's placing multi-year hedges on its behalf. Gas authority moved for dismissal and summary judgment.

The District Court held that:

- Doctrine of quod nullum tempus occurit regi, under which the sovereign is exempt from the consequences of its laches, did not apply to town's untimely claim under TCPA;
- Town knew or should have known of gas authority's actions regarding execution of hedges over a year before town brought action, and thus action was not timely;
- Town failed to meet its burden of proof under doctrine of equitable estoppel to toll statute of limitations on TCPA claim;
- Gas authority qualified as a person subject to TFCA;
- Fact issues precluded summary judgment on issue of whether gas authority violated TFCA;
- Fact issues precluded summary judgment on issue of whether gas authority was a fiduciary to town; (and
- Fact issues precluded summary judgment on towns breach of contract claim.

EMINENT DOMAIN - IOWA

[Rasmuson v. U.S.]()

United States Court of Appeals, Federal Circuit - October 5, 2015 - F.3d - 2015 WL 5781506

Putative class of owners of real estate underlying or abutting allegedly abandoned railroad right-o--way brought action against United States, alleging that government effected Fifth Amendment taking of land by conversion of right-of-way to public use trail pursuant to National Trails System Act. The United States Court of Federal Claims determined in awarding damages that appraiser was not required to take physical remnants of railroad easement into account when determining value of land before taking occurred. Government appealed.

The Court of Appeals held that appraiser had to consider value of landowner's property before easement, which included physical remnants of railroad.

In Rails–to–Trails case, fair market value of land included physical remnants of railway that would have remained on landowners' property but for issuance of Notices of Interim Trail Use (NITUs) for corridors, since railway easements would have lapsed and land would have returned to landowners with physical remnants of railway but for government's easement, and proper appraisal methodology had to account for those physical conditions.

CONTRACTS - GEORGIA

[Layer v. Barrow County]()

Supreme Court of Georgia - October 5, 2015 - S.E.2d - 2015 WL 5778796

Contractor who built sewer pumping station for county brought action against county, city, and county and city officials, alleging breach of contract, unjust enrichment, breach of the implied covenant of good faith and fair dealing, promissory estoppel, and an unconstitutional taking of his property without just compensation. The trial court dismissed action. Contractor appealed.

The Supreme Court of Georgia held that:

- Sovereign immunity barred contractor's contractual and quasi-contractual claims against county;
- Alleged oral contract between contractor and county was unenforceable;
- County officers, city, and city officers did not breach any alleged agreement; and
- City's use of pumping capacity was not unconstitutional taking.

ELECTED OFFICIALS - KANSAS

State v. Morrison

Supreme Court of Kansas - October 2, 2015 - P.3d - 2015 WL 5752472

State brought quo warranto action to oust city council member. The District Court entered order of ouster. Council member appealed. The Court of Appeals reversed and remanded. State petitioned for review, which was granted.

The Supreme Court of Kansas held that trial court was required to determine whether member's actions in providing homeless acquaintance access to city hall building for overnight shelter were, in addition to being unjustifiably illegal, the product of a bad or corrupt purpose.

ZONING - LOUISIANA

GBT Realty Corp. v. City of Shreveport

Court of Appeal of Louisiana, Second Circuit - September 30, 2015 - So.3d - 2015 WL 5717200 - 50, 104 (La.App. 2 Cir. 9/30/15)

Property developers brought action against city for wrongful denial of its site plan to build a thrift store, the construction and operation of which was a "use by right" within the property's zoning classification, after city's decision was overturned. The District Court entered judgment in favor of city. Developers appealed.

The Court of Appeal held that:

- City retained discretion to deny plan but denial was subject to strict scrutiny, and
- Denial of plan was a discretionary act that was genuinely based in city's attempt to ensure that use of property comported with the public interest, and thus city was immune from suit.

A municipality retains the discretion to deny a site or subdivision plan submitted in accordance with "use by right" zoning, but that denial is subject to strict scrutiny and the zoning ordinances and actions will be construed in favor of the use proposed by the owner.

City's action in denying developers' site plan to build a thrift store, construction and operation of which was a "use by right" within property's zoning classification, was a discretionary act that was genuinely based in its attempt to ensure that use of property comported with the public interest, and thus immunity applied to shield city from liability for claim of wrongful denial of plan, even though city's action was ultimately overturned. City's decision was based in part upon plan's provision for access into and out of store and the detrimental effect on traffic that the proposed access allowed, and store tenant did not approve plan after it was ultimately approved by trial court and instead asked developers to change plan's proposed access to property.

ZONING - NEW YORK

Roman Catholic Diocese of Rockville Centre, N.Y. v. Incorporated Village of Old Westbury

United States District Court, E.D. New York - September 3, 2015 - F.Supp.3d - 2015 WL 5178126

Non-profit religious corporation brought action against village, its board of trustees, and various individual village trustees and officials, challenging village’s imposition of restrictions, pursuant to zoning law, on proposed cemetery. Defendants moved for summary judgment, and religious corporation moved for partial summary judgment.

The District Court held that:

- Zoning law was neutral with respect to religion;
- Zoning law was generally applicable;
- Zoning law was constitutional under rational basis analysis;
- Genuine issues of material fact existed as to whether zoning law created substantial burden on exercise of religious corporation’s religious beliefs;
- There was no evidence that village treated any comparable secular assembly or institution more favorably;
- Genuine issue of material fact existed as to whether village would have denied religious corporation’s permit to build cemetery regardless of religious corporation’s prior state-court suit;
- Village’s application of zoning law was not motivated by anti-religious intent; and
- Genuine issue of material fact existed as to whether official entered religious corporation’s property, and whether he had warrant or sufficient cause to do so.

OPEN RECORDS - PENNSYLVANIA

Ali v. Philadelphia City Planning Com'n

Commonwealth Court of Pennsylvania - October 1, 2015 - A.3d - 2015 WL 5727701

Requestor appealed determination of the Office of Open Records (OOR) that copyrighted materials submitted to city planning commission as part of redevelopment project were exempt from disclosure. The Court of Common Pleas affirmed. Requestor appealed.

The Commonwealth Court held that:

- Materials were not exempt from disclosure under Copyright Act, but
- Copyright Act provided a basis for commission to limit access to copyrighted materials.

Copyrighted materials that were submitted as part of redevelopment project were not exempt from disclosure under Copyright Act and were thus not exempt from disclosure under Right to Know Law (RTKL) on that ground. Copyright Act did not expressly make copyrighted material private or confidential, nor did it expressly preclude a government agency, lawfully in possession of the copyright material, from disclosing that material to the public.

Copyrighted materials that were submitted as part of redevelopment project were not “nonpublic” materials under Copyright Act and were thus not exempt from disclosure under Right to Know Law (RTKL) on that ground. Copyright Act did not expressly make copyrighted material private or confidential, nor did it expressly preclude a government agency, lawfully in possession of the copyright material, from disclosing that material to the public.

Under Right to Know Law (RTKL), Copyright Act provided a basis for city planning commission to limit access to copyrighted materials that were submitted as part of redevelopment project. Materials could be redacted in response to RTKL request but were to be made available for inspection under RTKL.

TAX - NEW YORK

Level 3 Communications, LLC v. Erie County

Supreme Court, Appellate Division, Fourth Department, New York - October 2, 2015 - N.Y.S.3d - 2015 WL 5750574 - 2015 N.Y. Slip Op. 07104

Taxpayers brought hybrid article 78 proceeding and declaratory judgment action against city and school district, claiming that taxpayers' fiber optic cables did not conduct electricity and thus were not taxable real property. The Supreme Court, Erie County, dismissed the petition-complaint. Taxpayers commenced proceeding in the nature of mandamus.

The Supreme Court, Appellate Division, held that the Supreme Court could not dismiss taxpayers' hybrid article 78 proceeding and declaratory judgment action challenging a city's and school district's tax assessment on the basis of grounds not considered in administrative proceedings challenging the tax assessment, no matter how sound those grounds might be.

The appeals court remitted the matter to respondents for reconsideration of petitioners' applications, including determining whether the applications were timely and procedurally proper, whether the taxes that petitioners paid may be recovered despite the lack of protest by them, and whether the fiber optic cables at issue constitute taxable real property within the meaning of the RPTL.

SEC Official Corrects Municipal Advisor Misconceptions.

CHARLESTON, S.C. — Some municipal advisors have misconceptions about who can advise in the municipal market and who can be considered an independent registered municipal advisor, a Securities and Exchange Commission official told MAs meeting here.

Rebecca Olsen, deputy director of the SEC's office of municipal securities, made the remarks at the National Association of Municipal Advisors annual conference here on Thursday. She said that not only MAs, but also other individuals like registered investment advisors, can give advice on bonds. She also said that some MAs need to stop "telling everyone they are the IRMA" when they have not met the necessary requirements.

"While a municipal advisor may have agreed to serve in the role of an IRMA for [a] particular client, a market participant cannot rely on that municipal advisor in that capacity until all the requirements of the exemption have been satisfied," Olsen said.

The IRMA exemption allows an underwriter firm to avoid having to register as an MA as long as the issuer retains, as its own MA, an advisor that doesn't have ties to an underwriting firm, and agrees to rely on that MA's advice. An underwriter who gives bond advice to a state or local government without an exemption from the rule, such as the IRMA exemption, becomes an MA that has a fiduciary duty to put the municipality's interests before its own and is precluded from underwriting any bonds in that same transaction.

Olsen said the market participant relying on the IRMA exemption is the one who has to make sure all the requirements are satisfied, but that it is "something to keep in mind" for MAs moving forward.

MAs who falsely claim to be IRMAs are not violating any specific rules at this point, aside from Municipal Securities Rulemaking Board Rule G-17 on fair dealing if the behavior is egregious, but the SEC is "a bit concerned about the miscommunications and [is] encouraging people not to make them," she said.

There are also a number of MAs that are not permanently registered with the SEC Olsen said. The Bond Buyer's comparison of the SEC and Municipal Securities Rulemaking Board's lists of registered MAs shows approximately 80 firms or individuals still need to register with the SEC.

The deadline for registration was last year. "If a municipal market participant is engaging in municipal advisor activities and not registered on a permanent form, it would at this point be considered unregistered municipal advisory activity," Olsen said.

Later in the panel, Olsen updated the audience on a new SEC rating agency requirement that took effect in June. Paragraph "b" of the SEC's Rule 17g-8 on credit rating agencies stems from provisions laid out in the Dodd-Frank Act and requires rating agencies to have policies and procedures that are designed to take the probability that an issuer will default or fail to make timely payments into account when assigning ratings.

The rule responds to the long-time critique that muni ratings generally are not as high as corporate bond ratings, even though muni default rates are lower. Olsen said the rule change "appeared to have resulted in an upgrade for certain municipalities including general obligation bonds."

Dave Sanchez, an attorney at Sidley Austin in California and a former SEC muni office lawyer who moderated the panel, said rating agencies seem unaware of the rule. He also cited a study that referred to the absence of adequate default rate considerations as potentially a $2 billion problem for issuers.

Olsen said the study likely relied on data from before the rule took effect and emphasized that the rule requires rating agencies to look at the probability of default comparably with other factors they could have previously considered.

THE BOND BUYER

BY JACK CASEY

OCT 9, 2015 10:49am ET

[SEC Weighs Providing Legal Guidance on Role of MAs in Bank Loans.]()

CHARLESTON, S.C. — The Securities and Exchange Commission's Office of Municipal Securities is weighing whether to provide legal interpretive guidance to help municipal advisors determine if they are acting as an adviser or broker-dealer when working with an issuer on a bank loan.

Rebecca Olsen, deputy director of OMS, told those attending the National Association of Municipal Advisors annual conference here that the role an MA plays in bank loans has raised legal issues because advisors, who owe fiduciary duties to their clients, and broker-dealers, who act as intermediaries, operate in different regulatory regimes. She said her office "could consider" providing the guidance, in close coordination with the SEC's division of trading and markets.

"We completely understand that the definition of municipal advisor contemplates advice with respect to structure, timing and terms of an offering of municipal securities that would typically require broker-dealer registration and that this is creating legal interpretive issues," Olsen said.

The issue, she said, is whether the bank loan should be considered a security and whether an advisor dealing with the bank loan is "acting only as an advisor in providing advice in the capacity of their advisory relationship with their client" or whether they are acting as a broker by entering into the business of effecting a transaction in the securities of others. The first question fits into an ongoing discussion best answered by the 1990 case Reves v. Ernst & Young. In that case, the court ruled that notes were presumably securities, but allowed for that presumption to be overcome if the notes bore a strong resemblance to another note that was not a security. The ruling said an instrument is a security if: it is motivated by investment or commercial purpose; it is traded for speculation and investments; the public views the transaction as a security; or it falls under other federal regulations which make applying the securities laws unnecessary.

If the test shows the instrument is not a security, the need to distinguish between MA and broker-dealer is moot because the Securities Exchange Act of 1934 rules for broker-dealers and the Municipal Securities Rulemaking Board rules only apply to municipal securities, Olsen said.

She said the issue of whether an individual is acting as an advisor or a broker-dealer is "more difficult" because "there is no bright line" and any answer requires "a very factually intensive analysis."

Olsen suggested the trading and markets division's guide on broker-dealer registration may help MAs determine whether they are acting as broker-dealers and participating in important parts of the securities transaction. Key parts of a securities transaction include: solicitation, execution of the transaction, conversations about the size of the transaction, and whether the MA handles the securities of others in connection with the securities transaction.

Bank loans also have raised other questions in the market, such as whether and how often an issuer should disclose them. They do not qualify as a material event under SEC Rule 15c2-12 on continuing disclosure, meaning any effort to disclose them requires an issuer to volunteer the information.

Allen Robertson, a managing partner at Robinson, Bradshaw & Hinson, said during a later panel that issuers' or obligated persons' decisions to disclose bank loans fall outside the scope of advice a lawyer advising them should give. Robertson, a former president of the National Association of Bond Lawyers, said NABL determined a lawyer's job is to make sure issuers and borrowers understand the risks and considerations behind any type of voluntary disclosure. Armed with that information, their clients can make an informed business judgment.

The three concerns a lawyer might raise, according to Robertson, are whether voluntarily disclosing the bank loan: opens the issuer up to a continual liability to provide general updates; means the issuer is committing itself to provide information about all future bank loans; or requires the issuer to make a disclosure any time the loan is amended. While he said there are likely ways to avoid each of those concerns while still disclosing, he said that legally there is no "black and white answer."

The two rating agency officials on the panel both advocated for disclosure whenever possible because it allows for a more complete picture of an issuer's ability to pay its debt.

"I will never tell you not to disclose a bank loan," said Tom Jacobs, senior vice president and manager of Moody's municipal supported products group. "The more transparent the market is, the happier we will be."

Loans are particularly worrisome when the banks have acceleration rights that allow them to seek immediate repayment if ratings or other indicators of an issuer's ability to repay the debt diminish, Jacobs said. When acceleration rights are written into a loan, bondholders without the rights become subordinate and have to wait behind the banks for payment.

Diane Brosen, managing director for Standard & Poor's corporate and government ratings, said that a few years ago, issuers questioned why rating agencies needed information about bank loans.

"We at Standard & Poor's felt like we had to go to the issuers and let them know how important this was to the market," Brosen said.

Many issuers now more readily supply bank loan information, but Brosen said there is still an issue, especially with smaller community banks that are harder to reach. She asked any MAs in the audience who are involved in bank loans with smaller banks to spread the message of the need for disclosure.

National Federation of Municipal Analysts industry and media liaison Bill Oliver mentioned NFMA's recent white paper urging issuers to disclose bank loans. He challenged the idea that issuers will always be able to access the capital market and that there is a good level of liquidity present regardless of their disclosure practices.

"The market does have a fragile side to it and I think disclosure and having a disclosure track record for your issuers is really important," Oliver told the audience. "This notion about disclosure being voluntary is outdated."

THE BOND BUYER

BY JACK CASEY

OCT 9, 2015 10:31am ET

NABL Municipal Bankruptcy Teleconference.

Not too many of us are municipal bankruptcy experts (and few of us want to be!). Most bond law issues are often litigated and settled before trial, in both bankruptcy and work-out situations. This last year has been no exception.

Join our panel of national experts, Patrick Darby, Ann D. Fillingham, and Allen K. Robertson, on **Thursday, November 12, 1-2:30 pm Eastern**, for their perspectives on what we need to know.

This free, NABL members-only teleconference will cover:

- Distressed Units – Common Causes and Warning Signs;
- Understanding the Basics of Access to the Bankruptcy Courts;
- Common Arguments Raised During Bankruptcy;
- State Law Remedies vs. Chapter 9 Bankruptcy;
- Understanding the Importance (and Limitations) of Lien and "Special Revenue" Status;
- Statutory Liens and Recent State Law Developments; and
- Disclosure Issues.

Click here to download the registration form.

ABA Submits Recommendations for Public-Private Partnerships.

The American Bar Association's (ABA) Section of Taxation sent its recommendation to the Treasury Department and the Internal Revenue Service concerning the guidance to facilitate the development of public-private partnerships (P3's). The ABA's recommendations include the creation of a new safe harbor to ensure that P3 arrangements won't give rise to private business use.

The ABA's recommendations can be seen here.

Attention Municipal Advisors: Enroll Today for the Series 50 Pilot Exam.

The Municipal Advisor Representative Qualification Exam (Series 50) will be administered as a pilot exam January 15, 2016 – February 15, 2016.

Enroll using the Financial Industry Regulatory Authority's (FINRA) Form U10 by January 14, 2016 to participate.

For more information regarding the Series 50 pilot exam, see the MSRB's Regulatory Notice 2015-15.

MSRB Rule G-15 Webinar.

Request for Comment on Draft Rule Amendments to MSRB Rule G-15 Webinar.

October 29, 2015

3:00pm – 4:00pm EDT

During this free webinar, MSRB staff will provide an overview of the Request for Comment on Draft Rule Amendments to MSRB Rule G-15 to require municipal securities dealers to disclose the amount of the mark-up on retail customer confirmations for specified principal transactions. To support market participants' submission of comment letters, this webinar will review the key provisions of the draft rule amendments.

Register for the webinar.

S&P: Bank Loans Pose Potential Credit Risks, But For Now Issuers' Liquidity Positions Help Support Most Ratings.

Standard & Poor’s Ratings Services continues to scrutinize the credit impact of bank loans assumed by issuers and their potential effects on Standard & Poor’s rated debt. This commentary updates our Jan. 28, 2015. report on bank loans (see “Standard & Poor’s Maintains Its Focus On Direct Loans After Evaluating $15.8 Billion In 2014”) to include our 2015 year-to-date experience. Through Sept. 25, 2015, and including all prior years, we have reviewed 513 bank loans totaling approximately $20 billion in par by applying the methodology detailed in our 2012 contingent risk criteria.

The overwhelming majority of these bank loans we have evaluated have not, for the most part, negatively affected the credit quality of the obligors’ debt rated by Standard & Poor’s. This is because in our view (1) the parties to the transactions negotiated terms that we consider to be consistent with existing credit quality and current liquidity positions vis-à-vis the direct purchase terms under which acceleration could occur, (2) the financing structures do not present material contingent liquidity risks, and (3) the loans do not explicitly or implicitly subordinate other liens but the loan documents often provide preferential rights to the bank, in the event of a covenant default, which may result in a credit concern if liquidity is insufficient.

Overview

- So far in 2015, Standard & Poor’s evaluated the impact of 109 bank loans totaling $4.22 billion on the obligors’ public debt ratings. Of that total, six loans negatively affected the credit quality of Standard & Poor’s rated parity obligations due to lenient covenants and inadequate liquidity levels to handle a potential acceleration event.
- The overwhelming majority of bank loans generally haven’t negatively affected U.S. public finance issuers’ credit quality when the financing structures mitigate contingent liquidity risks and where liquidity is sufficient per our criteria.
- We continue to stress the importance of loan disclosures in our written analysis and communications with issuers as direct purchase debt is often not subject to disclosure rules like rated securities.

Often, the bank loan financing documents contained provisions that introduced additional risks that the obligors’ current liquidity position may or may not fully have mitigated. If liquidity were to erode in our view, credit quality and ratings could be negatively affected and the magnitude of the rating decline could be greater than it would be absent these loans.

Looking at 2015 exclusively, Standard & Poor’s evaluated the impact of 109 bank loans with a par amount totaling $4.22 billion on the obligors’ public debt ratings. The loans ranged from less than $287,000 to $300 million. To date, the ratings or outlooks of six obligors have been negatively affected by bank loans. The 109 loans evaluated thus far in 2015 include:

- 19 loans totaling $641 million and an average par of $33.8 million secured by universities, independent schools, and not-for-profit institutions;
- 35 loans totaling $1.89 billion and an average par of $54 million secured by hospitals and other health care providers;
- 40 loans totaling $589.9 million and an average par of $14.7 million secured by a variety of special taxes, general obligation and appropriation pledges, and
- 15 loans totaling $1 billion and an average par of $73.1 million secured by transportation and utility systems.

Measuring the U.S. public finance bank loan market remains a challenge for various reasons, most notably because bank loans are not explicitly required to be disclosed as they are not deemed to meet the legal definition of securities. Nevertheless, Standard & Poor's observes that issuers across the municipal finance market continue to meaningfully use bank loans as an alternative financing product to manage their debt profiles for various reasons, including cost of capital, ease of issuance, and often to avoid the put features of various bonds.

Although the instances where we have adjusted ratings as a result of issuers' use of bank loans have been limited, Standard & Poor's continues to emphasize that disclosure of the loans and their terms is critical to identifying those cases where the loans do affect credit quality. Moreover, loan disclosure promotes transparency for all market participants, including the retail and institutional investors that use Standard & Poor's ratings. In our view, reviewing the loans is critical because each transaction is separately negotiated, the terms are not uniform, disclosure of the loans can be inconsistent, and the potential for contingent liquidity exposures or altering the relative priority of creditors' claims can be significant even for fixed-rate instruments. Consequently, we continue to underscore with issuers that carry Standard & Poor's ratings the importance of providing us with bank loan documents, irrespective of whether we assign ratings to the issuers' loans. Our view is that bank loans lacking the protections outlined in our criteria have the potential to meaningfully affect the credit quality of rated capital market instruments largely because of covenants that can trigger acceleration even in fixed-rate instruments.

06-Oct-2015

MSRB Publishes Updated Documents Related to May 2016 Changes to RTRS.

On Friday, September 18, 2015, the Municipal Securities Rulemaking Board (MSRB) published updated RTRS Specifications and RTRS Web User Manual reflecting the amendments to MSRB Rule G-14 described in MSRB Notice 2015-07. The rule changes, which will become effective on May 23, 2016, will enhance the post-trade price transparency information provided through the MSRB's Real-time Transaction Reporting System (RTRS) by:

- Expanding the application of the existing list offering price and takedown indicator to include distribution participant dealers and takedown transactions that are not at a discount from the list offering price;
- Eliminating the requirement for dealers to report yield on customer trade reports and, instead, enabling the MSRB to calculate and disseminate yield on customer trades;
- Establishing a new indicator for customer trades involving non-transaction-based compensation arrangements; and
- Establishing a new indicator for inter-dealer transactions executed with or using the services of an alternative trading system (ATS).

A test environment reflecting the amendments to MSRB Rule G-14 was made available through the current RTRS BETA system on October 1, 2015. The MSRB encourages dealers to make necessary programming changes and complete testing prior to the May 23, 2016 effective date.

If you have any questions, please contact MSRB Support at 703-797-6668.

MSRB Proposes Four-Year Terms for Board Members.

WASHINGTON – The Municipal Securities Rulemaking Board is proposing to lengthen board members' terms to four years from three, claiming this will make them more effective.

The MSRB proposed the changes to its Rule A-3 on board membership on Monday and is asking for public comments to be submitted by Nov. 19. The self-regulator had previously asked for comments on longer board terms as part of a controversial proposal earlier this summer to ease the standard of independence for the board's public investor representative. That proposal was shelved after it drew criticism, including from the Securities and Exchange Commission's Investor Advocate.

The new amendments are "primarily designed to improve the continuity and institutional knowledge of the board from year to year, while retaining the benefits of the regular addition of new members," the MSRB said in its regulatory notice. Longer terms would be especially helpful when members work on more complex or unique rules that often take multiple years to formulate and implement, it said.

"As former board members frequently attest, there is a substantial learning curve when joining the board and members typically make increasing contributions with each year they become more knowledgeable about the work of the MSRB," said the board's executive director Lynnette Kelly.

The proposed new term structure would maintain the majority-public nature of the 21-member board, but would change the number of new board members every year to either five or six, instead of the current seven. The MSRB is proposing a transition period through 2020. In 2021 there would be six new members, the next year five, the next year five, and the next year five. The cycle would be repeated every four years. The MSRB currently considers the members that come on in the same year one "class" and names the class according to the year they end their terms.

The MSRB said each new class of five or six "would continue to be as evenly divided as possible between public representatives and regulated representatives."

As part of the changes, the MSRB would eliminate a current Rule A-3 requirement that every board class have at least one municipal advisor representative not associated with a dealer. The MSRB said that keeping the requirement "would create an unintended obligation that the board always include four non-dealer municipal advisors" and thus possibly decrease representation of other regulated entities.

"Nothing in this change would reduce the representation of municipal advisors nor would it prohibit the MSRB from deciding to include more than three non-dealer municipal advisors on the board," the MSRB said.

During the transitional period, different members of the board would be eligible for board-approved extensions each year.

In fiscal year 2017, one public representative from the class of 2016 would get a one-year extension and six new members would join the board. The next year, one public and two regulated representatives from the class of 2017 would receive a one-year extension and five new members would join. Then in 2019, three public and two regulated members from the class of 2018 would get one-year extensions and five new members would join the board. And by 2020, the board would have completed the transition and welcome a class of five new members who would serve four year terms.

A committee of board members not being considered for extensions would nominate the members eligible for extensions in each of the transition years and then the board would vote on each proposed term extension. The extensions and board composition during and after the transition period “would be consistent with the statutorily-required compositional requirements of the board,” the MSRB said.

While the MSRB said it recognizes there are numerous combinations of classes and members to achieve the change, it said it feels its specific recommendations would “achieve the transition expeditiously and efficiently while minimizing any disruption.”

However, the board included several alternatives for commenters to consider when responding to the proposal, including whether members should serve terms longer than four years and whether the MSRB should make it easier for members to serve consecutive terms, even though the self-regulator said it believes the regular turnover every four years has benefits.

It also listed alternatives, including: a new proposed lifetime cap on the number of years a member could serve; devoting more resources to educating board members; and changing to four-year terms but keeping the rotation of seven new people every year and having no new members every fourth year.

The MSRB also posed two questions at the end of its notice asking if the proposed amendments would give the board greater continuity and institutional knowledge as well as whether the amendments would impose costs or burdens on any industry participants.

Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association, said SIFMA thinks the proposed term limit extension is “a great idea” and although the dealer group is still looking at the proposal, a longer term will “make board members more effective in decision making.”

Jessica Giroux, Bond Dealers of America general counsel and managing director of federal regulatory policy, said BDA plans to discuss MSRB’s suggested changes to Rule A-3 “with an eye toward flushing out any of our concerns related to proposed details surrounding adjustments to classes and how the transition process will proceed.”

A spokesman for the National Association of Municipal Advisors said the group will be submitting comments. The Government Finance Officers Association could not immediately be reached for comment.

THE BOND BUYER

BY JACK CASEY

OCT 5, 2015 2:06pm ET

TAX INCREMENT FINANCING - IOWA

Acciona Windpower North America, LLC v. City of West Branch

United States District Court, N.D. Iowa, Cedar Rapids Division - September 4, 2015 - F.Supp.3d - 2015 WL 5189017

Wind turbine manufacturer brought action against city, alleging breach of tax increment development agreement for urban renewal project. Parties cross-moved for summary judgment.

The District Court held that:

- Manufacturer complied with agreement requiring it create approximately 110 new, full-time jobs within five-year period;
- Under terms of agreement, city did not have a legal obligation to appropriate funds for tax refund;
- City's cancellation of agreement was without legal excuse, and thus constituted anticipatory breach of contract;
- Manufacturer was not entitled, as award of damages for city's breach of agreement, to five years of unpaid tax rebates;
- Manufacturer was entitled to specific performance; and
- Genuine issue of material fact existed as to whether city had legal obligation to pay manufacturer a rebate obligated for appropriation in city resolution.

Under Iowa law, wind turbine manufacturer complied with terms of tax increment development agreement requiring it to create approximately 110 new, full-time jobs within a period of not to exceed five years, despite manufacturer's failure to maintain that number of jobs during entirety of five year period, where manufacturer created more than 110 new, full-time jobs almost immediately, and nothing in the agreement required manufacturer to maintain a certain number of jobs over any particular length of time.

Under Iowa law, terms of tax increment development agreement between city and wind turbine manufacturer, which stated tax rebate payment would be subject to annual appropriation of the city council, did not create a legal obligation to appropriate funds for a tax rebate in any given year, despite moral or practical reasons for doing so.

Under Iowa law, city's cancellation of tax increment development agreement, based on wind turbine manufacturer's alleged breach of contract, was without legal excuse, and thus constituted anticipatory breach of contract, where manufacturer had, in fact, complied with agreement.

Under Iowa law, wind turbine manufacturer was not entitled, as award of damages for city's breach of tax increment development agreement, to five years of unpaid tax rebates. Agreement required only that city consider whether tax rebate would be paid in any given year, and automatically awarding tax rebates for remaining five years of contract would place manufacturer in a better position than if the contract had not been breached.

Under Iowa law, wind turbine manufacturer was entitled to specific performance of tax increment development agreement, which had been breached by city.

Genuine issue of material fact as to whether, under terms of tax increment development agreement, city had legal obligation to pay wind turbine manufacturer a percentage of incremental taxes paid by manufacturer to be rebated in later fiscal year, which had been approved by city resolution, precluded summary judgment on claim that failure to pay such amount constituted breach of agreement under Iowa law.

GFOA Hosts Meeting to Discuss Implementing School Budgeting Best Practices.

Alliance for Excellence in School Budgeting members met last week at GFOA's office in Chicago to develop a set of guiding principles for the budget process, based on GFOA's new best practices. These guidelines center on aligning district resources with the areas that will have greatest impact on student achievement. The Alliance members are from 35 school districts across the country, from the largest to some of the smallest, and from urban, suburban, and rural areas. They worked on developing communication ideas and analyzing goals and priorities (see below for more information about their process).

Alliance members will be implementing GFOA's new Best Practices in School Budgeting over the next year. GFOA will support their efforts in several ways through online training courses and eLearning sessions. In addition, resources available on GFOA's website – based on the best practices – help academic and finance staff align resources with student outcomes by incorporating research-proven practices into a cohesive budget process.

Working on Implementation

At the meeting, Alliance members – superintendents, chief finance officers, chief academic officers, budget directors, and more – worked on implementing best practices that GFOA staff has developed in conjunction with school district staff and other education finance experts. Specifically, they developed communication ideas and analyzed goals and priorities.

Communication. The components of a communication strategy start with an overview of the organizations' processes, which allows them to find ways of engaging stakeholders and explaining how and why decisions are made. Next, districts must identify who will deliver the message, and to whom. Messages should then be tailored to that target audience, but it's not that easy. Districts must also determine which communication channels will be most effective. And once the message is delivered, it's time to gather feedback and adjust the message accordingly.

Goals. Districts also need to develop goals. One way to approach this step is by using the SMARTER framework. Goals should be specific – that is, they specify a precise outcome or result. They should also be measureable (verifiable and, ideally, quantifiable); achievable (grounded in reality); relevant (focused on student achievement); time-bound (laying out both short- and long-term objectives); exciting (reaching for ambitious improvement); and resourced (aligning finances with goals).

To define goals for academic achievement and make those goals understood by the schools, districts need to assess their strategic environment; set SMARTER goals for multi-year, district-wide improvement; understand baseline performance at the school level; and set goals for each school. To take that first step, start with goals that include specific outcomes, and aim for outcomes that are significant but manageable. Establish what data will the district will use to show whether progress is being made on a goal, and begin collecting evidence. Next, identify the root causes of gaps between the district's goals and its reality.

Best Practices. Alliance members will be implementing GFOA's new Best Practices in School Budgeting, which was recently passed by GFOA's executive board, over the next year. The best practices center on aligning resources with areas of greatest impact on student achievement. GFOA will support these efforts with collaborative meetings, newly developed eLearning modules, and other resources. GFOA will begin recruiting members for the next phase of the Alliance in early 2016.

GFOA's best practices for school include steps that are organized in five major phases: plan and prepare, set instructional priorities, pay for priorities, implement a plan, and ensure sustainability. The best practices include specific examples and guidance on implementing the process. Alliance members have benefitted from adopting the process, and GFOA will document and share their successes over the course of the project.

Training. GFOA is developing eLearning courses to help districts with these steps. The courses are self-paced and take approximately 30 minutes and 1 hour to complete.

Budget Award. GFOA's Award for Best Practices in School Budgeting and Award for Best Practices in Community College programs are based on the best practices in school budgeting. GFOA is finalizing the award criteria, which will allow school districts and community colleges to demonstrate process excellence and receive deserved recognition. Applications will be available for budgets with fiscal years beginning in calendar year 2017.

Contact GFOA for More Information

To find out more about the alliance, the best practices, or any other information regarding the project, please contact Mike Mucha, director of GFOA's Research and Consulting Center. More information on the project is also available on GFOA's website.

Thursday, October 8, 2015

S&P's Big Picture Look at U.S. Local Government Distressed Ratings, Bankruptcies, and Rating Correlations.

In this CreditMatters TV segment, credit analysts Lisa Schroeer and Jane Ridley discuss how we analyze U.S. local government distressed ratings, bankruptcies, and the correlation between rating pledges.

Watch the video.

Oct. 7, 2015

S&P: California's $961 Million GO Bonds Assigned 'AA-' Rating.

SAN FRANCISCO (Standard & Poor's) Oct. 6, 2015–Standard & Poor's Ratings Services has assigned its 'AA-' long-term rating, and stable outlook, to California's estimated $961 million of general obligation (GO) bonds, consisting of $855 million in tax-exempt various purpose GO refunding bonds and $106 million in taxable variable purpose GO bonds.

At the same time, Standard & Poor's affirmed its 'AA-' long-term ratings and underlying ratings (SPURs) on California's $75.6 billion of GO bonds outstanding as of Sept. 1, 2015.

Finally, we affirmed the long-term component of the 'AAA/A-1+' and 'AAA/A-2' ratings on some of the state's GO variable-rate demand bonds. The long-term component of the ratings is based jointly (assuming low correlation) on that of the obligor, California, and the various letter of credit (LOC) providers. The short-term component of the ratings is based solely on the ratings on the LOC providers.

"The GO rating is also based on our view of the state's diverse economy, which is currently expanding faster than the nation's; demonstrated commitment in five consecutive budgets to aligning recurring revenues and expenses while paying down budgetary debts; good budgetary reserves; strong enough overall liquidity that the state's typical intra-year general fund cash deficits can be financed entirely from internal sources; and declining, but still moderately high debt ratios," said Standard & Poor's credit analyst Gabriel Petek.

"Somewhat offsetting these strengths, in our view, are the state's persistently high cost of housing relative to other states that contributes to a relatively weaker business climate in California, volatile revenue base, large retirement benefit liabilities, limited prefunding of retiree health care benefits to date, and large backlog of deferred maintenance and infrastructure needs across the state," added Mr. Petek.

Under current conditions, the state's fiscal structure generates modest operating surpluses that translate to larger projected budget reserves, according to the state department of finance's forecast, than the state has had in recent memory. Passage of Proposition 2 in 2014 helped institutionalize a more disciplined approach by requiring annual deposits to the reserve fund. In addition, the measure captures capital gains-related revenue spikes, thereby discouraging the state from building instances of extraordinary revenue growth into its budget base. The state has also restored considerable fiscal flexibility by retiring much of its budgetary debt.

S&P: Nevada's $344 Million GO Bonds Assigned 'AA' Ratings.

SAN FRANCISCO (Standard & Poor's) Oct. 6, 2015–Standard & Poor's Ratings Services assigned its 'AA' long-term rating and stable outlook to Nevada's planned approximately $334 million issue of general obligation (GO) debt. We simultaneously affirmed our 'AA' rating on Nevada's GO debt outstanding and our 'AA-' long-term rating and underlying rating (SPUR) on the state's appropriation-backed certificates of participation. The outlook on all ratings is stable.

"The state has taken steps to bring its fiscal structure into alignment," said Standard & Poor's credit analyst Gabriel Petek. "This, along with Nevada' s demonstrated commitment to adhere to its policy of achieving an ending balance equal to at least 5% of appropriations (even if it potentially fell short in fiscal 2015) helps underpin the state' s strong credit quality, in our view," added Mr. Petek. "Also adding to credit stability, in our view, is the state's recent record of good liquidity and a mechanism to prefund a significant portion of its annual debt service. In our view, these characteristics reduce the risk that an unanticipated revenue shortfall could result in strain on the state' s ability from a cash flow perspective, to fund its debt service."

The current bond offering consists of:

- $256.3 million of GO (limited-tax) capital improvement and refunding bonds, series 2015D;
- $20.94 million of GO (limited-tax) natural resources and refunding bonds, series 2015E;
- $47.1 million of GO (limited-tax) bonds (issued for Nevada Municipal Bond Bank Project Nos. 87, 88, and 89) series 2015F; and
- $10.1 million of GO (limited-tax) open space, parks, natural resources, and refunding bonds, series 2015G.

The 'AA' rating reflects our view of the state's:

- Demonstrated willingness to address budget gaps with both cuts to

spending and increased revenue measures when necessary;
- Consistently good financial liquidity on both an intra- and inter-year basis;
- Good constitutional protections, which require balanced budgets and give tax preference to debt service;
- Commitment to and track record of maintaining positive ending balances;
- Nascent signs of employment diversification; and
- Low total debt relative to the state's economy and a low debt burden as a portion of the state's budget.

Partly offsetting the above strengths, in our view, are the state's:

- Depleted rainy day reserve fund, which it used during fiscal 2015 to address a biennium operating deficit that had emerged;
- Still slow economic growth despite population growth rates above the national average; and
- Still relatively narrow economy that relies on sectors sensitive to changes in discretionary consumer spending (tourism and gaming) and those with volatile performance (construction and real estate) — although we see evidence that this has begun to change.

Workshop Focuses on Best Leadership Practices in Conducting P3s.

Successful delivery of a P3 project hinges not only on obtaining the necessary financing and following construction best practices, but on developing solid working relationships with project partners and the public. To spearhead a P3 smoothly and ensure that it is accepted by government leaders and the public requires the ability to anticipate and address challenges faced by both those who are developing the project and those who are affected by it.

The Virginia Tech School of Public and International Affairs is holding an event to help those who pursuing P3s to explore these challenges. The "P3 Leadership Workshop: Understanding Dimensions of Leadership that Impact Public-Private Partnerships," will offer examples of how leadership has the greatest impact on the outcomes of P3 projects.

Current and former government officials and other experts from the metropolitan area will be on hand to share their insights.

This workshop is being held Nov. 6 in Arlington, Va. For more information, visit the event website.

NCPPP

October 9, 2015

FHWA Drafts Model Contract Guide on Availability Payment P3s.

The Federal Highway Administration has drafted a guide designed to assist in the development of contracts for availability payment-based highway public-private partnerships. The agency is inviting the public to comment on the draft before it is finalized.

The Availability Payment Concessions Public-Private Partnerships Model Contract Guide "is designed to provide industry-standard concepts, relevant common tools and mechanisms and situational examples applicable to availability payment-based P3 transactions," FHWA explains in its introduction to the guide.

The document is similar to the two-part model draft contract guide for toll concession P3s that FHWA released for public review in 2014 and early 2015. The final version of the two drafts will be published as a single document.

These guides are part of a series of documents that describe terms and conditions that P3 concession agreements typically contain and are meant to be educational, not prescriptive.

FHWA has decided to add suggested labor standard best practices recommended by the Department of Labor to both the toll concessions and availability payment guides. As a result, the toll roads concession guide will be finalized after public comments have been received on the availability payments guide draft, the agency said in a Federal Register notice.

Comments on the availability payments guide draft are due Oct. 29.

NCPPP

October 9, 2015

Standard & Poor's Proposed Criteria For Rating Jointly Supported Financial Obligations.

In this CreditMatters TV segment, Senior Director Ekaterina Curry and Criteria Officer Liz Sweeney discuss our recent request for comment regarding proposed methodology revisions to our joint support criteria, including the implications for ratings and obligors.

Watch the video.

Oct. 6, 2015

S&P's Public Finance Podcast: (California's Redevelopment Sector and Bank Loan Market Trends).

In this week's Extra Credit, Associate Director Sarah Sullivant discusses what's driving California's redevelopment sector and Senior Director Lisa Schroeer reviews the trends shaping the bank loan market.

Listen to the Podcast.

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.

THE BOND BUYER

BY NAOMI JAGODA

OCT 2, 2015 11:12am ET

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

BY NAOMI JAGODA

OCT 6, 2015 2:37pm ET

Ratings Agencies Diverge on Post-Default Approaches.

Kroll Bond Rating Agency last week weighed in on post-default ratings, a subject of increasing interest in the municipal industry.

Four of the five biggest municipal bankruptcies in United States history have taken place in the last four years. And the Puerto Rico Electric Power Authority will almost certainly create the greatest municipal default in U.S. history within the next few months.

Kroll noted the "changing landscape" in its Oct. 2 report, "Shouldn't Defaulting on Debt Have Rating Consequences."

While predicting defaults will remain low, the rating service said, "we do expect there will be a higher default rate going forward with substantially lower recoveries than has been experienced historically."

When an issuer defaults the agencies lower its rating, though not necessarily to the lowest grade. Kroll, like Moody's Investors Service would take into account recovery prospects. So even if the issuer has already defaulted, they may give the issuer something better than their lowest ratings based on prospects for a strong recovery on the debt.

Fitch Ratings and Standard & Poor's do not take into account recovery expectations in determining their lowest ratings.

The ratings agencies also vary in how they treat defaulted issuers in the years following defaults. Moody's and Fitch are flexible. S&P and Kroll take more systematic approaches.

Moody's doesn't have a general policy on how it deals with issuers in the years after default because the situation of credits vary so greatly, said Moody's spokesman David Jacobson.

At Fitch, "We consider the credit fundamentals of the issuer as it emerges, the restructured financial profile and the degree to which the forces triggering bankruptcy have been addressed," said Jessalynn Moro, head of U.S. local government ratings. "If the credit fundamentals leading to an issuer's default are unchanged post-default, the rating will remain low, in non-investment grade territory," she said in an email. "Conversely, if an issuer is able to restructure its revenue, expenditure and/or debt profile in a way that makes default less likely in the future, Fitch's rating will reflect those new fundamentals."

Kroll said it “will generally view a decision by a municipal issuer to default on its debt as the basis for assignment of a non-investment grade rating for an extended period of time. KBRA will take this rating approach both for general obligation and non-general obligations debt which has been placed into default.” Adoption of a plan to repay bondholders in full may mitigate Kroll ‘s position. “KBRA will not take this long term position of assigning a non-investment grade rating in a situation where a municipality has been through a Chapter 9 bankruptcy but has not defaulted on its debt, although KBRA may assign a non-investment grade rating during the bankruptcy process,” the report added.

“It is KBRA’s view that the decision to default on a municipal debt payment reflects an essential unwillingness to pay its obligations on the part of the municipal issuer,” Kroll said. “In KBRA’s view, the decision to upgrade a credit to investment grade post-default would be based on successful implementation of a long term plan to maintain fiscally balanced operations and pay its obligations as well as fund the ongoing operations of the local government.”

Before considering an upgrade, KBRA would need to see evidence of “significant progress towards these goals over an extended period of time.”

S&P explained its position on defaulted issuers in a September 2013 report on U.S. local government general obligation ratings:

“While the issuer credit rating of a local government would fall to ‘D’ or ‘SD’ following a default on an actual debt obligation, the payment prospects for other GO debt may remain stronger (such as when the default results from insufficient funds for limited-tax GO debt and other GO debt enjoys an unlimited-tax pledge),” wrote S&P analyst Jeffrey Previdi and eight others. “Consistent with our criteria for appropriation-backed obligations, a failure to pay a capital lease obligation also caps the GO rating.”

S&P didn’t immediately respond to a request for details on how it treats ratings of defaulted obligations in the years that follow a default.

THE BOND BUYER

BY ROBERT SLAVIN

OCT 6, 2015 11:02am ET

[Florida Supreme Court Decision Allows Municipalities to Issue Bonds Funding Green Energy for Commercial Properties.]

TALLAHASSEE, Fla., Oct. 6, 2015 /PRNewswire/ — An important ruling by the Florida Supreme Court last week will allow Florida municipalities to issue bonds to fund “property assessed clean energy” (PACE) programs, which provide up-front financing to commercial property owners who want to use green energy in their buildings.

Representing the winning side of the case were Leon County Attorney Herbert W.A. Thiele; Elizabeth “Ellie” Neiberger, Susan H. Churuti, and JoLinda L. Herring of Bryant Miller Olive PA; Jon C. Moyle, Jr. and Karen Putnal of Moyle Law Firm; and Assistant State Attorney Georgia Anne Cappleman.

“The ruling is a big win for commercial property owners in Florida and a major victory for the state’s environment," said Ellie Neiberger of Bryant Miller Olive. "The ruling gives local municipalities bonding authority that can make clean-energy projects more financially viable for commercial properties around the state."

Giving local municipalities the bonding authority to pay for PACE programs is expected to help expand the use of the program in Florida, where it has only been used on a limited basis for commercial properties.

The PACE program is entirely voluntary. Commercial property owners who choose to participate enter financing agreements with a local municipality, agreeing to repay the improvement costs over the long-term through special assessments added to their property tax bills. The bonds are repaid with the assessment revenues, and there is no personal liability for the property owner.

Commercial property owners could tap into this financing source for green energy-related improvements such as doing energy-efficiency retrofits to buildings or adding solar structures.

The programs have gained traction around the country over the past four years and are proving to be popular in a number of other states, such as California, Connecticut and Ohio, said David Gabrielson, Executive Director of PACENow, a Pleasantville, N.Y.-based foundation-funded nonprofit that serves as an advocate and information provider for PACE financing.

The decision, announced Oct. 1, was the outcome of an appeal of a bond validation judgment in the Leon County Energy Improvement District's favor. The District has been seeking the authority to issue $200 million in bonds to fund a PACE program, and appeals of validation hearing judgments go directly to the Florida Supreme Court.

Dean Minardi, CFO of Bing Energy International, LLC in Tallahassee, was hoping to use PACE financing last year for a green energy project he was working on personally on Gaines Street in Tallahassee. He applied for $200,000 in PACE financing with the Leon County Energy Improvement District, but had to finish the project without it as the case wound through the courts. But now, he sees opportunities around Leon County for similar projects.

"There will be significant demand for this financing, with the need to make older buildings more energy efficient," Minardi said. "Because the return on investment on green energy is longer-term, many traditional lenders don't want to finance such projects. Having access to this fund is a game changer."

Around the state, the Florida Supreme Court's decision is an important step in achieving the state's energy conservation objectives, as outlined in Florida Statute, said Leon County Attorney Herb Thiele. "By enabling Leon County with this type of bonding authority, we can now help developments and buildings become more energy efficient," he said. "This is good for business, good for government, and good for the environment."

The case was Reynolds v. Leon County Energy Improvement District et al., case number SC14-710, in the Supreme Court of Florida.

About Bryant Miller Olive

With a distinguished 45-year history of serving its clients' needs, Bryant Miller Olive represents governments, businesses and agencies in legal matters relating to public finance, state and local government law, complex transactions, project finance, and litigation. The firm has served as Bond Counsel on more deals than any other firm in the Southeast over the past five years, and more than any other firm in Florida over the past decade. Members of the firm are often called upon to handle some of the most complex legal issues in the boardroom and in the courtroom. The firm has offices in Tallahassee, Tampa, Orlando, Miami, Jacksonville, Atlanta and Washington, D.C. For more information, visit http://www.bmolaw.com.

Florida High Court Makes It Harder to Challenge Bond Validations.

BRADENTON, Fla. — In validating $700 million of clean energy bonds, the Florida Supreme Court overturned 60 years of case law and made it harder to challenge future bond validations.

The Florida justices overturned a 1955 precedent set in the case *Meyers v. City of St. Cloud*. The Meyers case held that a party that does not appear in a bond validation proceeding in circuit court, where the cases are initiated, still had the right to appeal from the trial court's decision directly to the state Supreme Court.

From now on, litigants must appear in the initial circuit court validation case to preserve their right to appeal, the justices said in an Oct. 1 ruling.

The decision benefits issuers and bond attorneys because it can speed up the validation of bonds in Florida, a legal process that insulates the debt from future legal challenges, experts said. Bob Jarvis, a professor at Nova Southeastern University's Shepard Broad College of Law, said justices got it wrong in 1955.

"If you want to challenge a case at the Florida Supreme Court, you'd better get involved at the trial court level and make sure you have standing," he said.

The new ruling is a major change in state law that has benefitted litigants who disagreed with an issuer's decision to issue debt or who simply used the fast-tracked appeal process to point out a procedural or constitutional deficiency, said a Florida attorney who asked not to be identified. "It's not good public policy," the attorney said. "If someone broke the law, you should be able to simply take the record and appeal."

The court ruled last week on two bond validation cases, affirming them both but remanding both for some changes. They were brought under a Florida bill passed in 2010 establishing a property assessed clean energy program.

Under the PACE law, local governments can issue revenue bonds to provide financing for residents and businesses that voluntarily agree to make energy conservation, renewable energy, and wind resistance improvements, and have non-ad valorem assessments placed on their property tax bills to repay the debt.

In the case that overturned the 1955 precedent, the justices confirmed the circuit court's validation of up to $200 million of commercial PACE revenue bonds for the Leon County Energy Improvement District in north Florida.

In a second ruling, the court validated up to $500 million of bonds for the Clean Energy Coastal Corridor, a PACE program established by the village of Biscayne Park and the towns of Bay Harbor Islands and Surfside in Miami-Dade County.

In Florida, bond validation appeals go directly to the state Supreme Court "so as to provide assurance of the marketability of the bonds," according to the ruling.

Litigants appealing both validation cases argued that the financing agreements for the PACE programs included the unlawful use of judicial foreclosure if the assessments could not be collected.

The Supreme Court agreed, and ordered the judicial foreclosure language struck from the financing agreements.

The appellant in the Leon County case failed to appear in the circuit court validation case, and lacked standing to appeal, the justices wrote.

Their ruling backtracked from six decades of Florida case law established in the Meyers case and three other bond validation cases since then based on Meyers.

“Under the plain terms of the statute, any person wishing to participate in bond validation proceedings must appear in the circuit court,” the justices wrote.

The ruling provides clarity to the bond validation process going forward, Jarvis said.

“You have to be personally affected by the court’s decision and therefore you have skin in the game,” Jarvis said, explaining why it is appropriate for parties to appear in the lower court case.

Jarvis also said the new ruling could potentially increase costs for litigants, if they choose to hire attorneys when the validation case begins before the circuit court.

If an issuer makes a mistake preparing bond documents, a citizen is now precluded from taking the record from the circuit court validation proceeding and pursuing an appeal, said the attorney who asked to remain anonymous.

The attorney said he would want appeal options open to ensure that bond validations are complete, and that bond documents are prepared properly.

Since a Florida validation case also involves the local state attorney as a participant, Holland & Knight partner and bond attorney Michael Wiener said his firm typically waits to close on a bond issue until after the 30-day appeal period ends.

The new Supreme Court ruling limits the universe of potential appellants, Weiner said. “You would have some certainty that during the 30day period no other parties could appear to appeal the decision,” he said.

The decision to validate Leon County’s bonds and overturn the standing law was hailed by Elizabeth Neiberger, an appellate attorney with Bryant Miller Olive PA who represented the county.

“I think the court did reach the correct decision on both points,” she said. The ruling is a big win for commercial property owners in Florida and a major victory for the state’s environment, she added.

“In Leon County where I live there is a lot of redevelopment and a lot people are interested in taking advantage of this [PACE] program,” Neiberger said.

While the justices ordered Leon County to remove judicial foreclosure from bond documents, Neiberger said the court’s order clears up any ambiguity in the paperwork even though the county did not intend to use foreclosure unless it was allowed by law.

“We got the remedy we asked for,” she said. “This doesn’t have to go back to another bond validation hearing.”

Neiberger also said the court's prior determination about standing ran counter to Florida law, basic principles of litigation, and appellate review.

"It's incredible as an appellate attorney to see a case where somebody doesn't have to show up at the trial court and can tie things up in an appeal, especially one that goes directly to the Supreme Court," she said.

Several attorneys, including Neiberger, said the Supreme Court's decision last week to validate the clean energy bond issues tends to support Florida's 2010 PACE law – though the law itself was not at issue in either case.

The constitutionality of the 2010 PACE law, however, is pending before the Florida Supreme Court in a separate case.

The Florida Bankers Association has appealed the validation of $2 billion of PACE bonds sought by the Florida Development Finance Corp.

The FBA has argued that the PACE law is unconstitutional because it gives the special assessment on a tax bill a lien that supersedes the payment of a mortgage on the property. Oral arguments in the FDFC case were heard in May.

PACE – related bonds have already been validated in Florida, including a $2 billion court-approved authorization for the Florida PACE Funding Agency in 2011 that is believed to be the first of its kind for the Sunshine state.

The ruling in the Leon County case overturning the Meyers precedent came on a 6 to 1 vote, with Charles Canady, who agreed with the majority's reasoning on Meyers, dissenting only because he believed the entire case should have been dismissed. The justices ruled unanimously in upholding the Clean Energy Coastal Corridor validation.

THE BOND BUYER

SHELLY SIGO

OCT 7, 2015 3:15pm ET

Muni Managers Get Busy After Fed Stands Pat.

Asset managers are keeping active in the municipal market as they prepare their portfolios for a prolonged period of uncertainty over interest rates. Some are adding risk to boost their fourth-quarter yields following the Federal Reserve Board's decision on Sept. 17 to keep rates unchanged, while other are playing a more defensive game.

Sean Carney, head of municipal strategy at BlackRock Inc. said year-end posturing includes looking more favorably at duration in the near-term and focusing on the trajectory and destination of future rate hikes, as well as the potential impact on the municipal market.

"Where appropriate, we will look to add marginal duration and/or credit so to be able to harvest greater returns as seasonals turn more positive," he said.

For some managers, that means exploring the high-yield sector. Carney, however, favors the A-rated space at a time when many managers are clinging to higher quality.

“When you look at returns in the market over time, it becomes evident that one must add some credit to their portfolio” to boost returns, he said.

The A-rated portion of the market “has grown from less than 10% to 30% of the overall outstanding universe, and since 2009, has outperformed the broad market by 10% when measuring total return,” Carney said.

Others, however, believe the risks outweigh the benefits in lower-rated sectors, and as a result are being highly defensive and choosing securities from tax and revenue-backed governments and entities that are less susceptible to credit issues.

“We are concerned about risks, such as underfunded pensions, Chapter 9 bankruptcy, and shake-outs in certain non-essential service enterprise sectors,” said David Litvack, managing director and head of tax-exempt research at U.S. Trust, Bank of America Private Wealth Management.

Some of those concerns dominated the headlines in 2015 and speculative issuers gave investors and money managers reason for great concern – especially cash-strapped municipalities like Puerto Rico, Detroit, Illinois, and New Jersey.

As a result of the highly visible, yet isolated, credit situations, Litvack said he prefers tax-backed bonds of governments with stable economies, solid finances, and manageable debt and pension liabilities, as well as revenue bonds of utilities and transportation authorities.

“We are selective in higher risk sectors, such as higher education and health care,” he said. U.S. Trust manages more than $380 billion in total client assets.

Others who are concerned about the future of interest rates are still seeking high-quality investments as the year comes to a close.

Mark Tenenhaus said his low expectations for Fed movement in 2015 means no major changes in the municipal strategy through year end at RSW Investments, where he is the director of municipal research.

“We have positioned our holdings well in advance as we did not and do not foresee the Fed taking any action during the course of the year,” he said. The Summit, N.J.-based asset management firm oversees $2 billion of separately-managed municipal bond client accounts.

“The Fed’s lack of action, to us, highlights the inherent weakness in both the domestic and global economies, supporting our emphasis on highest credit quality investments,” Tenenhaus said.

Janney Montgomery Scott Inc. is also maintaining its strategic approach when it comes to municipal investments, according to Alan Schankel, municipal bond strategist at the Philadelphia-based firm.

“We do not expect [the rate hike] to translate into significantly higher long term interest rates,” Schankel said. That’s led the firm to advise municipal investors to focus on the six- to 14-year range of the tax-free yield curve, with 5% range coupons, as well as higher quality paper in the double-A and higher spectrum.

Schankel said he recommends larger, non-profit healthcare issuers as the growth in the insured population increases demand, as well as the toll road and airport sectors because they benefit from the lower energy prices and improving economic conditions.

Stephen Winterstein, managing director of research and chief strategist at Wilmington Trust Investment Advisors, Inc., said that rather than making interest rate bets, his firm is focused on maintaining adequate exposure in the municipal portfolios to mid-grade and high-grade securities that are extremely liquid, frequent-to-market, and actively traded.

All the volatility and uncertainty over the Fed tightening put the market in a tailspin – with the latest expectations for a potential rate hike in March 2016.

“The market’s antics over the past several months only provide support for our agnostic view of interest rates,” Winterstein said.

Wilmington manages $4 billion in tax-exempt municipal assets consisting of separate accounts for ultra-high net worth individuals.

“The sensible way to manage the unknown is to prepare for adverse volatility in the event that we do experience a material increase in tax-exempt yields,” he said.

The firm continues to give clients full exposure to the term structure of their respective benchmark indices notwithstanding an interest rate forecast.

“We do not express a view in our portfolios of the future shift in, or shape of the curve,” Winterstein said.

Like his peers, he is steering clear of riskier sectors for now, but won’t rule them out entirely, as he said relative value is a key component to his overall strategy.

He is currently avoiding “precarious” sectors, such as resource recovery, tobacco settlement, life care, and nursing homes until spreads widen out. “We may be interested in certain names in the BBB category at some point, but with 10-year spreads at about 114 basis points, lower investment-grade yields still have quite a distance to cover to even get to the 152 basis point spread where they were in the beginning of 2014.”

“While we do not wilt from risk, we travel into the BBB arena, not in search of a higher yield, but for opportunities where credits may be improving,” Winterstein added. “As a total return manager, we are focused as much on price performance as yield, and so any potential upgrade or other progress in a credit may be the catalyst to spark our curiosity.”

Overall, the managers said they are well prepared for the remainder of 2015 — and optimistic about the arrival of 2016, even with interest rate volatility.

“We do not fear the Fed in the sense that we believe the muni market holds up rather well in most scenarios,” Carney of BlackRock said.

“Our conviction around a September lift-off was low, and in many cases below market expectations,” he added. Following what he referred to as the Fed’s “dovish” comments in September — and subsequent data indicating lower-than-projected growth outlooks – Carney expects a “lower for longer” interest rate environment to continue going forward.

“Even if the Fed does go, their accommodative stance coupled with low inflation expectations should keep the long-end of the curve well bid,” Carney said.

THE BOND BUYER

BY CHRISTINE ALBANO

OCT 8, 2015 10:07am ET

Social Impact Bonds: Cha-Ching! Success!

Nothing talks like money does and this week, the financiers of a Utah preschool program became the first Social Impact Bond (SIB) investors to see a return on their investment. The United Way of Salt Lake announced it had cut a check for $267,000 to investment bankers who funded public-preschool expansion in Utah. The early payment came because initial results showed the program is working already at reducing the number of kids who need special education in grade school.

Of the 595 low-income three- and four-year-olds who attended preschool financed by the SIB in the 2013-14 school year, 110 of the four-year-olds were identified as likely to use special education in grade school. Results showed that of those 110 students identified as at-risk, only one used special education services in kindergarten. That equals a $281,000 cost savings for the school district, the state and Salt Lake County. The so-called success payment is 95 percent of that cost savings.

Goldman Sachs and J.B. Pritzker committed $7 million to the pay-for-success program, which will fund expanded preschool services for five years. Researchers will continue to monitor the 110 students through sixth grade. Investors will get more success payments based on the number who avoid use of special education in each year.

The news comes two months after the first-ever social impact bond program in the United States shut down early. An evaluation nearly three years in on a program aimed at reducing recidivism at Rikers Island Prison in New York City found the project had no impact on the number of repeat offenders.

GOVERNING.COM

BY LIZ FARMER | OCTOBER 9, 2015

How to Save Billions on Public Construction.

The ways we calculate pay scales for labor on government projects dramatically inflate the costs.

A recent Wall Street Journal op-ed column called for repeal of the Davis-Bacon Act, which sets a floor for wages on federally funded construction projects. Thirty-two states have their own prevailing-wage laws, and while the goal of making sure that those working on public construction projects are fairly compensated is too important for the laws to be repealed, some simple reforms for how prevailing wages are calculated could save state and local taxpayers billions of dollars.

According to a 2008 study by Suffolk University's Beacon Hill Institute, state and local governments spend about $300 billion annually on public construction. Labor accounts for about half the cost of those projects. How each of the states with prevailing-wage laws calculates the wage, which various by region within states, is determined by state law.

Some, such as Texas and Connecticut, simply use the amounts determined by the U.S. Department of Labor's Wage and Hour Division (WHD) that are used on federal projects. Five states — Massachusetts, Michigan, New Jersey, New York and Ohio — calculate wages based on the amounts negotiated in local collective-bargaining agreements. The problem is that both approaches dramatically inflate prevailing wages.

WHD determines prevailing wages by surveying construction unions and large employers. But the surveys are so complex and time-consuming that most contractors — especially small ones — don't complete them.

Unions and union contractors, on the other hand, are far more likely to fill out the surveys. Union wages tend to be above market, and these entities want to see the prevailing wage set as high as possible to minimize their competitive disadvantage (disclosure: an association of open-shop construction contractors is among my clients). As a result, the Beacon Hill Institute study found that the WHD approach inflates wages by an average of about 22 percent, which adds about 10 percent to overall project costs.

The cost problem is even worse in the five states that base prevailing wage on collective-bargaining agreements. In recent years, New York State has debated whether to extend the prevailing wage to cover Industrial Development Agencies, the state's public economic-development authorities. A Center for Governmental Research report estimated that doing so would increase the cost of the agencies' construction projects by 36 percent.

Using collective-bargaining agreements to determine prevailing wage is also unfair because such a small portion of construction workers belong to unions. According to Unionstats.com, membership ranges from 2 percent in Alabama to about 38 percent in Hawaii, and the number is in single digits in about half the states.

A far better approach would be to simply base prevailing wage on Bureau of Labor Statistics data. BLS, which like WHD is within the U.S. Department of Labor, is the gold standard for employment data. BLS calculates wage data by industry (including construction) in 80 metropolitan and 170 non-metropolitan areas. It is far more transparent about its methodology than WHD and most states are. In addition, its methodology is more sophisticated and its conclusions are based on much larger samples.

And the wage differences are significant. A 2012 Columbia University study found that current New York state prevailing wages ranged from 10 percent to more than 70 percent higher than BLS rates.

Like so much of government, prevailing-wage laws are a balancing act. Done right, they ensure that those who work on public construction projects receive a reasonable wage, and they also are fair to the taxpayers who fund those projects. Using Bureau of Labor Statistics data to determine prevailing wages is the best way to strike that delicate balance.

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BY CHARLES CHIEPPO | OCTOBER 7, 2015

The Top 10 Counties Where People Are Moving.

Migration rates are near historic lows, but some places are still attracting large numbers of new residents. View data for every county.

More people moved to Travis County, Texas, home to Austin, than anywhere else in the United States.

With migration rates near historic lows, not many Americans have been changing addresses in recent years. A few larger jurisdictions, however, are welcoming large numbers of new residents from all across the country.

Last week, the Internal Revenue Service (IRS) published updated migration data based on income tax returns, showing where taxpayers are moving to and from at the county level. We've compiled the data, shown in the interactive, and have highlighted the areas experiencing the highest population gains from migration.

Numbers of exemptions claimed on tax returns are commonly used to approximate population totals. Using this metric, only about 15 million Americans relocated to a new county between 2013 and 2014. For most counties, net migration gains or losses are fairly small — typically less than 1,000 tax returns — in a given year.

Several of the nation's largest counties do, though, experience significant shifts from year to year. As one would expect, it's the larger counties in the Sun Belt that generally register the highest migration gains. The following counties saw the top 10 migration increases, as measured by net changes of numbers of exemptions, between 2013 and 2014:

1) Travis County, Texas, had nearly 123,802 new residents move in — by far the most of any county nationally. To put that in perspective, it's more than three times the tally of the next highest county. The region, home to Austin, has seen significant population and economic growth in recent years. Data suggests people are moving from long distances into the area (those migrating from out of state account for nearly all of the net increase).

2) Jefferson County, Colo., gained 34,205 new residents (compared to less than 4,000 over the previous two years), with nearly all movers coming from neighboring Broomfield County. We've reached out to the county for an explanation and will update when we hear back. (It's possible that the IRS data contains an error.)

3) Maricopa, County, Ariz., recorded a net migration increase of 17,827. The county, which includes Phoenix and its surrounding suburbs, has long benefited from retirees moving in.

4) Fort Bend County, Texas, welcomed a net total of 17,462 residents — a figure that's increased over the previous two years. Unlike Travis and Maricopa counties, migration coming from within the state accounted for the majority of its increase.

5) Clark County, Nevada, recorded a net gain of 14,292 residents for the year. The vast majority of its new residents migrated from out of state, particularly from neighboring California. The county has also seen net migration jump quite a bit in recent years, up from 8,613 for 2011-2012.

6) Collin County, Texas, which comprises the northern part of the Dallas-Fort Worth-Arlington metro area, added a net total of 13,428 residents. The county's newcomers also tend to be relatively wealthy, with their adjusted gross incomes averaging $73,930 per tax return.

7) Denton County, Texas, which borders Collin County, experienced a similar net gain of 12,461 residents. Migration from within Texas and outside the state accounted for roughly equal portions of the county's net migration gain.

8) Montgomery County, Texas, saw a net increase 11,652 for the year, with about half of its new residents moving from neighboring Harris County. Households migrating into the county reported average gross incomes of $82,316.

9) Palm Beach County, Fla., is known as a top destination for wealthy retirees, a fact reflected in the county's migration data. Many of its new residents, who made up a net gain of 11,303, moved in from other parts of Florida or the New York Metro area. Gross incomes for new Palm Beach County residents averaged $95,030 per tax return, one of the highest amounts nationally.

10) Lee County, Fla., another hot area for retirees, welcomed a net total of 10,609 residents. Its new households also tend to be wealthy, (but not quite as wealthy as Palm Beach County) with incomes averaging $82,884.

Counties recording the largest net migration losses were Los Angeles County, Calif., (-53,670); Cook County, Ill., (-49,142); Manhattan, N.Y., (-28,123); and Brooklyn, N.Y., (-27,416). Population losses for these counties are largely offset by international migration, most of which is not reflected in the IRS data.

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BY MIKE MACIAG | OCTOBER 7, 2015

Rainfall to Results: The Future of Rainwater.

Evolving techniques for managing stormwater aren't only cost-effective. They hold the promise of multiple urban benefits.

It's been said that if you live on a street, you live on a stream: Water that runs off our streets when it rains ultimately makes its way into creeks, rivers and other waterways.

Impervious surfaces such as roadways and rooftops prevent rain and snowmelt from filtering into the ground as they do in natural landscapes. In most areas, storm sewer systems exist to collect this runoff. But that's not all they collect. Oil, dirt, industrial chemicals, lawn fertilizers and other pollutants that harm the quality of our waterways all find their way into the storm drain. Stormwater runoff and the pollution it carries with it can discourage recreation, degrade aquatic habitats and contaminate water supplies.

Now more than ever, increased urbanization and more intense rainfall caused by climate change are creating burdensome challenges for cities and towns. But within these challenges lie new opportunities to build systems that improve the vibrancy and climate resiliency of our urban areas.

Certainly the challenges loom large. Superstorm Sandy and other major weather events may come to mind when we think of flooded streets. But due to impervious surfaces, even small storms can generate vast amounts of runoff. The city of Baltimore, for example, could generate 1,060 Olympic-sized swimming pools' worth of runoff from a storm that produced only one inch of rain.

Stormwater is the only growing source of water pollution in many watersheds throughout North America. This is why stormwater regulations are growing increasingly strict. While no one argues the importance of protecting water quality for public health and the environment, city planners, government managers and elected officials must balance this responsibility with competing priorities and limited funding.

Just how can that be accomplished? A new report from the Water Environment Federation's Stormwater Institute, "Rainfall to Results: the Future of Stormwater," details how communities can address their growing stormwater challenges in ways that not only are cost-effective but also create multiple community benefits. Developed with input from the nation's leading stormwater experts, the report describes the challenges, opportunities and pathways to achieving sustainable stormwater management.

As the report makes clear, strong and vibrant communities rely on stormwater management techniques that continually evolve based on new science, experience, technical innovation and responsive regulations.

The report envisions a future in which stormwater is considered a reusable resource and managed through an optimized mix of affordable and sustainable green, gray and natural infrastructure. Green infrastructure, such as ground and rooftop rain gardens, combined with natural systems, such as wetlands and open spaces, can reduce the cost of and burden on the gray infrastructure of catch basins, pipes and other engineered systems. Green spaces can provide value beyond stormwater management, improving human health and wellness, reducing crime and increasing property values.

As a complement to these green and gray stormwater controls, the sector also must cultivate new partnerships to focus on pollution prevention. Keeping pollutants out of stormwater is much more effective than trying to remove them after the fact.

However, paying for stormwater infrastructure is one of the top challenges facing communities. Sustainable stormwater management requires a dedicated funding source and governance structure best supported by stormwater utilities.

Essential to fully funding innovative stormwater initiatives is cultivating community understanding and appreciation for the value of this vital infrastructure. Achieving this vision requires attention and action from stormwater professionals as well as all others within the community — from the general public to city planners to elected officials. With the support of the full community, we can feel more confident facing the next storm.

GOVERNING.COM

BY EILEEN O'NEILL | OCTOBER 8, 2015

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New Jersey Uses Eminent Domain Against One of Its Own Beach Towns.

A week after calling this well-heeled beach town "selfish" for refusing to give up land needed for the state's dune project, Gov. Christie on Thursday moved to give Margate no choice.

The state said it had filed an eminent domain action against the City of Margate to gain access to city-owned beachfront easements needed for the project. The city's opposition has caused the Army Corps of Engineers to abort plans for dunes for Ventnor, Margate, and Longport.

Prior to the filing, the state had offered Margate $29,000 for nine beachfront easements, based on an appraisal, the city said. When that was rejected, the Christie administration took the action in Superior Court, saying it was seeking 87 municipally owned lots. Margate officials could not explain what 87 referred to. “I am aware of nine,” said Richard Deaney, city business administrator.

Margate voters have twice passed questions in referendums opposing dunes and authorizing their government to wage a legal battle against the state.

The state had been threatening to file eminent domain against Margate since January, when a federal judge in Camden told the state that eminent domain would be the proper, and perhaps only, way to get control of the easements. The state had attempted to take the land through an administrative order, which prompted Margate to file a lawsuit in U.S. District Court.

Thursday night, the city issued a response saying it was “prepared to defend in any court at any time the legal rights of the people of Margate to provide the best, safe and most effective storm protection.”

“The people of Margate know and love their community . . . and appreciate the need for the best protection against the storms,” the statement said. The city contends that its bulkhead system is sufficient and that dunes “eventually wash out to sea.”

“Margate’s opposition to the dunes is not based on a vain desire to preserve oceanfront views,” the statement said.

Deaney said the city had requested to negotiate the terms of the shore protection project in response to the $29,000 offer, but that the state had filed for eminent domain as soon as a 14-day time required by law following an offer had passed.

“We sent them a letter saying we’d like to negotiate with them,” Deaney said. “They ignored it.”

Deaney said the city was not against shore protection but wanted a chance to discuss changes in the technicalities of how that is done. Residents argue that dunes will be a costly, unsightly, and ineffective way of protecting the town. Most of the flooding issues from past storms have been from the back bay.

The Army Corps of Engineers had to put aside its Absecon Island protection project last winter after Margate fought the state to essentially a stalemate in federal court. Longport voluntarily gave the state access to its easements following Hurricane Sandy, after opposing the dunes for years. Ventnor has long cooperated with the state and federal agencies, and has had dunes on most of its oceanfront for years.

The release, issued directly from the governor’s office, tallies the amount of property at 87 lots owned by Margate, saying action “builds upon the ongoing work the Christie administration has been undertaking to secure easements necessary to construct these vital coastal protection projects.” The filing covers easements “over all city-owned properties east of the Margate bulkhead, south of Ventnor and north of Longport.”

Of 4,279 beachfront easements statewide, 366 are outstanding, owned by 239 property owners. Environmental Protection Commissioner Bob Martin said in the release that the state was “very disappointed” that Margate forced the state to go to court to protect its citizens and promised to “continue to be very aggressive in using eminent domain as a tool to obtain the easements.”

Also holding out in Margate are 10 private owners with beachfront easements. Those properties are being appraised, the state said.

Margate has been represented by former U.S. Rep. Robert E. Andrews of the Dilworth Paxson law firm. The state had been reluctant to take the case to state court, where eminent domain fights can drag on. The state will argue that the project is necessary "to protect lives, homes, businesses, and infrastructure."

"We've never been happy with the design and proposal for shore protection," Deaney said of the city. "We're willing to negotiate the concept of shore protection. We have a lot of ideas as to how that can be accomplished. We don't believe in their single arbitrary project."

He called the $29,000 offered for access to the easements "low" but said price was not the issue.

The state declined to comment beyond the news release. The release noted that property owners in other municipalities voluntarily provided easements to allow the Army Corps to erect dunes. It said Longport and Margate both suffered "significant overwash" of its beaches and "damage to its bulkhead" during Sandy, "which required Federal Emergency Management Agency funds for the cleanup."

The state's release also notes a New Jersey Supreme Court ruling in July 2013 in which the Borough of Harvey Cedars acquired an easement through eminent domain, but the parties could not agree on fair compensation. The court reversed a jury ruling valuing the easement at $375,000, saying homeowners "were not entitled to a windfall" for a project they also benefit from. The couple subsequently settled for $1 as compensation.

In addition to the Absecon Island project, beach and dune construction projects are stalled in Monmouth County and in northern Ocean County, where residents are also fighting the state's efforts to use their properties to construct dunes.

BY TRIBUNE NEWS SERVICE | OCTOBER 9, 2015

By Amy S. Rosenberg

Swift Descent to Junk Shows Buried Risk as Municipal Loans Surge.

In a routine review of Lawrence, Wisconsin's credit rating last month, Standard & Poor's analysts discovered something troubling.

The 4,600-person town eight miles (13 kilometers) south of Green Bay had borrowed $4.6 million, about three times its annual revenue, from local banks, and tucked into the agreements was a potentially costly clause: The banks could demand immediate repayment if they decide the town has turned into a mounting financial risk. The finding triggered an eight-level downgrade to Lawrence's rating, which went from the third-highest grade to junk.

"Anyone could have these deals," said Geoffrey Buswick, a managing director at S&P in Boston. "Until it's disclosed or someone reads the documents and considers the credit risk, you don't know if you're holding double A paper or double B plus paper."

How many Lawrence's are there in the $3.7 trillion U.S. municipal-bond market? It's impossible to know.
The proliferation of such loans since the credit-market crisis seven years ago has added fresh

uncertainty to the state and local-government debt market, where the financial disclosure rules are already more lax that those that apply to businesses. Because the loans aren't securities, states and cities aren't immediately required to disclose them — despite the risks they may pose to bondholders if a government is pushed toward default.

"Nobody knows how many loans there are, nobody knows the total volumes of those loans, nobody knows the terms of those loans," said Lynnette Kelly, executive director of the Municipal Securities Rulemaking Board, the industry's regulator. "I'm frustrated by it."

The loan terms can favor banks over bondholders and add to a city's financial risk, credit-rating companies said. For example, banks can demand accelerated principal and interest if a payment is skipped or a government's cash falls below a specific target, which could push the borrower into a liquidity crisis if it can't cover the bills.

"Most local government bond investors don't have the right to be paid back upon default," said Tom Jacobs, a senior vice president at Moody's Investors Service. "A private financing can jump to the head of the queue when it matters."

Financial Wreckage

The municipal bank-loan business rose from the wreckage of the financial crisis, when cities and states used them to escape from floating-rate bond deals that turned costly when credit markets seized up. The business has continued to grow because hospitals, universities and others can borrow at rates comparable to those in the bond market, without the fees tied to a public-debt offering.

The push has made U.S. banks a growing presence in local-government finance. They held about $477 billion, or 13 percent, of the municipal debt outstanding by the end of June, twice what they had five years earlier, according to Federal Reserve data.

S&P estimates that loans account for as much as one-fifth of municipal borrowing. In 2014, S&P evaluated 404 direct loans of about $16 billion. Of those, 13 credit ratings were affected by them.

Lawrence, Wisconsin, followed on Sept. 17, when S&P cut its rating from AA to BB+.

Jennifer Messerschmidt, the town's finance director, criticized the decision. She said one of its banks said it rarely, if ever, has invoked the ability to demand repayment by deeming itself "insecure," a clause that protects a lender if a borrower's finances deteriorate. She said the town is working with its banks to remove the provision in an effort to have its previous rating restored.

"S&P wouldn't even give me a day to talk to the bank,"' she said.

While states, cities and non-profits disclose the amount of bank loans in their annual financial statements, those reports often aren't released until months after the year's end and don't reveal key terms.

Even though municipal issuers are required under federal securities rules to disclose all material information when they sell bonds, it's up to them to decide whether the loans fit that bill, said Kelly, the MSRB director. The regulator has encouraged issuers to voluntarily disclose key details about the loans on its online repository, where bond documents for investors are now posted.

Full Picture

Lawrence hasn't publicly sold debt since 2012. Instead, it borrowed $4.6 million from local lenders

The Business Bank and Greenleaf Wayside Bank. The loans account for more than 60 percent of the town's debt.

"If there was an acceleration how would they be actually be able to cover that?" said S&P's Jane Ridley, a senior director. "Without a requirement to disclose, we can't get a full picture of what the rating looks like."

Messerschmidt, the Lawrence finance director, said the size and interest rates on the loans are disclosed in its annual financial reports. She said Lawrence is in a better financial position than when it last issued debt in 2012, when many cities' tax collections were still being squeezed by the effects of the housing-market collapse and the recession that followed.

"I don't think it was handled properly," she said of the downgrade.

Caroline West, an S&P analyst, said the company can't give a city such as Lawrence advice or help it structure documents or deals.

"We have to proceed with evaluating the information we have at hand," she said. "That's what we did."

Bloomberg News

by Martin Z Braun

October 4, 2015

Americans Are Smoking Again, a Boon for Municipal Tobacco Bonds.

Americans are boosting spending on cigarettes for the first time in almost a decade. While that may raise health concerns in a nation that's worked for decades to cut smoking, it's fueling a rally in one of the riskiest corners of the municipal-bond market.

High-yield tobacco bonds, which are repaid from legal-settlement money that state and local governments receive from cigarette companies, returned 9.4 percent this year through Monday, almost five times the broader municipal market, Barclays Plc data show. That adds to a 19 percent gain last year, when investors plowed into the high-interest-rate securities that have been imperiled for years by the decline in smoking.

U.S. cigarette shipments that back the debt are now on track for the first annual increase since 2006, spurred in part by a gas-price drop that's given consumers more to spend. Deliveries rose 2.8 percent through June from the same period a year earlier, according to data from the U.S. Treasury Department. That's altering return expectations among investors and pushing some bonds to their highest prices in two years.

"Smoking shipments on the year have marginally increased — that's obviously a big change from historical trends," said David Hammer, manager of the high-yield municipal-bond fund at Pacific Investment Management Co. The firm, which oversees $40 billion of state and local debt, eased the constraints on its investment-grade funds last month so they could hold more of the tobacco bonds, he said.

The debt allowed governments to borrow against the money they will receive under the 1998 settlement with Philip Morris USA, Reynolds American Inc. and Lorillard Inc. The securities are among the riskiest in the $3.7 trillion municipal market because smoking has declined more rapidly than expected since they were issued, cutting into the payouts used for interest and principal bills.

The debt isn't guaranteed by the governments that sold them, and much of the $91 billion of bonds are rated below investment grade. Moody's Investors Service projects that a 4 percent annual decline in cigarette shipments would cause 80 percent of them to default. The deliveries have dropped by an average of 4.7 percent a year since 2007.

Waiting Game

Investors could be forced to wait for years after the scheduled maturity to recoup all that they're owed if sales fall short of initial forecasts. Because the tobacco settlement continues in perpetuity, bondholders will eventually be repaid.

"Positive shipments of even 1 or 2 percent — that's significant," said Steve Czepiel, who runs a $992 million high-yield municipal mutual fund for Delaware Investments in Philadelphia. He said he's keeping his holdings of tobacco bonds steady.

"If you sold them last year because you thought they had an overly aggressive run, you've missed out," he said. "We still think they provide pretty good value versus other types of high-yield municipal credits."

The tobacco bonds have outperformed the high-yield municipal market, which has been little changed this year. Securities issued by California's Golden State Tobacco Securitization Corp. are among those that have rallied.

The debt, which matures in June 2047 and carries a 5.75 percent coupon, traded last week for as much as 89.4 cents on the dollar, the highest for trades of at least $1 million since June 2013 and up from about 83 cents at the start of 2015, data compiled by Bloomberg show. That size is common among institutional investors and is considered the most accurate reflection of a bond's market value. The securities are rated six steps below investment grade by Moody's and Standard & Poor's.

Pimco is the second-largest holder of those bonds, with about $141 million, while Delaware is seventh with $27.3 million, according to the latest company filings compiled by Bloomberg. The funds have bested 92 percent and 68 percent of their peers this year, respectively, Bloomberg data show.

Some investors have doubts that the rally is justified. This year's increase in shipments is probably an anomaly and unlikely to persist, said Timothy Milway, an analyst at New York-based BlackRock Inc., the world's largest money manger. He speculates that the rise may have been caused by the decline of fuel prices, which has left consumers with extra cash.

Negative Outlook

"In the very short term, the number looks pretty good," he said at a Smith's Research & Gradings conference on Oct. 2. "Looking out longer-term, we're still negative and we think the declines are going to be above trend."

Other factors may continue driving demand for the debt even if shipments start falling again, said Bill Black, who runs Invesco Ltd.'s $7.4 billion high-yield municipal fund.

Fewer localities are issuing the bonds, driving down supply at a time when investors are searching for higher yields, Black said. They're also among the most frequently traded municipal securities, which reduces the premium investors demand to hold debt that's difficult to sell, he said.

The liquidity benefits were part of the reason why Pimco altered its prospectuses, effective last month, to allow for lower-rated bonds than before, Hammer said. They can now own bonds rated as low as Caa by Moody's, eight steps below investment grade, according to an August supplement.

"Tobacco has been a strong conviction trade we're looking to incorporate in other portfolios," Hammer said. "We expect some maturity and principal return extension, but you're being well-compensated even if consumption declines are worse than they have been in the last 10 years."

Bloomberg News

by Brian Chappatta

October 5, 2015 — 9:01 PM PDT Updated on October 6, 2015 — 7:20 AM PDT

61,064 Failing Bridges Must Wait as Cities Borrow at Decade Low.

States and cities rely on the $3.7 trillion U.S. municipal-bond market to pay for roads, commuter trains and water works. Yet even with a growing backlog of projects, 61,064 deficient bridges and interest rates near a half-century low, such borrowing has dropped to the slowest pace in at least a decade.

About $14.8 billion of municipal debt has been sold this year for highway, airport and mass-transit projects, on pace for the smallest amount since at least 2005, data compiled by Bloomberg show. The population has grown by 7.5 percent since then, placing an increasing demand on America's infrastructure: The Federal Highway Administration estimates that when it comes to bridges alone, one in 10 is structurally deficient. The American Society of Civil Engineers reckons that more than $3 trillion of work should be done.

"It's a pretty deteriorated backbone," Marc Lipschultz, head of energy and infrastructure at KKR & Co., said in an interview at Bloomberg Markets Most Influential Summit 2015 in New York on Tuesday.

"There's not enough capital in the public domain," he said. "It's trillions of dollars of capital that has to be invested."

One reason for the lack of borrowing: officials at local governments that were stung by budget shortfalls after the recession have been leery of taking on new debt. Instead, they've been seizing on low interest rates to refinance higher-cost bonds. About two-thirds of the $312.5 billion issued through Sept. 30 has been for that purpose, Bank of America Merrill Lynch data show.

Federal subsidies briefly spurred work on infrastructure, though the program has since lapsed. Borrowing for new highway, airport and mass transit projects reached a record $65 billion in 2010, the last year of the federal Build America Bonds program, Bloomberg data show. The initiative paid a share of the interest bills on taxable debt sold for public works, which prodded governments to borrow.

Private investment should be encouraged as a way to find new sources of funds, Lipschultz said. KKR struck a 40-year deal in 2012 with Bayonne, New Jersey, in conjunction with the United Water unit of Suez Environnement to operate the city's water system. He said such deals, however, haven't been widely embraced.
"It's slow in the making," he said.

Bloomberg News

by Brian Chappatta

October 6, 2015 — 10:48 AM PDT

O'Hare Bonds Avoid Chicago Stain in City's Biggest Offering Ever.

Even as Chicago confronts a fiscal crisis, investors are looking beyond its turbulent finances with anticipation toward the city's biggest bond deal ever.

Chicago sold about $2 billion of securities for O'Hare International Airport, backed by revenue from the nation's busiest airport and sheltered from the mounting pension obligations squeezing the third-most populous U.S. city. Fund managers at Wells Fargo Asset Management and Conning say any yield premium resulting from the city's tainted reputation is likely a buying opportunity given the airport's rising traffic and hub status.

"Just looking at the nuts and bolts of the deal, it's been pretty impressive what's going on there," said Paul Mansour, head of municipal research at Hartford, Connecticut-based Conning, which holds O'Hare debt among its $11 billion of tax-exempt securities and is reviewing the deal. "There will be a certain amount of firms, individuals who say no Chicago under any circumstance. That will add some value for those that look through to the underlying credit."

Chicago has the worst-credit rating of all major U.S. cities except Detroit, and had to pay yields approaching 8 percent for a taxable offering in July. Wednesday's issue is raising $1.6 billion to refinance higher-cost bonds and about $330 million to cover costs of projects such as terminal improvements.

A portion of federally tax-exempt securities due in January 2046 were sold with a yield of 3.9 percent, according to preliminary data compiled by Bloomberg. That's about 0.7 percentage point more than 30-year benchmark municipal bonds.

During the city's last bond sale for O'Hare in November 2013, 20-year securities were issued for yields as high as 5.53 percent, about 1.7 percentage point more than benchmark debt, according to data compiled by Bloomberg. That premium has since narrowed by almost a third, trading for an average yield of 4.1 percent on Sept. 11.

The offering follows sales from the city and related agencies such as the Chicago Park District that have had to pay up to borrow. The O'Hare bonds are rated as much as two levels higher than the city's general-obligation debt. The sale comes as U.S. airport bonds are outperforming the broader $3.7 trillion tax-exempt market for a fifth consecutive year amid an improving economy and falling energy costs.

Mayor Rahm Emanuel is working to ease Chicago's fiscal challenges and convince the city council to pass the biggest property tax increase ever to help cover retirement costs. O'Hare is sheltered from the fallout of the city's $20 billion pension hole because the Federal Aviation Administration limits the use of airport revenue to facility purposes. That prevents the city from taking excess O'Hare monies to fix its finances, Standard & Poor's said in a Sept. 30 report.

Historical Premium

Even so, issuers associated with distressed situations typically have to pay up, and that's what Merritt Research Services expects.

"It's just a historical premium that they'll have to pay because of their association with Chicago," said Richard Ciccarone, Chicago-based chief executive officer of Merritt Research Services, which analyzes municipal finance. "It may end up for a yield investor more attractive than an average airport."

That wasn't the case with Michigan's Wayne County Airport Authority, which runs the airport serving once-bankrupt Detroit. The authority wasn't penalized when it sold about $522 million last month despite the county's fiscal distress. Wayne is in a consent agreement with the state because of its ongoing budget deficit.

Airliner Hub

S&P raised its outlook on O'Hare general revenue bonds last month by one level to A, five steps above junk and two levels higher than its rating on the city's GO debt. The credit rater cited the airport's high traffic. Fitch Ratings assigned an A- ranking to the debt, four steps above junk, and notes the airport general revenue bonds are secured by a first lien on airport net revenues.

O'Hare is a hub for American Airlines Group Inc. and United Continental Holdings Inc., the largest carriers. The airport is the biggest worldwide when measured by operations, according to bond documents. In 2014, O'Hare had the busiest airport measured by flight operations, according to FAA data.

Municipal airport bonds have climbed 2.2 percent this year, compared to a 1.8 percent gain in the broader market, according to Bank of America Merrill Lynch data. Crude-oil prices have tumbled 8.6 percent in 2015, and sliding fuel costs have benefited municipal airports in particular, Janney Fixed Income Strategy said in an Oct. 5 report.

Chicago is expecting more than $150 million in present-value savings from the refinancing with interest rates near generational lows, said Molly Poppe, a city spokeswoman.

O'Hare's capital projects have shown progress and been within budget, according to bond documents. Three of four runways and one runway extension for the O'Hare modernization project are complete as of this month. Airfield improvements funded by the 2015 bonds include installation of runway status lights, maintenance of terminals, and fixes to roadways.

"Airport debt has had a strong bid from investors looking for income, and that should certainly benefit the pricing on this Chicago transaction," said Gabe Diederich, a Menomonee Falls, Wisconsin-based money manager at Wells Fargo Asset Management, which holds some O'Hare's bonds among its $39 billion of munis, and is considering buying the deal. "The essential nature of the airport and the size of it are going to overwhelm any bias against the city of Chicago."

Bloomberg News

by Elizabeth Campbell

October 6, 2015

Puerto Rico Claw Back Wouldn't Pay Debt Costs, Barclays Says.

Puerto Rico wouldn’t be able to repay the $5.5 billion of principal and interest due on its general-obligation bonds in the next five years even if the commonwealth diverted sales-tax revenue pledged to cover payments elsewhere, according to Barclays Plc.

The general obligations due through fiscal 2020 surpasses the $4.2 billion of revenue, including sales-tax receipts, that commonwealth officials calculate Puerto Rico will have to pay down central government and some agency debt during that period, Mikhail Foux, a municipal-debt strategist at Barclays in New York wrote in a report Wednesday. The island’s sales-tax collections repay bonds, known as Cofina because of their Spanish acronym, that are backed by that revenue stream.

“Even if Cofina’s cash flow stream is invaded, there would still not be enough value to fully cover principal and interest for GOs and commonwealth guaranteed debt in fiscal year 2016 through fiscal year 2020,” Foux wrote in the report. “This suggests that some type of haircut would be needed,” over those five years, he wrote.

Puerto Rico officials haven’t said that they plan to redirect, or “claw back,” sales-tax collections to pay down general-obligation debt before Cofina bonds. The island’s constitution states that general-obligations must be repaid before other expenses. The commonwealth on Sept. 25 said it would take into account the constitutional priority given to general-obligation bonds as it seeks to restructure $73 billion of debt.

Prices on some Cofina debt would fall if the government uses the sales-tax receipts to repay general obligations first, Foux said. Subordinate Cofinas, which are repaid after senior-lien sales-tax bonds, would drop in value, he said.

“If Cofina is pierced, subs would be severely affected, allowing for more downside even at current depressed levels,” Foux wrote.

Subordinate Cofinas maturing August 2039 traded Wednesday at an average price of 44.5 cents on the dollar, to yield of 12.9 percent, data compiled by Bloomberg show.

Puerto Rico had $13 billion of general obligation debt and $15 billion of sales-tax bonds, as of March 31.
Commonwealth general obligations sold in March 2014 and maturing July 2035 traded Wednesday at an average price of 75.3 cents on the dollar for a yield of 11.1 percent, according to data compiled by Bloomberg.

Bloomberg

by Michelle Kaske

October 7, 2015 — 2:35 PM PDT Updated on October 8, 2015 — 6:20 AM PDT

Scandals Leave Port Authority Bondholders Undaunted Before Sale.

To Wall Street, the scandals engulfing the Port Authority of New York & New Jersey are nothing but noise.

As the agency sold $2 billion of bonds Thursday, its biggest offering since 2012, investors weren't focused on the federal and state investigations that spurred the resignation of United Continental Holdings Inc.'s chief executive officer and tarnished Governor Chris Christie's presidential bid. Instead, they looked at a near monopoly on getting into New York that brings in more than $12 million a day.

The upheaval at the agency may even have a financial upside: It's searching for a CEO to replace the two top officials who were hired by political appointment and faces pressure to improve its management of the region's bridges, tunnels and airports.

"They certainly have a lot of work to do," said Howard Cure, head of municipal research in New York at Evercore Wealth Management, which oversees $6 billion. "But the hope is that this additional scrutiny will make the organization more transparent and better able to provide for its core mission."

The Port Authority's bonds have the fourth-highest rating from Moody's Investors Service, Standard & Poor's and Fitch Ratings with a stable outlook, indicating no changes are imminent. The agency's 10-year tax-exempt bonds were sold at yields of 2.33 percent, or 0.25 percentage point more than top-rated munis, according to data compiled by Bloomberg.

The Port Authority receives revenue from almost everyone who comes to the biggest U.S. city, as well as from cargo ships. It runs a commuter train, bridges and tunnels connecting New York and New Jersey, the world's busiest bus depot in Manhattan, marine terminals, and the region's three major airports — John F. Kennedy International, LaGuardia, and Newark Liberty International. It also owns the World Trade Center site.

Major Projects

Even with a constant stream of revenue, the Port Authority is facing financial challenges in the coming decades. In addition to its usual upkeep, the agency is moving to replace its bus terminal, which may cost $10 billion, as well as a bottleneck-prone rail tunnel under the Hudson River. Christie and New York Governor Andrew Cuomo want the federal government to pay half of the $20 billion cost of the tunnel.

The agency's current operating results have been on the upswing. Operating revenue rose 8 percent to $2.3 billion during the first six months of the year, according to Moody's, as New York's strong economy fueled an increase in plane travel. At the same time, its operating expenses climbed by 1.3 percent to $1.4 billion.

The agency's finances stand in contrast to the agency's battered political reputation. In May, former Deputy Executive Director Bill Baroni and former Christie aide Bridget Kelly were indicted for snarling traffic leading onto the George Washington Bridge in 2013 to punish a New Jersey mayor who didn't back Christie's re-election. David Wildstein, a former Christie ally at the agency, pleaded guilty to participating in the scheme. Baroni and Kelly are fighting the charges.

Widening Investigation

Last month, United CEO Jeff Smisek stepped down amid an investigation into whether the airline ran a money-losing flight from Newark, New Jersey, to South Carolina, where former authority Chairman David Samson had a vacation home, in an effort to secure funding for projects. Prosecutors haven't alleged wrongdoing.

The Securities and Exchange Commission, which polices fraud in the municipal-bond market, is also investigating the agency's disclosures to investors.

The Port Authority's finances show that the management turmoil hasn't hurt its operations, said Dan Solender, head of municipal debt at Lord Abbett & Co. in Jersey City, New Jersey. In an Oct. 6 report, S&P said the agency has kept expenses below its target during the first eight months of the year while revenue exceeded forecasts.

"We really care about the finances and how much leverage they're taking on, how they're controlling expenses and things like that," said Solender, who owns some agency bonds. "For us, those are the bigger issues than the political headlines."

Bloomberg

by Romy Varghese

October 7, 2015 — 9:01 PM PDT Updated on October 8, 2015 — 11:17 AM PDT

Muni Funds Draw $714 Million, Largest Inflow Since January.

Investors added the most money to municipal-bond mutual funds since January in the past week as state and local government bond yields fell to the lowest level in five months.

Individuals poured $714 million into muni funds in the week through Wednesday, Lipper US Fund Flows data show, marking the second inflow in three weeks. Those funds investing in the longest-dated debt fared the best, capturing $685 million of the cash, as the Federal Reserve continued its almost decade-long policy of keeping borrowing costs close to zero.

Benchmark 10-year munis yield 2.09 percent, close to the lowest level since April, data compiled by Bloomberg show. That's pushed the return on state and local debt to 1.9 percent this year, better than the 1.6 percent gain for Treasuries and 0.1 percent for investment-grade corporate securities, Bank of America Merrill Lynch data show.

In the four weeks through Sept. 16, the day before the Federal Open Market Committee released its policy statement leaving its benchmark rate unchanged, individuals withdrew $1.4 billion from muni mutual funds, Lipper data show.

Bloomberg

by Brian Chappatta

October 8, 2015 — 2:49 PM PDT Updated on October 9, 2015 — 6:39 AM PDT

Bloomberg Brief Weekly Video - 10/08/15

Taylor Riggs, a contributor to Bloomberg Briefs, talks with reporter Joe Mysak about this week's municipal market news.

Watch the video.

October 8, 2015

Moody's: U.S. Academic Medical Hospitals 2014 Medians Show Stability and Solid Balance Sheets.

The 2014 fiscal year medians show US academic medical center hospitals (AMCs) benefit from operational stability, high revenue and expense growth as well as increases in cash and investments. The not-for-profit AMCs also benefitted from important strategic and financial relationships with top-tier medical schools and highly-rated universities, which bolstered joint fundraising an investment management…

The full report is available to Moody's subscribers here.

Moody's: U.S. Municipal Water and Sewer Medians Demonstrate Stable and Positive Trends.

The full year 2013 US water and sewer utility medians show larger utilities enjoy greater financial resources and flexibility, while service area wealth correlates to stronger operating performance. Across the sector, debt service remains consistent and liquidity has modestly improved. Leverage is down for higher-rated utilities, but grew for lower-rated utilities…

The report is available to Moody's subscribers here.

Down Payment on Detroit: Charting the Next Steps in the Detroit Housing Recovery.

As Detroit continues a journey toward economic recovery, the housing market in many parts of the city remains a serious challenge. In particular, mortgage activity is stuck at historically low levels, even as jobs and investment continue to grow throughout the city and the region. What steps—policies, programs, and products—should we take to stabilize and improve the homebuying market while ensuring affordable options for homeowners and renters alike?

Continue reading.

Connecticut, America’s Richest State, Has a Huge Pension Problem.

The state with the richest population may not have enough money in its own pockets.

Connecticut has roughly half of what it needs to pay future retirement benefits for its workers, meaning the home to scores of hedge funds and some of the country’s wealthiest towns is wrestling with financial distress rivaling that of Kentucky or Illinois.

Some investors concerned about the size of Connecticut’s pension hole are backing away from bonds issued by the Constitution State or demanding bigger rewards to hold them. Investors in some Connecticut state bonds now get a premium of about half a percentage point above benchmark bonds from other states, up from 0.28 percentage point a year ago, according to Thomson Reuters Municipal Market Data. Only four other U.S. states are now priced as riskier bets.

Still, some in the state say Connecticut’s affluence is making it difficult to overcome complacency about fiscal problems. Yields on the state’s debt would be even higher and budget problems would be worse if not for a deep pool of wealthy in-state investors willing to gobble up Connecticut’s tax-deductible debt, according to analysts.

“There’s almost limitless money to buy Connecticut bonds,” said Matt Fabian of research firm Municipal Market Analytics. Investors “are getting less of a risk premium than I think you deserve because of the high demand created by the wealth of the taxpayers in the state,” added Paul Mansour, head of municipal research at Hartford, Conn.-based Conning.

Connecticut’s surprising pension predicament shows how even the wealthiest parts of the U.S. are struggling to keep pace with ballooning retirement obligations that now amount to $1 trillion nationally.

Connecticut’s unfunded pension liabilities more than doubled over the past decade to $26 billion as the state’s retirement system reeled from inadequate state contributions, a subpar investment record and longer lifespans for its retirees.

The state, boosted by wealth concentrated in towns such as Greenwich and New Canaan, has a per capita income of $64,864, the highest in the U.S., according to a Fitch Ratings analysis of Bureau of Economic Analysis data. But the state still finished the fiscal year ended June 30 in the red as tax revenues fell below expectations, and has projected annual deficits of $650 million or more after its current two-year budget cycle ends, according to a report by the state’s Office of Fiscal Analysis.

The state’s pension problems represent “a ticking time bomb,” said State Sen. L. Scott Frantz, a Republican whose district includes the wealthiest section of the state. He is worried residents will leave and Connecticut will “end up as another Detroit,” a city that filed for bankruptcy protection in 2013, absent more dramatic changes.

Some Connecticut officials and union leaders said they are unfazed by the pension problems and pledge to reverse the deficit in the coming decades. Their strategy hinges partly on predictions the various state retirement systems will be able to earn 8% or more annually, a goal that is more optimistic than most public pensions across the U.S. The average target for all state plans is 7.68%, according to the National Association of State Retirement Administrators.

“The truth of the matter is that the state of Connecticut can afford to make up the difference over time,” said Dan Livingston, a Hartford-based labor attorney who has negotiated on behalf of the state's public workers for decades.

Connecticut's pension gap developed as a result of decisions made over decades to scrimp on payments when the economy sputtered and to cut taxes, according to state leaders and public-finance experts. And there is a quirk: Connecticut officials contributed almost no money to the state's various public pensions from the late 1930s until the early 1980s, meaning little had been saved up because the state had chosen not to prefund the retirement system for future payouts.

The smaller base of assets hurt Connecticut during the 1990s when a run up in the stock market pushed most pensions around the U.S. to fully funded status—meaning they had more assets than liabilities, according to Gregory Mennis, director of Pew Charitable Trusts' public-sector retirement-systems project. Connecticut's ratio of assets to liabilities, meanwhile, was just 72% in 2001, according to Pew, which tracks pension-fund finances.

Furthermore, according to the Center for Retirement Research at Boston College, Connecticut's annual investing returns have trailed the national average by a full percentage point since 2000, because of a heavy allocation to stocks that inflicted deep losses first during the dot-com bust and then the 2008 financial crisis. Connecticut pensions eventually shifted some bets to nontraditional investments, like hedge funds, but those produced lower returns as the equity markets rallied in recent years.

Connecticut only has 51.9% of the assets it needs to pay future obligations to workers, lower than all states except for Illinois and Kentucky, according to the National Association of State Retirement Administrators.

Connecticut has scaled back pension benefits in recent years, reducing cost-of-living adjustments for retirees and pledging to make the appropriate annual payments to fully fund the system by 2032. State officials have raised taxes twice since 2011 as a way of covering some liabilities, reduced its workforce by more than 3% and held back on deeper spending on education and local aid.

Connecticut now allocates 10% of its budget to paying down unfunded pension obligations, up from about 7% four years ago, according to Connecticut Office of Policy and Management Secretary Ben Barnes, who oversees the budget.

"We have plenty of resources to address whatever shortfalls, or whatever fiscal crisis might develop in the short run," Mr. Barnes said.

But there are signs that the pressure on Connecticut could intensify absent deeper changes. Standard & Poor's Ratings Services lowered the outlook on Connecticut's bonds in March to negative from stable, meaning they could be downgraded from their current double-A rating. Moody's Investors Service already has placed Connecticut among the lowest-rated states. And Fitch Ratings, although it removed Connecticut's negative outlook in July, warned the state has a "narrow margin of flexibility."

States rarely default and generally carry higher ratings as a result. Moody's, which changed the way it calculates pension costs two years ago, has been more aggressive at downgrading states and cities with sizable unfunded obligations, while S&P and Fitch have generally taken a more optimistic view.

Fredrena deGraffenreaidt, a 61-year-old state retiree from East Hartford, is worried about whether future benefit cuts would force her to sell her house and move to a cheaper state, she said.

"Everyone sees us as this very wealthy state and yet our pension isn't 100% funded," Ms. deGraffenreaidt said. "How is that possible?"

THE WALL STREET JOURNAL

By AARON KURILOFF and TIMOTHY W. MARTIN

Updated Oct. 5, 2015 12:36 p.m. ET

Write to Aaron Kuriloff at aaron.kuriloff@wsj.com and Timothy W. Martin at timothy.martin@wsj.com

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Problems Mount for the ‘Other’ College Debt.

The bond markets are giving a new grade to America’s small colleges: A gentleman’s C.

Spooked by bad news out of the higher-education sector in recent months, including unexpected campus closures, potential mergers and poor enrollment projections, some prospective buyers are steering clear of bonds being sold by small, private colleges that don’t have national reputations, schools that rely heavily on tuition revenue, and those in regions facing population declines.

Moody’s Investors Service Inc. in September warned investors to expect closures at public and not-for-profit colleges to triple by 2017 from an average of five a year over the past decade, concentrated among the smallest schools. Some small schools have experienced several years of shrinking class sizes, which leaves fewer students paying for their relatively high fixed costs, and have lost market share to larger universities, Moody’s said.

Concerns about market forces were at play at Roseman University of Health Sciences in Henderson, Nev., when the school of about 1,500 students sought $67.5 million worth of bonds to pay for a new office and research building last spring. The process took two to three times longer than usual, said Ken Wilkins, the school’s vice president for business and finance. Standard & Poor’s had downgraded the 16-year-old school’s debt in February, and investors were asking about everything from the market viability of the school’s academic programs to its possible responses to increasingly far-fetched disaster scenarios.

“It felt excessive at times, especially those questions which we affectionately began to call the ‘asteroid questions,’” he said.

Roseman ultimately sold the bonds at an average yield of 5.68% in April, about three percentage points more than highly rated municipal bonds, according to Thomson Reuters Municipal Market Data.

Roseman joined colleges and universities that are selling more bonds than ever. Schools including highly rated Stanford, Northwestern and the California State University System have sold a record $32.7 billion worth of debt through September, almost twice as much as in the same period of 2014, according to data from Thomson Reuters. This “other” college debt still is small compared with the market for student-lending debt, which is $1.2 trillion.

Yet as many colleges and universities are eager to tap the bond market to take advantage of low interest rates, bond investors have grown wary of their debt.

Yields on the S&P Municipal Bond Higher Education Index this week reached 2.55%, up from a low of 2.12% in February, and ahead of the broader market’s 2.38%. Yields rise as prices fall. Investors often find some extra yield in the higher education sector, which contains many high-quality bonds but has grown increasingly risky when compared with debt backed by essential services such as power or water, said Howard Cure, director of municipal research at Evercore Wealth Management.

“You can’t just buy bonds from your alma mater anymore, because you might end up getting the short end of the stick,” said Hugh McGuirk, head of the municipal bond team at T. Rowe Price Group Inc. He said his firm is generally avoiding small liberal-arts colleges and is sticking with schools that have national brands and strong student demand, either public or private.

Colleges and universities are selling more bonds, but investors have grown wary of those from smaller, private colleges. In contrast, Stanford University has a AAA debt rating. ENLARGE
Colleges and universities are selling more bonds, but investors have grown wary of those from smaller, private colleges. In contrast, Stanford University has a AAA debt rating. PHOTO: PAUL SAKUMA/ASSOCIATED PRESS
Concerned about volatility in the public markets, some low-rated colleges and universities have been pursuing alternatives to bond issuance, such as placing debt privately or borrowing directly from banks, says Lorrie DuPont, head of the higher education finance group at RBC Capital Markets.

Hawaii Pacific University, a private school with campuses in Honolulu and Kaneohe, Hawaii, opted in January for short-term bonds to finance the renovation of a waterfront property, hoping that it can refinance the debt once its credit rating—currently BB-plus by Standard & Poor’s—improves. The school expects that the renovation will yield new retail and housing revenue.

The school borrowed $32.5 million in a five-year deal at a 4.48% yield. Bruce Edwards, vice president and chief financial officer, estimates that had the institution opted for a more traditional 30-year bond, it would have paid “a little bit north of 6%.”

All the school’s new debt was bought by Nuveen, which had acquired a chunk of the school’s $42 million issuance in 2013. While other investors expressed interest, “they were going to need to do some lengthy due diligence” and the school was looking for a fast close since construction was already under way, Mr. Edwards said, and construction deadlines outweighed questions over potential improvement in market conditions later in the year.

For schools without strong financial footing—or those in categories perceived to be susceptible to financial pressure—the timing is far from ideal. Many such institutions have put off facility upgrades since the financial crisis and now face massive deferred maintenance backlogs, or need cash to pay for capital projects that could make them more attractive to potential students.

Moody’s has been seeing undiminished demand to initiate ratings on smaller colleges this year, the firm says, as schools fret about higher interest rates on the horizon and look to access money through one outlet or another.

McDaniel College in Westminster, Md., is planning a private placement this fall to cover about $3 million in new energy-saving and infrastructure upgrades. That school last issued a bond in the public markets in 2006 and has funded renovations and a new stadium with donations and cash on hand.

W. Thomas Phizacklea, vice president for administration and finance, said a private placement was more attractive because it allows the school to avoid the upfront costs of issuing a bond in the public markets—including fees for lawyers, accountants and ratings companies—and provide more freedom when structuring debt-service payments. Mr. Phizacklea said the school is near a 10-year bank deal and has begun its cost-saving projects using available cash.

“I don’t think we’ll get a better rate” with a private placement, he said, “but I do think we’ll get more flexibility.”

THE WALL STREET JOURNAL

By MELISSA KORN and AARON KURILOFF

Updated Oct. 8, 2015 5:45 p.m. ET

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GASB: Understanding Costs and Benefits - Other Postemployment Benefits.

Read the GASB report.

CUSIP Request Volume Shows Fifth Consecutive Monthly Decline Among Corporate and Municipal Bond Issuers.

“The phrase ‘don’t fight the Fed’ has become something of a mantra on Wall Street over the last several years and corporate and municipal debt issuers are clearly heading that advice right now,” said Richard Peterson, Senior Director of Global Markets Intelligence, S&P Capital IQ. “While CUSIP request volume has made it clear that there will be declines in new debt issuance in the coming weeks and months, we’re anxious to see whether that trend will continue once the first rate hike takes place.”

Read the Press Release.

October 7, 2015

MSRB Requests Comment on Lengthening Board Member Terms.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) is seeking public comment on a proposal to lengthen the term of Board member service to four years from three. The draft amendments to MSRB Rule A-3, on Board membership, are primarily designed to improve the continuity and institutional knowledge of the Board, while retaining the benefits of the regular addition of new members.

“As former Board members frequently attest, there is a substantial learning curve when joining the Board and members typically make increasing contributions with each year they become more knowledgeable about the work of the MSRB,” said MSRB Executive Director Lynnette Kelly. “Given the complexity of many MSRB initiatives, we think a four-year Board term is more appropriate and would enhance the Board’s overall effectiveness and institutional knowledge.”

The MSRB Board of Directors establishes regulatory policies and oversees the operations of the MSRB and has 11 independent public members and 10 members from firms regulated by the MSRB, including broker-dealers, banks and municipal advisors. Each year, seven individuals join the Board as seven others complete their three-year terms.

The MSRB’s request for comment includes a draft transition plan that would implement the proposed changes in an expeditious but minimally disruptive manner. Comments should be submitted no later than November 19, 2015.

Date: October 5, 2015

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