

- [MSRB Files Exception to MA Conduct Rule's Principal Transaction Ban.](#)
- [MSRB to Implement Gifts Rule for Municipal Advisors.](#)
- [Bill Introduced to Require Hedge Funds to Disclose Holdings More Frequently.](#)
- [House Committee Approves Legislation to Classify Muni Bonds as High-Quality Liquid Assets.](#)
- [How Safe are Municipal Bonds from a Fed Interest Rate Hike?](#)
- [Foley: New IRS Regulations For Mixed Use Projects Financed With Tax-Exempt Bonds Have Practical Importance.](#)
- [McCarter & English: At Long Last - Allocation and Accounting Rules.](#)
- [Joseph B. Doerr Trust v. Central Florida Expressway Authority](#) - Supreme Court of Florida holds that, when condemning authority causes excessive litigation, the trial court shall utilize section 73.092(2) - which requires a trial court to consider qualitative and quantitative factors in determining the amount of a fee award - and is not limited to the benefits achieved formula in section 73.092(1).
- And finally, our deeply held assumptions regarding the subterranean municipal milieu were shaken to the core this week when the court, in [Metropolitan Water Dist.](#), dropped this bombshell on us, "[the pipelines] have peacefully coexisted underground for more than sixty years." Is peaceful coexistence not the natural state of underground pipelines? Are there roving gangs of lead down there beating up on the PVC? Snooty copper patronizing the cast iron? U.N. Pipekeepers?

EMINENT DOMAIN - FLORIDA

[Joseph B. Doerr Trust v. Central Florida Expressway Authority](#)

Supreme Court of Florida - November 5, 2015 - So.3d - 2015 WL 6748858

The Orlando-Orange County Expressway Authority, now the Central Florida Expressway Authority (the Authority), began a condemnation proceeding to acquire 9.81 acres of land identified as Parcel 406. Parcel 406 was owned by Joseph B. Doerr. On June 5, 2006, the Authority submitted to Doerr a presuit written offer to purchase Parcel 406 for \$4,914,221. Doerr rejected the offer, and in August 2006, the Authority filed an action to condemn the property. In February 2008, a jury trial was held to determine the value of Parcel 406. The jury found that the land had a fair market value of \$5,744,830.

Thereafter, Doerr filed a motion for attorney's fees. The Authority sought to limit the fees to the benefits achieved formula under section 73.092(1), which generated an award of \$227,652.25. On the other hand, the Landowners asserted that they were entitled to attorney's fees under section 73.092(2), which requires a trial court to consider qualitative and quantitative factors in determining the amount of a fee award.

The trial court awarded fees under subsection (2) because it concluded that the Authority's presuit written offer was insufficient to calculate the benefits achieved by each Landowner in the final judgment so as to permit a fee award under subsection (1). Applying the factors listed in section

73.092(2), the trial court awarded the Landowners \$816,000 in attorney's fees for the proceedings that involved the valuation of Parcel 406.

The District Court of Appeal reversed and remanded, concluding that the attorney's fees for the valuation proceedings were limited to those allowed by section 73.092(1), it remanded to the trial court for consideration of the Landowners' claim that the application of the benefits achieved formula violated their constitutional right to full compensation because the Authority caused excessive litigation.

The Supreme Court of Florida held that when condemning authority causes excessive litigation, to calculate attorney fees, trial court shall utilize section 73.092(2), which requires a trial court to consider qualitative and quantitative factors in determining the amount of a fee award.

Although the Legislature may establish reasonable parameters for the award of attorney fees in eminent domain proceedings, a statute cannot operate in a manner to so reduce a fee award that it runs afoul of the constitutional guarantee that private property owners receive full compensation for a taking of their property.

Where private property owners are forced to defend against excessive litigation caused by a condemning authority, a mandatory statutory formula that generates a fee award below that which is considered reasonable denies those property owners their right to the full compensation that is guaranteed by the state constitution.

When a condemning authority engages in tactics that cause excessive litigation, to calculate a reasonable attorney fee, a trial court shall utilize provision setting forth considerations in assessing attorney fees incurred of statute governing attorney fees for eminent domain matters, but only for those hours incurred in defending against the excessive litigation or that portion that is considered to be in response to or caused by the excessive tactics. Remainder of the fee shall be calculated pursuant to benefits achieved formula in statute and the two amounts added together shall be the total fee.

Landowners were not required to pursue sanctions in lieu of challenging constitutionality of benefits achieved formula in statute governing attorney fees for eminent domain matters as applied to excessive litigation by county expressway authority. Sanctions were not sufficient to protect landowner's constitutional right to full compensation for taking of private property, which included reasonable attorney fee.

UTILITIES - INDIANA

[Citizens Action Coalition of Indiana, Inc. v. Southern Indiana Gas and Elec. Co.](#)

Court of Appeals of Indiana - October 29, 2015 - N.E.3d - 2015 WL 6550654

Citizens group and Office of Utility Consumer Counselor (OUCC) sought review of decision of the Indiana Utility Regulatory Commission granting the petition of public electric utility seeking approval of projects to modify current coal powered generating stations and requesting financial incentives and reimbursement from ratepayers for costs associated with the projects.

The Court of Appeals held that:

- Request for judicial review was not rendered moot by substantial work on projects;

- Portion of proposed modification was clean coal technology (CCT) that required a certificate of public convenience and necessity (CPCN);
- CPCN granted under different statutory section was insufficient;
- Commission made sufficient findings regarding whether specific unit was necessary for meeting electricity needs; and
- Commission was not required to make findings regarding utility's delay in filing petition.

Request for judicial review of decision of Indiana Utility Regulatory Commission granting petition of public electric utility seeking approval of projects to modify current coal powered generating stations and requesting financial incentives and reimbursement from ratepayers for costs associated with the projects was not rendered moot by utility's completion and use of many of projects due to objectors' failure to obtain stay pending appeal. Utility began work on projects while appeal was pending at its own risk, and appellate court had power to grant relief sought, which included remand to Commission with instructions to make additional findings.

Public electric utility's proposed modification of current coal powered generating stations so as to meet new Environmental Protection Agency (EPA) standards constituted clean coal technology (CCT) that required a certificate of public convenience and necessity (CPCN). Statutory definition of CCT applied to technologies which reduced emissions of sulfur or nitrogen based pollutants, and utility proposed two injection systems designed to mitigate sulfur emissions.

Certificate of public convenience and necessity (CPCN) granted under statutory section governing a utility seeking to recover federally mandated costs was insufficient to satisfy requirement of CPCN for approval of clean coal technology (CCT) project requested by public electric utility, where different sections governing different types of CPCNs had different requirements in order to issue CPCNs thereunder, and different sections served different purposes.

Indiana Utility Regulatory Commission made sufficient findings regarding whether specific unit was necessary for meeting electricity need of utility's customers in considering public electric utility's petition for approval of proposed modification of current coal powered generating stations so as to meet new Environmental Protection Agency (EPA) standards, where Commission specifically addressed issue of electricity demand when it found that retiring certain facilities prematurely would have resulted in reliability risks for consumers based on capacity shortfall projections, and utility did not request approval of any project tied only to specific unit.

Indiana Utility Regulatory Commission was not required to made findings regarding whether utility's delay in filing its petition was unreasonable in considering public electric utility's petition for approval of proposed modification of current coal powered generating stations so as to meet new Environmental Protection Agency (EPA) standards, where there was no evidence that delay was effort to reduce feasibility of alternative compliance options.

PENSIONS - NEW YORK

[Pitzel v. Dinapoli](#)

Supreme Court, Appellate Division, Third Department, New York - November 5, 2015 - N.Y.S.3d - 2015 WL 6741039 - 2015 N.Y. Slip Op. 08015

Retired police officer brought article 78 proceeding challenging determination of State Comptroller denying officer's application for recalculation of his final average salary. The Supreme Court, Albany County, transferred proceeding.

The Supreme Court, Appellate Division, held that substantial evidence supported determination that wages earned on special-duty details were properly excluded from officer's final average salary calculation.

Substantial evidence supported State Comptroller's determination that police officer did not provide service to police department while he was on special-duty details, as would preclude consideration of wages earned for those details in calculation of officer's final average salary for retirement purposes. Private entities paid police department so that officers would provide services to them on special-duty details, officer acknowledged that he volunteered to perform services on special-duty details, and there was no evidence that the department had ever ordered officer or his fellow officers to perform special-duty details.

UTILITIES - NORTH CAROLINA

[Point South Properties, LLC v. Cape Fear Public Utility Authority](#)

Court of Appeals of North Carolina - October 20, 2015 - S.E.2d - 2015 WL 6142998

Developers who paid water and sewer impact fees brought actions against water and sewer authority and county, seeking refunds. The Superior Court entered summary judgment in favor of developers. County and authority appealed. Appeals were consolidated.

The Court of Appeals held that:

- Claims were not subject to statute of limitations for claims based upon a liability created by statute;
- Statute of limitations for action against a local unit of government upon a contract did not apply;
- Catch-all statute of limitations applied;
- Doctrine of laches did not apply; and
- Fees were not "to be furnished" to developer's properties as would have authorized the fees.

Developers' claims against water and sewer authority and county for refunds of water and sewer impact fees on the basis that authority and county lacked authority to impose the fees were not based on authority's and county's breach of a duty or liability established by statute that granted authority and county the power to levy fees for water and sewer services furnished or to be furnished and, thus, were not subject to three-year statute of limitations for claims based upon a liability created by statute.

Two-year statute of limitations for action against a local unit of government upon a contract, obligation, or liability arising out of a contract did not apply to developers' claims against water and sewer authority and county for refunds of water and sewer impact fees on the basis that they lacked authority to impose the fees, where developers, who retained private utility company to provide water and sewer service, did not assert that authority and county were obligated to immediately provide them with sewer services.

Ten-year catch-all statute of limitations applied to developers' claims against water and sewer authority and county for refunds of water and sewer impact fees on the basis that they lacked authority to impose the fees.

Doctrine of laches did not apply to developers' claims against water and sewer authority and county for refunds of water and sewer impact fees on the basis that they lacked authority to impose the fees. Claims were legal, rather than equitable, and water and sewer authority and county failed to

show that they were prejudiced by delay in bringing claims.

Water and sewer impact fees that were imposed by county and water and sewer district were not for service “to be furnished” to developers’ properties, for purposes of statute permitting county water and sewer districts to collect fees for use of services to be furnished, although county and authority expressed a goal of extending service to areas including the properties, where county and authority had not decided or planned for service to be furnished to the properties, agency plans going three years ahead did not include any specific commitment to extend service to any of the properties, and a private utility company had continuously provided water and sewer service for the properties.

ZONING - PENNSYLVANIA

[Scott v. City of Philadelphia](#)

Supreme Court of Pennsylvania - October 29, 2015 - A.3d - 2015 WL 6675465

Objector to proposed condominium development sought review of zoning board of adjustment’s decision granting developer variances to construct development. The Court of Common Pleas granted developer’s motion to quash appeal. Resident appealed. The Commonwealth Court reversed. Allowance of appeal was granted.

The Supreme Court of Pennsylvania held that developer’s first opportunity to challenge standing of objector before board was when objector took appeal to trial court, rather than when objector appeared before board, disapproving *South of South Street Neighborhood Ass’n v. Philadelphia Zoning Bd. of Adjustment*, 54 A.3d 115.

UTILITIES - SOUTH DAKOTA

[Pesall v. Montana Dakota Utilities, Co.](#)

Supreme Court of South Dakota - November 4, 2015 - N.W.2d - 2015 WL 6750305 - 2015 S.D. 81

Utility and power company applied for permit to construct a high-voltage electrical transmission line. Farmer objected because he was concerned that excavating and moving soil to construct the project might unearth and spread a crop parasite. Public Utilities Commission granted permit on conditions, including condition to identify and mitigate the potential parasite problem. Farmer sought judicial review. The Circuit Court affirmed. Farmer appealed.

The Supreme Court of South Dakota held that:

- Commission did not delegate its regulatory authority to applicants, and
- Commission did not exceed twelve-month time limit for rendering complete findings on the application.

Decision to grant permit to construct high-voltage electrical transmission line subject to crop parasite mitigation conditions, rather than requiring utility company and power company to reapply in order to provide more specificity regarding mitigation proposal, was expressly authorized by legislature and within Public Utilities Commission’s area of expertise and therefore within the Commission’s discretion.

Modified condition of permit to construct high-voltage electrical transmission line, requiring applicants to identify and mitigate potential crop parasite problem, did not improperly delegate Public Utilities Commission's authority to a private party. On the contrary, the permit and the Commission's modifications of the condition reflected that the Commission retained its authority to make the ultimate decision regarding the crop parasite mitigation, and applicants did not have ultimate authority to choose final mitigation plan.

Public Utilities Commission did not exceed statutory twelve-month time limit for rendering complete findings on application for permit to construct high-voltage electrical transmission line, which was subject to crop parasite mitigation conditions, even though it did not order a specific mitigation plan within the twelve-month statutory period. Fact that the Commission retained jurisdiction to enforce its conditions did not mean it had failed to render complete findings on the permit.

UTILITIES - UTAH

[Metropolitan Water Dist. of Salt Lake & Sandy v. Questar Gas Co.](#)

Court of Appeals of Utah - October 29, 2015 - P.3d - 2015 WL 6567671 - 2015 UT App 265

Local water district brought action against public utility that operated natural gas pipeline on district's easement, seeking a declaratory judgment that district had statutory authority to require a licensing agreement for utility's continued occupancy in the easement, and that the utility's continued presence in the easement amounted to trespass, interference with waterway, and public nuisance as a matter of law.

District filed motion for summary judgment. The Third District Court denied the motion. District appealed.

The Court of Appeals held that:

- District enjoyed no express or implied statutory authority to regulate utility's pipeline, and
- Utility's pipeline did not unreasonably interfere with district's water pipeline.

Local water district had no express statutory authority to regulate public utility's natural gas pipeline located within its non-exclusive easement, since nothing in the relevant statutes expressly authorized local districts to regulate any public utility.

Local water district had no implied statutory authority to regulate public utility's natural gas pipeline located within its non-exclusive easement. Existence of gas pipeline on opposite side of street from water pipeline did not affect district's ability to carry out its duties, even if gas pipeline crossed the water pipeline in four locations, and authority exercised by other government entities in regulating utilities was with express statutory grants of power, which district lacked.

Public utility's gas pipeline located within local water district's non-exclusive easement did not unreasonably interfere with district's water pipeline so as to justify removal. District's concerns about costs of future rehabilitation and replacement for its pipeline being affected by the existence of the gas pipeline were speculative since it had no present construction plans, and pipelines had peacefully coexisted underground for more than 60 years.

[West v. Washington State Ass'n of Dist. and Mun. Court Judges](#)

Court of Appeals of Washington, Division 1 - November 2, 2015 - P.3d - 2015 WL 6680205

Requester brought declaratory judgment action alleging violations by District and Municipal Court Judges' Association (DMCJA) of the Public Records Act, as well as the Fair Campaign Practices Act. The King County Superior Court granted DMCJA summary judgment. Requester appealed.

The Court of Appeals held that:

- DMCJA was part of judiciary and was therefore not an "agency" subject to the Public Records Act;
- Requester was required to comply with statutory notice procedures to attorney general and local prosecutor prior to bringing action against DMCJA for alleged violation of the Fair Campaign Practices Act; and
- Judge's recusal was not warranted by her status as former member of DMCJA.

[Largest Muni Sale Next Week is \\$1.75 bln for Florida Rail.](#)

The largest deal to hit the U.S. municipal market next week is \$1.75 billion of private activity bonds to help fund All Aboard Florida, a 235-mile (378 km) passenger rail project that will connect Miami to Orlando.

The bonds will be sold by the Florida Development Finance Corporation, a state authorized issuer of industrial revenue bonds, and the sale will be managed by Bank of America Merrill Lynch.

All Aboard Florida is a privately owned, operated and maintained passenger rail system with stations planned in Miami to Fort Lauderdale, West Palm Beach and the Orlando International Airport.

The express train is expected to take approximately three hours, move at speeds up to 125 mph (201 kph), and be completed by early 2017.

A handful of express and high-speed rail projects are currently planned to be built across the country, including projects in California, Texas, and Nevada.

Siemens Corporation will manufacture All Aboard Florida's trains in Sacramento, California. Archer Western is upgrading rail infrastructure along the corridor.

Altogether, U.S. municipal bond issuers are expected to offer over \$6 billion of municipal bonds and notes next week, according to Thomson Reuters preliminary data.

Reuters

Nov 6, 2015

(Reporting by Robin Respaut; Editing by Alan Crosby)

[Moody's Withdraws 3 U.S. Public Finance Local Government Obligors for Lack of Sufficient Information.](#)

New York, November 04, 2015 — Moody's Investors Service has withdrawn the ratings of 3 U.S. public finance local government obligors, affecting approximately \$30.5 million of outstanding debt, due to insufficient information.

The affected obligors are:

- Canton, MS
- Lamar County, TX
- Mabank, TX

SUMMARY RATING RATIONALE

Moody's has withdrawn the ratings because it believes it has insufficient or otherwise inadequate information to support the maintenance of the ratings. Please refer to the Moody's Investors Service's Policy for Withdrawal of Credit Ratings, available on our website, www.moodys.com.

REGULATORY DISCLOSURES

Regulatory disclosures contained in this press release apply to the credit rating and, if applicable, the related rating outlook or rating review.

Please see www.moodys.com for any updates on changes to the lead rating analyst and to the Moody's legal entity that has issued the rating.

Please see the ratings tab on the issuer/entity page on www.moodys.com for additional regulatory disclosures for each credit rating.

Sarah Jensen
Associate Analyst
Public Finance Group
Moody's Investors Service, Inc.
600 North Pearl Street
Suite 2165
Dallas, TX 75201
U.S.A.
JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

Vanessa Youngs
Analyst
Public Finance Group
JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

Releasing Office:
Moody's Investors Service, Inc.
250 Greenwich Street
New York, NY 10007
U.S.A.
JOURNALISTS: 212-553-0376
SUBSCRIBERS: 212-553-1653

How Safe are Municipal Bonds from a Fed Interest Rate Hike?

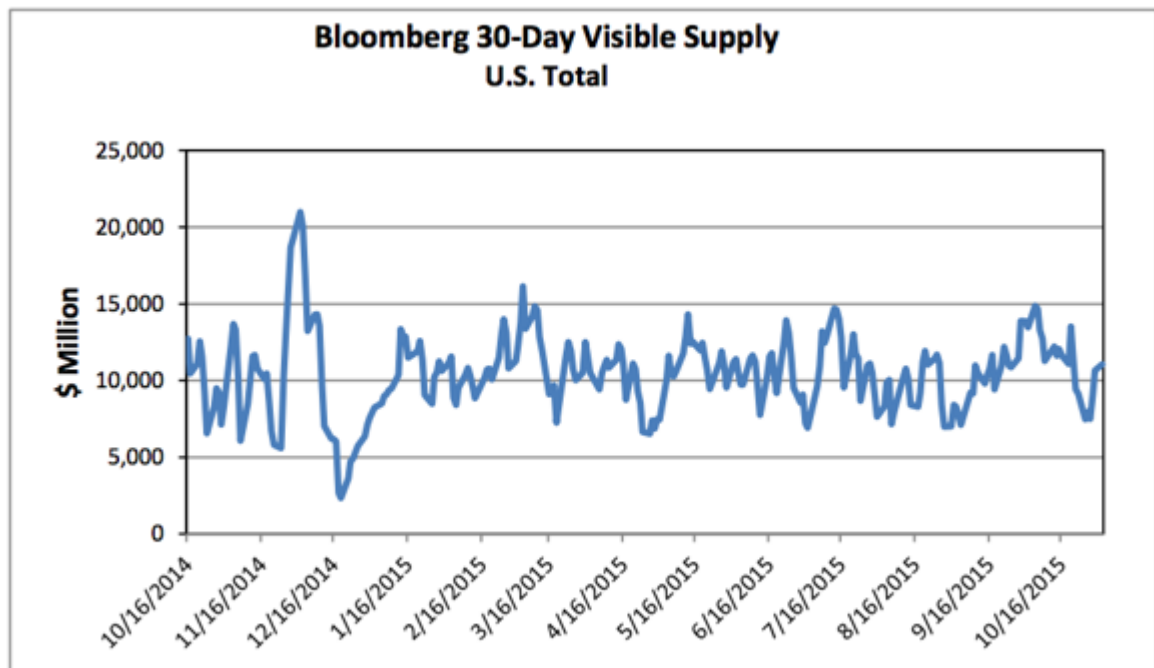
Summary

- The supply of new issues will likely fall as rates rise, creating an imbalance between supply and demand.
- Historically municipal bonds have avoided losses in a rising interest rate environment.
- Municipal bonds currently are trading at attractive historical levels relative to taxable bonds.

The bond market (NYSEARCA:BND) is bracing for a smackdown when the Federal Reserve hikes interest rates. The CME Group's FedWatch Tool shows the Fed-funds futures market is pricing in a 52% chance of a 50 basis point increase at the Fed's Dec. 16 meeting. That's a sharp rise from a 34% reading last week before the Fed's policy statement. The probability gauge rises to 61% for the January meeting next year and 75% for March 2016. Intermediate and long duration bonds of all stripes will lose principal when rates rise. Municipal bonds (NYSEARCA:MUB), however, are relatively safe from a rate hike. The stars seem to be aligning in their favor. Here are five reasons why.

1. The supply of new issues will likely fall as rates rise, creating an imbalance between supply and demand. New issue volume has been falling since June. September new issue volume was the lowest in one and half years, according to Janney Montgomery Scott's monthly municipal bond report from October. Municipalities will likely issue less debt in a rising rate environment.

Refundings fell 38.3% in October 2015 from the year-ago period, according to RW Baird, citing Bond Buyer data. Total issuance declined from October 2014. Sept. 2015 issuance also dropped year over year.



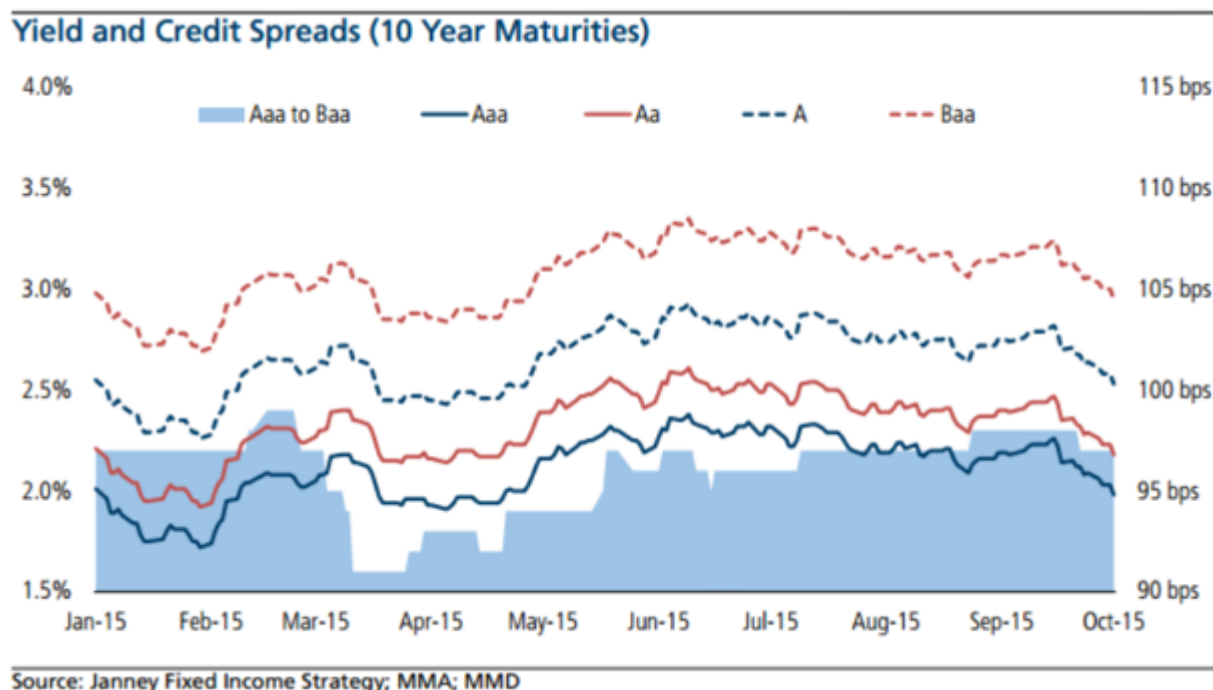
(Robert W. Baird Municipal Bond Market Weekly, Nov. 2, 2015)

"Because so much issuance this year has been refunding of older debt due to current low rates there could be a reduction in new issuance making munis more valuable as a result of better

supply/demand technicals,” says John Donovan, senior vice president of municipal trading at Drexel Hamilton in New York City. “And somewhat counterintuitively, the start of tightening could lead to lower equities and add to the demand for munis in a rotation type trade.”

Matthew Carbray, CFP®, ChFc®, a certified financial planner and partner at Carbray Staunton Financial Partners LLC in Avon, Conn., says: “With reduced new supply coming to market and the likelihood that there will be less refinancing activity on existing muni debt due to higher rates, the fundamentals for municipal bond investing look strong.”

Carbray recommends buying high-yield munis (NYSEARCA:HYMB) because spreads have widened enough to justify the credit risk in many cases.



(Janney Montgomery Scott, “Municipal Bond Market Monthly,” Oct. 6, 2015)

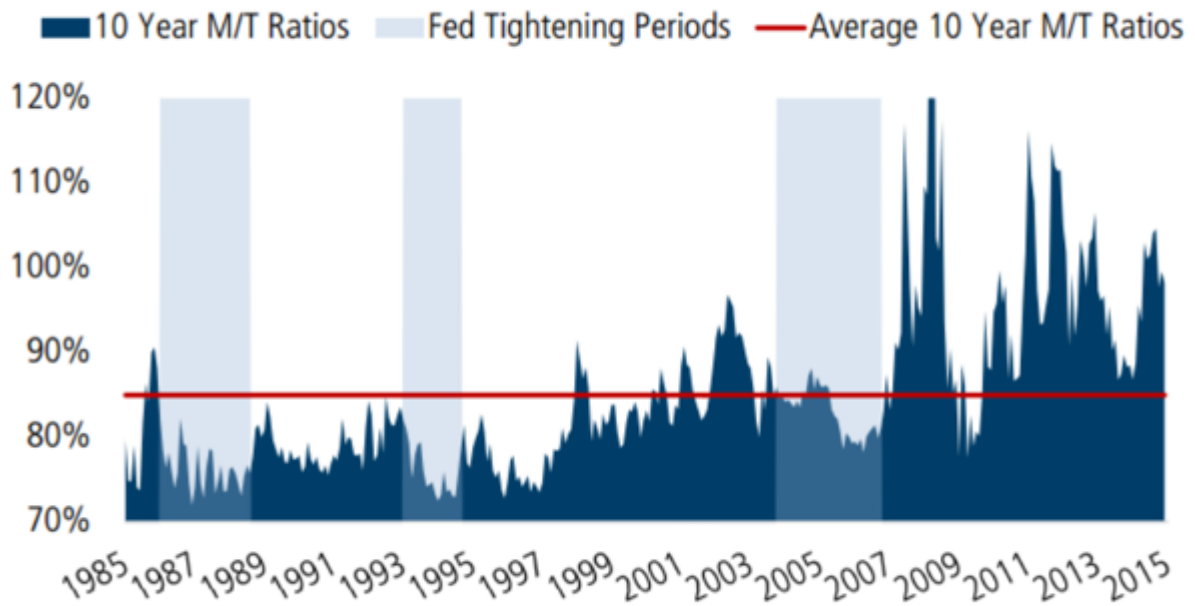
2. Historically municipal bonds have avoided losses in a rising interest rate environment.

It’s doubtful that longer-term rates will rise dramatically when the Fed lifts the policy rate. The yield curve will likely flatten. Long-term rates (NYSEARCA:BLV) are more sensitive to expectations of inflation, which is basically non-existent thanks to falling commodity prices. Energy prices are expected to remain low for the foreseeable future because of the fracking boom.

A primary indicator of municipal relative value is the ratio of 10-year AAA yields to like maturity Treasury yields (NYSEARCA:IEF). Janney Montgomery Scott’s graph below shows during rising interest-rate periods in the late 1980s, the mid-1990s and the mid 2000s, muni ratios fell. That means muni yields fell (as prices rose) relative to Treasuries.

“With ratios currently hovering around 100%, despite high marginal income tax rates, we see more downside bias to M/T ratios than upside likelihood,” Alan Schankel, managing director at Janney, wrote in a client note issued Sept. 17.

When the Fed is Tightening, Munis Tend to Outperform Taxables

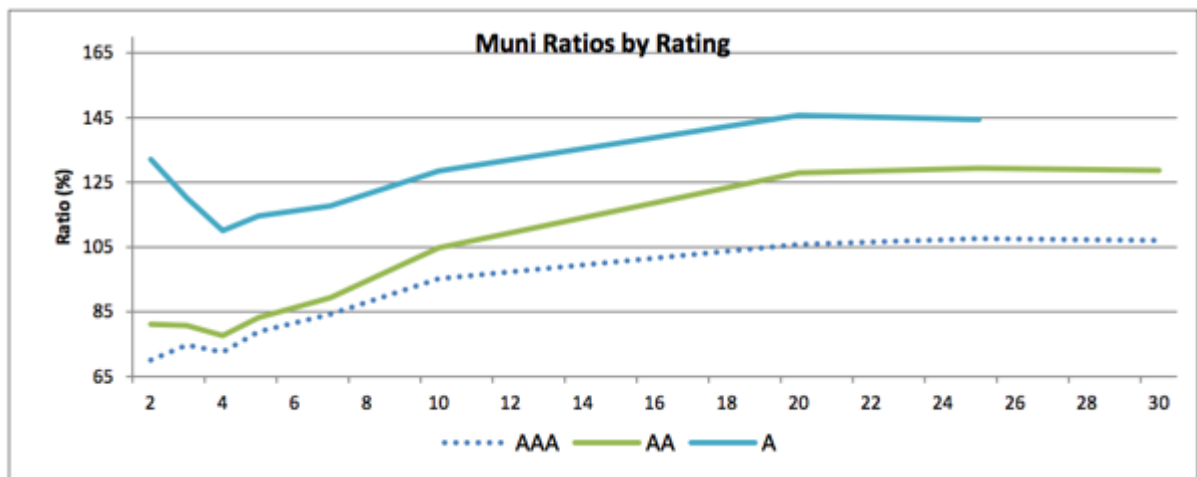


Source: Janney Fixed Income Strategy, Thomson Reuters MMD, Bloomberg

(Janney Montgomery Scott, "Munis in a Tightening Cycle," Sept. 17, 2015)

3. Municipal bonds currently are trading at attractive historical levels relative to taxable bonds. The lower the credit rating and the longer the duration, the higher the muni valuation relative to equivalent Treasuries as this chart from RW Baird shows.

Muni Index Ratios by Maturity and by Credit Rating



(Data Source: Bloomberg; Baird Municipal Bond Market Weekly Nov. 2, 2015)

"This has a very important implication for investors, as it means that despite the fact that municipal bonds' income is tax-free – consequently, their rates should be lower. But their yields on maturities greater than 20 years are higher than those on treasury bonds," Keith Lanton, president of Lantern Investments with \$1 billion in client assets in Melville, N.Y. "Of course, the latter are backed by the full faith and credit of the United States. Nevertheless, municipal bonds levels over 100% are high by historical standards."

4. Arguably, muni bond prices have already priced in an interest rate hike because it has been anticipated for so long. Jefferies' team of economists and analysts used a handful of complicated models to conclude there will be a December liftoff. They project a 2% Fed funds rate at year-end 2015. They forecast the Fed funds to reach at least 3% by year-end 2016 and 3.75% or higher in late 2017.

"The rate normalization process, of course, will depend upon the economy and inflation continuing down the path toward more normal economic and inflation conditions," Ward McCarthy, managing director and chief financial economist at Jefferies and his colleagues wrote in a client note Oct. 30. "Consequently, the projected fed funds rate in all of these models is based on the same projections for a continued decline in the unemployment rate to as low as 4.5% and a gradual rise in inflation back toward the Fed's 2% target."

Jefferies' model does not factor in overseas uncertainty. Crude oil prices and import prices are huge wild cards that could affect the inflation rate.

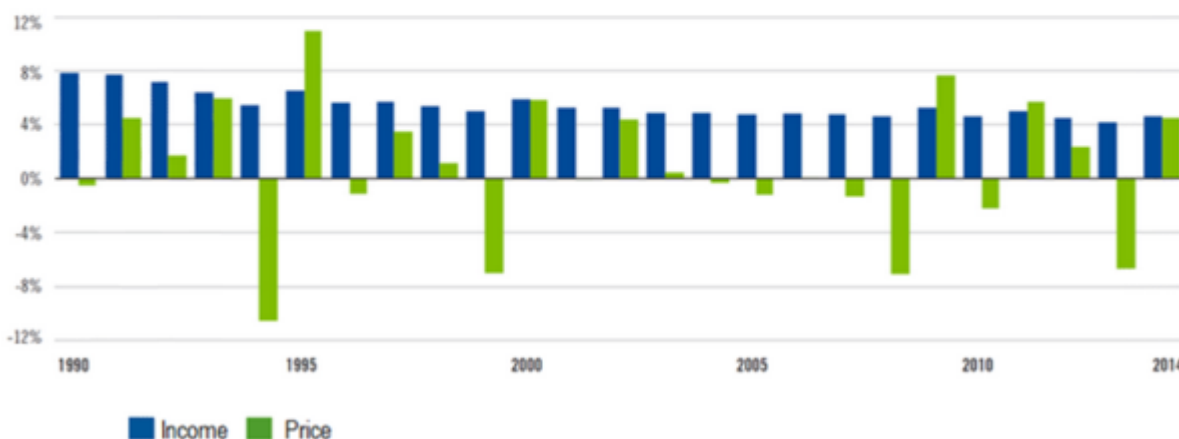
5. Knee-jerk market reactions present a chance to take advantage of volatility. When bonds sell off, yields rise. Therefore, educated investors can swoop up higher-yielding bonds to increase income. Over the past two decades, muni yields have typically fallen from their highs. Over the long term, yields are the primary contributor to total returns than price appreciation for muni bond investors. Over the short term, income helps cushion price declines. Unless credit quality deteriorates, bond prices usually stabilize relatively quickly as the yield rises.

Franklin Templeton's chart below shows that although prices of municipal bonds dropped in 12 out of the 24 calendar years between 1990 and 2014, the bonds' yield income helped offset losses in price. After factoring in income, municipal bonds only saw negative total returns in four out of the 24 years.

Income and Total Return



Barclays Municipal Bond Index: 1990-2014



(Franklin Templeton, "In the Know: Seven Myths About Municipal Bonds," May 7, 2015)

Seeking Alpha

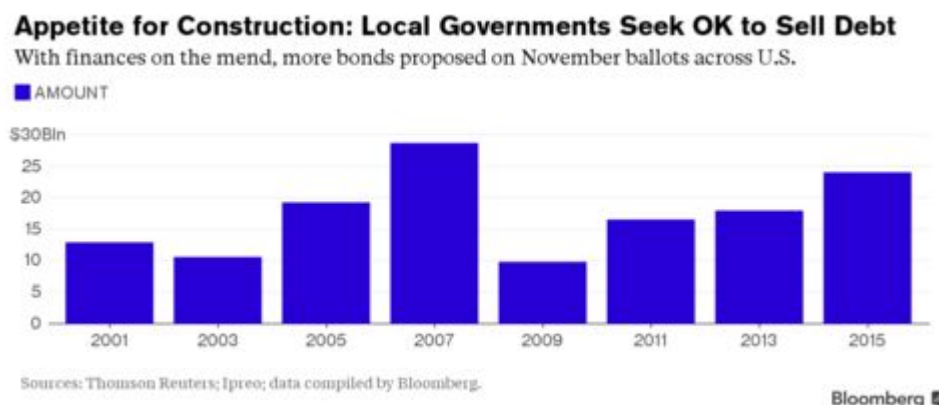
Robert Kane, BondView
Research analyst, municipal bonds, event-driven, macro

Nov. 5, 2015 4:48 PM ET

[U.S. Voters Approve \\$10 Billion of Bonds in Top Ballot Contests.](#)

U.S. voters approved more than \$10 billion of new municipal bonds for local governments, with returns showing strong support for large debt issues for Dallas schools, Houston roads and Denver's stock show and convention facilities.

With interest rates near 50-year lows, localities nationwide sought authority Tuesday to issue \$24 billion of debt for water systems, roads and economic development, according to Ipreo, a New York-based financial-market data provider. It was the most in an odd-year November election since 2007, before the worst recession since the 1930s cut tax revenue and pushed states and cities into a period of austerity.



While municipalities have been borrowing to take advantage of low rates to cut the cost of existing debt, they've been reluctant to take on new obligations. Borrowing costs have averaged just under 4 percent since 2012, the lowest since the mid-1960s, according to the Bond Buyer's index of 20-year yields.

"The best case would be a wave of supply that pushes yields and spreads meaningfully higher," said Matt Fabian, a managing director at Concord, Massachusetts-based research firm Municipal Market Advisors. "Unfortunately we are probably stuck with low yields for a while, regardless of what supply might come."

Dallas Schools

A strengthening economy gave government officials confidence to ask voters for permission to borrow. The approved borrowings would make a small contribution toward some of the \$3.6 trillion of investment in infrastructure that the American Society of Civil Engineers estimates the U.S. needs by 2020.

For Dallas Independent School District, the \$1.6 billion of new debt will be used to replace and renovate schools that are more than a half-century old. Denver voters approved \$778 million of debt to upgrade a facility for the National Western Stock Show and for improvements to a convention

center. Meanwhile in Harris County, where Houston is located, voters approved \$848 million of debt for road improvements, parks and flood control, according to county election returns.

Debt sales were also approved for the Aldine Independent School District, North East Independent School District and Conroe Independent School District, all in Texas, and the Fairfax County schools in Virginia. Nine Texas districts were among the largest approved.

Voters in Maine, the only state with bond questions on its ballot, also supported \$100 million of debt for transportation and senior housing.

Rejected Proposals

Two of the largest issues that failed to pass included \$816 million of bonds in Pima County, Arizona, which sought to use the proceeds for roads and highways, economic development and tourism, and other purposes. In Travis County, Texas, voters rejected \$287.3 million for a new courthouse in downtown Austin.

Six years after the recession ended, state tax revenue is only 5 percent over the prior peak and far lower than in past recoveries, according to data released in July by the Nelson A. Rockefeller Institute of Government, which tracks state and local revenue and spending. The long recovery from the recession that began in late 2007, followed by a sustained decline in investment by state and local governments in infrastructure, has created demand, said Donald Boyd, director of fiscal studies at the Rockefeller Institute.

The record for bond proposals in a November general election was in 2006, when municipalities asked for \$78.6 billion and voters approved \$69.6 billion, according to Ipreo. November general-election ballots typically contain more debt in even years, when congressional and presidential elections are held, than in odd-numbered ones. Last year voters were asked to decide on \$44 billion of bonds, more than twice the amount sought in 2010, and passed about 85 percent, according to Ipreo.

Bloomberg

by Darrell Preston

November 3, 2015 — 8:57 PM PST Updated on November 4, 2015 — 9:35 AM PST

[House Committee Approves Legislation to Classify Muni Bonds as High-Quality Liquid Assets.](#)

Earlier today, the House Financial Services Committee voted overwhelmingly to favorably report legislation (H.R. 2209) that would allow large banks to count some of their municipal bond investments as high-quality liquid assets under federal bank liquidity standards. The legislation, which was introduced by Representative Luke Messer (R-IN), was approved by a vote of 56-1, with Democrat Stephen Lynch of Massachusetts casting the lone opposition vote.

H.R. 2209 would modify a regulation the Federal Reserve, the Department of Treasury, and the Federal Deposit Insurance Corporation (FDIC) released in October 2014 to ensure that large banks hold enough liquidity to continue making payments during periods of financial stress. Under the rule, banks with at least \$250 billion in assets (or \$10 billion in foreign exposure on their balance

sheet) must maintain a minimum liquidity coverage ratio (LCR) comprised of certain financial investments that are considered “High-Quality Liquid Assets (HQLAs).” The rule will permanently take effect on January 1, 2017.

Despite the urging of NCSHA and other advocates, the agencies did not include municipal bonds as HQLAs in the final rule. This means that large banks cannot currently use any municipal bond investments they hold towards meeting their LCR. H.R. 2209 would require that all investment-grade municipal bonds that are “liquid and readily marketable” be classified as level 2A HQLAs. This would allow banks to count such municipal bonds towards their LCR, but only at a value that is 15 percent below each investment’s market value. In addition, banks cannot use level 2 assets to account for more than 40 percent of their HQLAs. Regulators would have three months to incorporate these changes into the current regulations.

In May, the Federal Reserve issued a proposed rule that would allow some municipal bonds to be considered as HQLAs. However, the proposed rule would only apply to uninsured general obligation bonds. This means that housing bonds, and other private-activity bonds, would still not be considered HQLAs. Further, because the Federal Reserve issued this proposed rule unilaterally instead of jointly with Treasury and the FDIC, it would only apply to the large banks the Federal Reserve oversees.

H.R. 2209 has not been scheduled yet for full House of Representatives consideration.

National Council of State Housing Agencies

November 04, 2015

[Puerto Rico Debt Tragedy's Second Act is Close. Here is the Cast.](#)

NEW YORK - The second act of Puerto Rico’s long- building debt drama is about to begin, and waiting in the wings is a veteran cast. It includes an embattled politician, his foe, the former executive of a failed bank, and those with roles in the Wall Street bailout, Argentina’s default and America’s biggest municipal bankruptcies.

Locked out of the capital markets as it edges toward a record-setting default, the Caribbean island of 3.5 million people may run out of cash as soon as this month. With \$354 million of debt payments due on Dec. 1, Gov. Alejandro Garcia Padilla would have to decide whether to pay bondholders or conserve whatever funds he can find to keep the government running.

While Puerto Rico has already defaulted on securities backed by legislative appropriations, it may mark the first time the government has failed to make good on obligations guaranteed by its full faith and credit — a pivotal moment that could haunt it for years.

With a debt load of \$73 billion, more than any state but California or New York, and an economy that’s contracted in all but one year since 2006, Garcia Padilla says the island can’t afford to pay back what it owes. Puerto Rico expects to have a negative cash balance of \$30 million this month, the governor told a U.S. Senate committee on Oct. 22, and the administration may cut civil servants to a three-day work week to conserve cash. The debt restructuring the governor wants to push through would be by far the largest ever in \$3.7 trillion municipal market.

Here are the men and women who will chart the way:

-Alejandro Garcia Padilla, governor. Before becoming governor in January 2013, Garcia Padilla, a graduate of the Interamerican University of Puerto Rico School of Law, served in Puerto Rico's senate. The 44-year-old is a member of the Popular Democratic Party, which is aligned with Democrats in the U.S. and favors keeping the island a territory over pushing for statehood. He raised excise taxes, increased the retirement age for government workers, and pushed to change the sales tax to a value-added tax, a step aimed at cracking down on widespread evasion.

He's been unable to revive the economy or eliminate chronic deficits that have left the government reliant on borrowed money. In April, Garcia Padilla said it would be "folly" to default. By late June he reversed course, saying the deep spending cuts or tax increases that would be required to pay its debts would be too much to bear.

His administration plans to offer investors a chance to exchange their bonds for new securities that will be less costly to the government, though no details have been released and it's unclear how many bondholders will go along. Facing re-election next year, Garcia Padilla hasn't said whether he'll run again. El Nuevo Dia, the island's biggest newspaper, reported that he won't so that his handling of the debt crisis is freed from the pressure of election-year politicking. About 12 percent of Puerto Ricans approve of Garcia Padilla's performance, according to a poll published by El Nuevo Dia.

- Pedro Pierluisi. Puerto Rico's sole representative in Congress since 2009 and president of the New Progressive Party that favors statehood, Pierluisi, 56, is planning his own gubernatorial run and has been critical of Garcia Padilla, giving the island a somewhat divided voice in Washington. With Garcia Padilla's support, he proposed a bill that would allow the government-run power company and other struggling agencies to file for bankruptcy protection in U.S. court.

It's gone nowhere for lack of a single Republican co-sponsor. In testimony prepared for a September hearing, he said debt guaranteed by the central government should be "sacrosanct" and that the governor had "badly tarnished" the island's reputation by not standing firmly behind it.

A graduate of Tulane University, he has a degree from George Washington University Law School and worked as a lawyer in private practice before taking office.

- Melba Acosta, Government Development Bank. A Harvard University MBA, Acosta has been president of the GDB, which handles the commonwealth's financial affairs, since October 2014 and previously worked as Puerto Rico's Treasury Secretary. From 2004 to 2010, she was a vice president, chief operating officer and chief financial officer with R&G Financial Corp. and its subsidiary R-G Premier Bank, one of three Puerto Rico lenders that closed following the island's severe recession. While at the GDB, she attempted to negotiate a restructuring of some of the agency's debt in a trial run of what may be attempted on a larger scale. The talks collapsed last month.

In addition to her MBA, Acosta, 49, has degrees in accounting and law from the University of Puerto Rico.

- Jim Millstein, Millstein & Co. Millstein, the founder and chief executive officer of the financial advisory firm that's serving as Puerto Rico's main debt adviser, has experience with high-profile financial messes. Before starting his firm, from 2009 to 2011 Millstein served as the U.S. Treasury's chief restructuring officer, responsible for monitoring the financial-industry bailouts from the 2008 credit-market crisis. He was the principal architect of American International Group Inc.'s recapitalization.

Millstein, 60, is a former co-head of Lazard's restructuring group and before that was head of the corporate turnaround practice at Cleary Gottlieb Steen & Hamilton. At Lazard, he represented Argentina in connection with the exchange offer for its international bonds, which may serve as a template for Puerto Rico. A Princeton University graduate, he has a law degree from Columbia Law School.

- Antonio Weiss, Treasury Dept. After his nomination to serve as undersecretary for domestic finance was blocked by Sen. Elizabeth Warren over his long career on Wall Street, Weiss joined Treasury as an adviser to Secretary Jack Lew and serves as the point person for Puerto Rico. The Obama administration has suggested that Congress give Puerto Rico's entire government the power to file for bankruptcy to allow for an orderly workout in court, a broader scope than Pierluisi's stalled bill. It's also proposed increasing health-care spending and tax credits for the island to help boost the economy.

At Lazard, Weiss was the head of investment banking, advising Walgreen in its acquisition of Alliance Boots and cigarette maker Reynolds American in its takeover of rival Lorillard. He was formerly publisher of the storied literary magazine *The Paris Review*, where he worked as assistant to founder George Plimpton just after graduating from Yale University. Weiss, 49, also has an MBA from Harvard.

- Lee Buchheit, Cleary Gottlieb. Buchheit, 65, who worked on the restructuring of Greece's debt, is partner in the sovereign practice group at the firm, which is serving as legal adviser to Puerto Rico. Over three decades his clients have included Russia, Mexico, the Philippines, Iraq and Iceland. Buchheit received *International Financial Law Review's* inaugural Lifetime Achievement Award for his contributions to international finance. Buchheit earned an undergraduate degree from Middlebury College and a law degree from the University of Pennsylvania Law School.

- Harrison Goldin, Goldin Associates. Harrison Goldin, 79, the firm's managing director, was involved in one of the biggest municipal financial crises: New York City's mid-1970s meltdown. Known as "Jay," he served as the city's comptroller when it was pushed to the brink of bankruptcy by years of unsustainable borrowing to pay bills, just like Puerto Rico. Goldin's firm was hired to advise a group of investors holding some of Puerto Rico's \$13 billion of general- obligation bonds, the second biggest chunk of the island's securities. He's a graduate of Princeton and Yale Law School.

Bondholders, however, are far from unified. That's because some 17 arms of the commonwealth have sold securities that are backed by different legal protections and revenue streams, setting up a clash between various bondholders over who will be saddled with the steepest losses. Case in point: a group formed to represent more than three dozen hedge funds holding \$5 billion of Puerto Rico bonds disbanded, with the firms breaking into smaller alliances that would better represent their interests.

- Lisa J. Donahue, AlixPartners. Donahue, a managing director of the advisory firm's turnaround practice, serves as the chief restructuring officer for the Puerto Rico Electric Power Authority, the government-run electric company that's been negotiating for over a year in an effort to cut its \$8 billion of debt. She was appointed in September 2014. She previously served as executive vice president and CFO at Calpine Corp., an independent power producer, and CFO for the Atlantic Power Corp. The authority has reached an agreement with some bondholders to restructure the agency's debt, which would leave investors taking losses of as much as 15 percent. Finishing the rest of the deal has proved difficult. The utility still needs to get agreements with insurers that guarantee the debt against default. Donahue has a degree in finance and accounting from Florida State University.

- David Brownstein, Citigroup. Brownstein is head of public finance at the New York-based bank, the third-largest underwriter of U.S. municipal bonds during the first half of the year. Citigroup was hired to be the lead banker for the restructuring of Puerto Rico's debt and hosted a July meeting between investors and officials at its Manhattan headquarters. Brownstein was the top banker to Jefferson County, Alabama, on the water and sewer refinancing that brought it out of the second-biggest U.S. municipal bankruptcy. He also worked with Detroit following its financial collapse. Brownstein has a bachelors degree from Beloit College.

Bloomberg

by Martin Z. Braun

Contributors: Michelle Kaske and Laura J. Keller in New York and Catarina Saraiva in Washington.

Nov. 6, 2015

[Vanguard Steps Into Muni-Bond Indexing.](#)

Long associated with index funds, Vanguard Group didn't launch its first municipal-bond index fund until this past August.

At an annual cost of 0.12%, Vanguard Tax-Exempt Bond ETF (VTEB) tracks the S&P National AMT-Free Municipal Bond Index, the same one tracked by iShares National AMT-Free Muni Bond ETF (MUB), which has a 0.25% expense ratio .

Vanguard, which already had active mutual funds for the sector, hasn't set off fireworks with the ETF so far. The iShares fund dwarfs the Vanguard ETF in assets (\$5.6 billion to \$60 million) and average daily volume, where differences in expense ratio can be made up in trading spreads.

Yet, Vanguard's launch is sure to bring added focus to muni-bond indexing and passive-investing strategies. Through Sept. 30, actively managed municipal-debt funds held \$573 billion, compared with just \$20 billion for index funds, the largest active/passive discrepancy for eight distinct fund types tracked by Morningstar Inc. And 85% of those passive funds were in ETFs.

Muni bonds (and funds) are typically held by investors in higher marginal tax brackets, those who benefit the most from the state, federal and local tax-exempt status of interest income from munis. Moreover, the muni market isn't nearly as large or as liquid as those for federal or corporate debt—so trading individual bonds can be a challenge.

"In a more fragmented market, the sampling approach a manager uses to align with an index is extremely important," says Peyton Studebaker, managing director of Caprin Asset Management in Richmond, Va. His clients are invested in the \$1.2 billion Market Vectors Intermediate Municipal ETF (ITM). The fund, which costs 0.24%, has an effective duration of 7.1 years compared with 4.7 years for the more broadly based MUB.

"Intermediate muni ETFs offer a more-reasonable risk/reward in today's interest-rate environment," adds Mr. Studebaker. ITM yields 2.1%, or 3.52% tax equivalent at the 39.6% marginal federal rate. MUB yields 1.63%, or 2.89% tax equivalent as of Nov. 2, according to each company.

It remains to be seen whether Vanguard's entry into the market will win over customers from

existing funds, including the \$1.5 billion SPDR Nuveen Barclays Municipal Bond ETF (TFI), or expand interest in muni-bond indexing generally.

THE WALL STREET JOURNAL

By ARI I. WEINBERG

Updated Nov. 8, 2015 10:02 p.m. ET

Mr. Weinberg is a writer in New York. He can be reached at reports@wsj.com.

California Private Placement Market May Be Pivoting.

PHOENIX - The relatively opaque private placement market, which has been very strong in California, may be slowing down after years of growth and shifting from a totally bank-dominated market to a more diverse range of purchasers, market participants believe.

The line between a private placement of municipal securities and a more traditional bank loan is sometimes fuzzy and full of ambiguity over disclosure, but issuers have turned increasingly to both techniques in recent years because of the relative simplicity of dealing with only one investor or lender.

The limited disclosure requirements that apply to non-public offerings of municipal bonds, particularly to loans, make it difficult to pin down exactly how big the multi-billion dollar market is nationally or in the Golden State. Observers described evolving practices in California.

Banks have been ramping up their muni holdings, with Federal Deposit Insurance Corporation data showing that bank holdings of municipal bonds have risen from just over \$270 billion in June 2013 to about \$325 billion in June this year.

Banks have been attracted to the strong performance munis have provided and the better risk profile attached to municipal securities compared to other kinds of debt.

Data provided by Thomson Reuters shows that private placements of munis totaled about \$24 billion in 2014, with California accounting for some \$4.4 billion of that total.

That was up from just \$1.8 billion nationwide in 2005, of which \$277 million were in California.

As of Nov. 4, Reuters data shows that neither the nation nor California are on pace to reach last year's levels, with California's activity slowing more.

Total private placement volume through Nov. 4 sat at \$15.4 billion nationally and at \$850 million in California.

Roger Davis, a partner at Orrick, Herrington & Sutcliffe in San Francisco, said he and other lawyers at his firm have been involved in California private placements, sometimes as counsel to the issuer and sometimes as counsel to the purchaser of the securities.

He said such deals occur as they traditionally have, with unrated or lower-rated credits, but have also broadened to include more types of transactions and include all sectors.

“They’re occurring both where you would expect them to and replacing more traditional financing,” Davis said. “We see it in the general government area, we see it in healthcare, we see it in K-12 education.”

Davis said private placements have long been a bank-dominated market, but in his experience may be pivoting a bit away from that.

“It may be the case that there are somewhat fewer of those,” Davis said of bank direct purchases.

He said that he has seen an increasing number of purchases made by hedge and infrastructure funds.

Davis said it’s not clear from his perspective whether the direct placement market in California is losing steam.

“I can’t say that it’s shrinking or growing,” he said. “They’re still a material factor in the market. It’s hard to tell how material a factor they are.”

Several market participants discussed the California private placement market in at The Bond Buyer’s California Public Finance Conference last month in San Francisco, saying the market may have peaked a year or two ago.

Those discussions also indicated that between 15 and 20 banks are consistently active with private placements in the state.

Dmitry Semenov, vice president and commercial relationship manager at Umpqua Bank in Roseville, Calif., said he has seen a number of smaller commercial banks getting involved in the private placement market over the last couple of years.

The new competition has given issuers more access to inexpensive borrowing, but it is unclear how long that will last, Semenov said.

“They’re aggressive,” Semenov said of the new market entrants, adding that he has seen some examples of very loose covenants and a potential lack of due diligence. “Lots of cheap money.”

Semenov said that his bank is very active in the private placement market, totaling about \$500 million in the last five years. Private placements are used for almost everything now, he said.

“At this point it covers pretty much the entire spectrum of issuers,” Semenov said.

Some private placements are more of a one-off from banks who generally don’t do them.

C.J. Johnson, chief financial officer at Mechanics Bank, a community bank in the San Francisco Bay Area, said his bank’s recent decision to purchase \$3 million of social impact bonds in a private placement was not a normal part of Mechanics’ business.

In that deal, Richmond, Calif. is issuer of \$3 million of bonds with a 0% coupon for the Richmond Community Foundation to use to acquire abandoned houses and sell them to qualified low-income homebuyers. The deal is risky, as Mechanics only gets its potential 10% annual return on its \$3 million of the project is a success.

The bank gets credit under the Community Reinvestment Act, which encourages financial institutions to meet the credit needs of their communities. Regulators take a bank’s CRA

performance record into account when considering an institution's application for deposit facilities.

"I would say we're not really active in this market at all," Johnson said when asked about private placement activity. "It's a little bit of a one-off."

Johnson said the bank was motivated more by the local community angle, calling the situation "unique."

"We're a community bank, and this is our community," he said of Mechanics, which has three Richmond branches.

Regulators are in the midst of trying to bring clarity to the private placement sector, where there is significant confusion and controversy.

Issuers and banks are often unsure of whether an instrument is a loan or a security subject to Securities and Exchange Commission and Municipal Securities Rulemaking Board Rules, and broker-dealer groups have said repeatedly that some municipal advisors are acting improperly as placement agents soliciting banks to participate in these types of non-public transactions.

Analysts have called for more prompt voluntary disclosure by issuers of all their debts.

The Government Finance Officers Association executive board recently approved a best practice document recommending voluntary disclosure of information on direct placements, loans, and other credit arrangements with private lenders or commercial banks.

THE BOND BUYER

BY KYLE GLAZIER

NOV 5, 2015 1:30pm ET

[Sizing Up Dallas' Massive Pension Problem.](#)

The short of it is this: Dallas' pension fund for police and firefighters is in big trouble. This week, the City Council heard from an outside auditor that the fund has \$5 billion in commitments that it doesn't have assets to pay, based on the new way the Governmental Accounting Standards Board will begin calculating pension liabilities. Previously, those commitments were calculated to be \$1 billion.

In light of the \$4 billion reassessment, both the Moody's and Standard and Poor's ratings services downgraded the city's credit rating. Moody's downgraded the city's bond rating from its second highest level, Aa1, to its third highest Aa2. S&P did the same, using a slightly different lexicon — Dallas went from AA+ to just AA. The downgrades come less than a week after the city released \$227 million in capital improvement bonds. Matt Fabian, a municipal finance analyst with Municipal Market Analytics, said that the credit downgrades in and of themselves shouldn't cause an immediate crunch for the city, thanks to a friendly bond market and the high perch from which Dallas' bond rating has only slightly dropped.

"Right now [municipal bond] yields are at or near an all-time low. That means that there aren't enough bonds available for all the investors that want to buy them. They're falling all over each

other to buy bonds, to buy income for their municipal bond accounts, and so the penalty that Dallas is apt to pay is minimal," Fabian says. "[Dallas'] ratings are still very solid in the AA category. That's still an excellent rating. Typically, a city with a rating in the AA category or above receives minimal credit scrutiny from anyone."

The ratings themselves, as they stand, are not a big problem, but things could get worse, Fabian says, if the city doesn't show the political will to deal with the massively underfunded system.

"Investors are becoming a lot more sensitive to headline risks related to pensions, because pensions can create political instability. The debate about pensions can have a meaningful impact on how the city does business. Investors have been far more cautious on this topic than almost any other," he says. "If the city lets things fester and get worse, a penalty that it pays could easily become much larger and the rating downgrades could accelerate. [The ratings cut] is a clarion call to the city to take action."

Unfunded pension liabilities pile up, in part, because cities defer current costs (salaries) and take on future costs (pensions), Fabian says. Dallas pays its police officers some of the lowest salaries in North Texas but has one of the most generous pension systems. Given appropriate circumstances, it is possible for Dallas cops and firefighters to retire as millionaires, something Dallas police representatives have cited as one of the few things that can keep officers in the department. No matter how much retirees expect to get paid, it won't matter if the pension system goes broke, something Moody's warns could happen by 2038. Dallas can come out of the mess no worse for the wear, Fabian says, if it takes aggressive action to limit new liabilities and pay off old ones.

"Dallas could be a poster boy for fiscal management if it addresses this problem aggressively, but more likely than not, how these situations work out is that the large liabilities are very difficult to service," he says.

So far, Dallas has hired a new executive director, Kelly Gottschalk, for the pension fund and suspended enrollment in the lucrative "DROP" program, which allowed police officers and firefighters to collect and reinvest retirement benefits at high rates while they were still on the job. According to Fabian, one way or another, the only way to save the fund is to cut benefits, potentially through negotiations with the city's uniformed personnel, or increase income, which could happen through increased taxes or better performance from the funds investments.

THE DALLAS OBSERVER

BY STEPHEN YOUNG

FRIDAY, NOVEMBER 6, 2015

[Congress Shouldn't Provide A 'Super Chapter 9' Escape For Puerto Rico.](#)

Puerto Rico's Governor, Alejandro García Padilla, confirmed everyone's worst fears recently when he testified before a Senate committee that "Puerto Rico will have no choice but to default. Nobody wants this, but it is a reality, and the consequences will be grave."

Indeed, with each passing week, it is looking more and more likely that Puerto Rico will run out of funds before year's end, becoming the first major U.S. jurisdiction to default on all its bonded debt. Such a widespread and indiscriminate default could have a damaging effect on the U.S. municipal

bond market, given that the island is the third-largest issuer in the country after the states of California and New York. Moreover, such a default will make it extremely hard for Puerto Rico to return to the capital markets after the current financial storm eventually passes.

As someone who was involved in multiple restructurings of government debt in an earlier career on Wall Street, and as a keen academic observer of fiscal crises during the past decade, I fail to understand the governor's preemptive surrender to the forces pushing him downriver into an all-out bankruptcy.

The importance of respecting the seniority structure

In workouts involving corporate or government entities, it is standard procedure to observe the established hierarchy of creditors. Each security issued, whether debt or equity, has a specific seniority or ranking which determines the order of repayment in the event of a reorganization or bankruptcy. Everybody knows that preferred stock is higher-ranking than common stock, and that senior debt must be repaid before subordinated debt.

Even sovereign governments in financial difficulty prioritize their payments, though they do not operate under a formal bankruptcy regime. For example, governments will keep servicing debts to official multilateral agencies such as the International Monetary Fund and the World Bank, widely regarded as senior creditors, even as they stop paying their bondholders or bank creditors. This is what Greece did in 2012, and even what Argentina has done in the past dozen years in which it has been in and out of default to bondholders.

Besides, Puerto Rico's laws and bond indentures spell out exactly what is to be done should revenues ever prove insufficient to cover debt-service payments. At the top of the proverbial totem pole stand the General Obligations (GOs), which are backed by the Commonwealth's full faith and credit. As per Article VI, Section 8 of the island's Constitution, "interest on the public debt and amortization thereof shall first be paid and must be serviced by the government prior to any other government obligation."

About \$13 billion of these GOs are outstanding, plus some \$5.5 billion in debts guaranteed by the Commonwealth's good faith and credit, and together they account for roughly one-quarter of total obligations. The first of these payments due consists of \$355 million which Puerto Rico's Government Development Bank must pay on December 1, a portion of which is guaranteed by the Commonwealth's good faith and credit.

At the bottom of the totem pole are the debts of the Public Finance Corporation, on which Puerto Rico has already defaulted, which did not constitute an obligation of the Commonwealth or any of its instrumentalities (other than the corporation itself). Low-priority debts have been racked up also by the island's Highways and Transportation Authority, Infrastructure Financing Authority and Municipal Finance Agency, among others. These have the weakest protections and thus lowest likely recovery rates in any scenario in which creditor seniority is respected.

It boggles the mind that Governor García Padilla is willing to rip up the well-worn playbook of debt restructurings and allow all obligations to go unpaid. The selfish reason why corporations and governments observe established payment priorities is because, in an eventual return to the markets, they can start out by issuing the type of obligations which were respected in the worst of moments. But who is ever going to invest in a Puerto Rico GO again—never mind in any lower-ranked obligation—if they are disrespected now? Only some risk-prone speculators, perhaps, but at usurious interest rates and short maturities, at best.

Congress should not provide a “Super Chapter 9” escape hatch

Governor García Padilla would also be violating the Constitution and laws of Puerto Rico if he were to allow for a generalized default. He could be impeached for doing so, and never make it to the end of his mandate in January 2017—and his government would certainly be inundated with lawsuits seeking to enforce the legal obligations the island previously assumed.

This is why he has proposed to the Obama Administration, and now he has appealed directly to the U.S. Congress, that he be provided with a “get out of jail free” card: He wants Congress to mandate a broad legal framework that goes well beyond the scope of Chapter 9 to allow for a comprehensive restructuring of all of Puerto Rico’s outstanding debt in one fell swoop.

Since the laws passed in Washington trump those approved in San Juan, and they can even override the island’s constitution, the governor would be able to disregard every now-lawful obligation and get away with it because “the devil (in Washington) told him to do it.”

It is unfortunate that even the U.S. Treasury, which should know better, has endorsed a Super-Chapter 9 “solution” to the island’s financial woes—a legislative overreach which would set a dreadful precedent for states, municipalities and other territories in trouble.

In essence, the Administration is asking Congress to compound the mistake it made a century ago, when Puerto Rico was allowed to sell its debt throughout all 50 U.S. states on a triple-tax-free basis, by now having Congress authorize Puerto Rico to disavow its obligations to the millions of investors who believed that the constitutional and other legal pledges made by Puerto Rico were inviolable.

The Obama Administration, instead, should be brokering a new compact with Puerto Rico: reasonable cuts in spending that reflect downward demographic and economic trends, combined with pension reforms and a new business model (to include privatizations and concessions) for the island’s money-losing public utilities and agencies, in exchange for an increase in budgetary transfers on account of Medicaid, tax credits and other help to treat the island more like a state than a territory.

And this compact should be enforced by the establishment of a federal Financial Control Board, to ensure that whatever funds are provided by Congress, and debt relief is granted by bondholders, go hand-in-hand with greatly improved management of the island’s public finances. At present, the Administration proposes merely “fiscal oversight in a way that respects Puerto Rico’s autonomy”—namely, something completely toothless. The whole idea behind these boards is for them to be empowered to take the tough decisions on management, spending, revenues and assets for which there was no local political support. As I’ve argued before, the control board set up by Congress in the mid-1990s for the District of Columbia, without authority to impair creditors, is the kind that would be most helpful to Puerto Rico right now.

Forbes Opinion

Guest Post Written by Arturo C. Porzecanski

Dr. Porzecanski is a distinguished economist in residence at American University.

Nov. 6, 2015

Kroll Firm to Expand Bond Rating Coverage.

With an infusion of new capital from a private-equity investor, Kroll hopes to double in size in the next three years.

Competition may be heating up in the credit rating business as Kroll Bond Rating Agency, armed with an infusion of new capital, expands its coverage of corporate and municipal bonds.

KBRA, which was founded by CEO Jules Kroll five years ago, has specialized in coverage of the structured finance market. Last week, it announced private-equity investor Wharf Street had acquired a majority stake, positioning it to pursue future growth and challenge the “Big Three” agencies — Moody’s, Standard & Poor’s, and Fitch Ratings.

“The last five years we’ve really built a name for ourselves in the structured finance market and are beginning to build a name for ourselves in municipals and financial institutions,” KBRA president Jim Nadler told Reuters. “There is a real need for research in the band from A down to BB within the corporate finance sector, where we are not currently as active.”

KBRA hopes to double in size in the next three years. “Everywhere we go, we need to prove ourselves and so far investors have been our best allies,” Kroll said.

The firm has so far published more than 600 ratings linked to over \$400 billion of issuance. The “Big Three” rating agencies issue around 95% of credit ratings globally, a total unchanged since the financial crisis.

According to Kroll, KBRA’s goal is to offer deeper insight than competitors in areas where there is such a need. One possible area is airports where, Kroll said, other agencies have stuck to single-A ratings for the sector despite evidence that some airports were much more creditworthy.

Wharf Street now owns around 90% of KBRA after buying out early investors and much of Kroll’s stake.

by Matthew Heller

November 9, 2015 | CFO.com | US

MSRB Files Amendments to Proposed Rule G-42 to Establish Core Standards of Conduct for Municipal Advisors.

Today the Municipal Securities Rulemaking Board (MSRB) filed with the Securities and Exchange Commission (SEC) an amendment to proposed MSRB Rule G-42, on duties of non-solicitor municipal advisors. If approved by the SEC, proposed Rule G-42 would establish core standards of conduct and duties of non-solicitor municipal advisors when engaging in municipal advisory activities, including their fiduciary duty to municipal entity clients. Today’s amendment adds, in response to commenters, a narrow exception to the specified prohibition in the proposed rule of certain principal transactions with municipal entity clients, and also makes minor, technical amendments. The exception generally would cover transactions in particular types of fixed income securities where the municipal advisor follows a process to make disclosure and obtain client consent.

[View the filing.](#)

MSRB Files Exception to MA Conduct Rule's Principal Transaction Ban.

WASHINGTON - The Municipal Securities Rulemaking Board is proposing a limited exception to the controversial principal transaction ban in its proposed municipal advisor core conduct rule.

The MSRB filed the proposed amendment to its Rule G-42 on core duties of municipal advisors, with the Securities and Exchange Commission on Monday and asked that it become effective six months after SEC approval. The SEC previously published the MSRB's G-42 proposal for comment on May 8, but asked for an extension of up to 90 days on Aug. 6. The MSRB then published revisions to the rule and responded to earlier comments on Aug. 12.

Commenters were most concerned about the proposed rule's ban on an MA acting as a principal in a transaction with a muni issuer client that is directly related to a transaction on which the MA is providing advice. They said it would make the rule overly burdensome and anti-competitive.

The MSRB said the proposed amendment responds to concerns that, without an exception for certain transactions, "the proposed ban would restrict the access of municipal entities to trusted financial advisors, limit their ability to obtain certain financial services and products, create undue burdens on competition, and impose unjustified costs for issuers."

Under the core portion of Rule G-42, MAs would owe a fiduciary "duty of loyalty" to their municipal issuer clients and be required "without limitation ... to deal honestly and with the upmost good faith with a municipal entity and act in the client's best interests without regard to the financial or other interests of the municipal advisor."

It also mandates a less stringent "duty of care" for all clients that requires MAs to: exercise due care in their work; be qualified to provide advisor services; make a "reasonable inquiry" into the facts relevant to a client's request before deciding whether to proceed; and undertake a "reasonable investigation" to determine their advice is not based on bad information.

The amendment filed with the SEC draws from the procedures under which investment advisors are allowed to engage in principal transactions with clients.

The changes filed Monday describe three requirements for MAs to qualify for the principal ban exception and the types of transaction that fall under the exception.

MAs can only use the exception if they are registered broker-dealers under the Securities and Exchange Act of 1934 and that the accounts they want to use it for are brokerage accounts subject to the Exchange Act, as well as the rules of self-regulatory organizations of which they are a member. MAs also can only use the exception if they use their investment discretion on a temporary or limited basis, at their clients' discretion.

The MSRB allows for the exception to carry over to future principal transactions following an original principal transaction that met the amendment's requirements. For example, if an MA uses the exception for one principal transaction with a municipal client, it can then use the exception for future principal transactions with the same municipal client that are directly related to the first transaction.

The third requirement in the amendment would limit an MA's principal transactions under the exception to sales to, or purchases from, a municipal client of U.S. Treasury securities, agency debt security, or corporate debt security.

If an MA is in compliance with those three requirements, it can then choose whether to pursue a transaction-by-transaction process or a process that is more complex but gives the MA the flexibility to obtain oral consent on a transaction-by-transaction basis instead of written consent.

If it chooses transaction-by-transaction, the MA must tell its municipal client in writing the capacity in which it is acting and get the client's informed written consent for the transaction, either before executing the transaction or after execution but before settlement.

If an MA opts not to pursue a transaction-by-transaction process, it must follow a six-step process. Neither the MA nor any of its affiliates can be the issuer or underwriter of a security that is the subject of the principal transaction and an MA also must get an executed written, revocable consent from its municipal client that would prospectively authorize the MA to directly or indirectly act as principal for its own account in selling a security to, or purchasing a security from, the client. The written consent must have been obtained after the MA explains to the client in writing the circumstances under which the MA may engage in principal transactions, the nature and significance of conflicts with the client's interests and how the MA will address those conflicts.

The process then requires the MA to inform its client either orally or in writing of the capacity in which it may act and get the client's consent either orally or in writing before executing each subsequent principal transaction. The MA would also have to send a written confirmation to the client saying that it disclosed that it may be acting in a principal capacity, the client authorized the transaction, and the MA sold or bought the security for its own account.

Finally, MAs would be, at least annually, required to send clients a list of all executed transactions in the client's account that relied on the exception, complete with the date and price. Each written disclosure would also have to include a statement about the client's ability to revoke its consent without penalty at any time by written notice.

Jessica Giroux, general counsel and managing director of federal regulatory policy with Bond Dealers of America, said the proposal is "very encouraging" and that BDA is pleased the MSRB has responded to industry comments.

Leslie Norwood, associate general counsel and co-head of municipal securities for Securities Industry and Financial Markets Association, said SIFMA is very pleased with the amendment and thinks it is helpful for issuers in the marketplace.

But executive director of National Association of Municipal Advisors Susan Gaffney disagreed with BDA and SIFMA, calling the amendment "a step backwards."

"The proposed amendment is further compromised by its complexity," Gaffney said. "The disclosure and consent model has been shown not to work well in other municipal market rulemaking. It is therefore surprising that such a structure has come forward, especially this late in the game, for Rule G-42."

THE BOND BUYER

BY JACK CASEY

NOV 9, 2015 3:07pm ET

[Nonprofit-Government Contracts and Grants: The State Agency Perspective.](#)

Public agencies, at all levels, increasingly rely on nonprofit organizations to address social issues and deliver publicly funded human and cultural programs and services. Therefore, strengthening relationships between nonprofits and government is essential to enhancing the quality of service delivery. This report provides information and insights on the nonprofit-government contracting and grants relationships from the state government perspective. The findings convey challenges administering government contracts and grants and strengthen the need for state government policymakers to strategize with their nonprofit and government partners about how to better align their efforts to address specific problems and improve nonprofit-government relations.

[Read the full report.](#)

The Urban Institute

by Saunji D. Fyffe

October 29, 2015

[Texas Approves New Road Funding Plan.](#)

Voters approved a way to increase transportation funding without raising taxes or tolls. But some say it's a bad approach.

Texas voters approved a measure Tuesday to provide more money for roads without raising taxes, adding debt or adding toll roads. The measure could add as much as \$2.5 billion a year for the next decade toward building and repairing the state's congested roads, and even more after 2019.

The voters' approval is a major victory for Republican Gov. Greg Abbott, who vowed in his campaign last year to address the traffic problems that have come along with the state's recent population surge. Legislators ultimately crafted the measure that went to the voters, which was called Proposition 7.

When it became clear that Prop. 7 and six other ballot measures passed Tuesday night, the governor expressed his gratitude on Twitter. "THANKS Texans for making Texas freer & stronger with lower taxes & better roads. Texas remains best state in U.S.," he wrote.

The measure is the latest effort by Texas leaders to cope with the stresses more residents put on the state's transportation networks without raising taxes. After all, part of the reason to move to Texas is that the state has low taxes. Texas hasn't raised its gas tax since 1991.

But more than 1,000 new people a day mean bigger traffic jams in the Austin, Dallas and Houston regions. The additional taxes they pay don't cover the cost of expanding and maintaining roads. The recent increase in oil production, which began with widespread adaption of fracking technologies, also strained roads that connect oil fields to the rest of the state.

Texans have turned increasingly to toll roads to handle the increase in traffic. But toll roads are unpopular. Voters may not want to pay higher taxes, but they also don't want to have to pay just to drive on their roads (which explains a prohibition on Prop. 7 money going toward toll roads). Last

year, the state used its flush rainy day fund to direct up to \$1.7 billion more a year toward transportation. But that still fell short of the \$5 billion a year that state transportation officials say is needed to maintain current levels of congestion. And the gap grew even bigger after oil prices fell this year, because oil tax revenues fund the rainy day fund.

So rather than adding new taxes, Prop. 7 will pull new money from certain existing taxes and direct it toward transportation. So, for example, once the sales tax — the state's main source of tax revenue — brings in more than \$28 billion a year, the next \$2.5 billion will be devoted exclusively for transportation every year for the next 10 years. A similar mechanism will apply to the vehicle sales tax starting in 2019: Once collections reach \$5 billion a year, 35 percent of the receipts beyond that will go toward roads.

It's a more complicated solution than simply raising the gas tax or increasing vehicle registration fees, acknowledged Jack Ladd, the president of Move Texas Forward and the treasurer of a related political action committee backing Prop. 7. "There is no political will in Austin to do that" among Democrats or Republicans, he said. Conservatives don't want to increase taxes at all, while liberals worry that gas taxes and registration fees hurt poor people.

"It's also a question of priority: How big of a priority is transportation funding in Texas?" Ladd said. "You have to say, if you know the facts, it's a really big problem and it should be addressed." Prop. 7 puts transportation funding ahead of other priorities, like health care and education. But Ladd said those areas would also benefit from better roads.

"You can't get to a hospital, you can't get to a school without roads," he said. "It's not just a quality of life issue, it's also a jobs issue." There was little organized opposition to the measure, but critics worried that the measure will be too strict, because it puts roads ahead of schools, health care and even other kinds of transportation for new state money.

Jay Crossley was one of those who expressed doubts. Crossley, executive director of Houston Tomorrow, which promotes urban issues such as walkable neighborhoods, worried the ballot measure would promote bad transportation policy for a decade, because Prop. 7 specifies that the designated money could only be spent on roads — not on public transportation, bike paths or sidewalks.

The Texas Department of Transportation "has made it very clear that, if they could have a decade of guaranteed funding, it makes all the finances work better to build a lot of unnecessary roads," Crossley said before the vote. According to Crossley, supporters of the measure essentially said, "We don't want people to be able to change their mind."

We don't want the people of Texas to be able to say, 'Maybe we want transit. Maybe we would rather have safe streets. Maybe we want a transportation system that doesn't subsidize sprawl.'"

(Crossley stressed that he was speaking for himself; Houston Tomorrow did not take a position on Prop. 7.)

But Ladd, the proponent of Prop. 7, said lawmakers made sure the measure would expire after 10 years, so lawmakers will review the approach later. "Future legislators who may not have been around when Prop. 7 passed ... could look at it and say we want to raise taxes instead, we want to do something else, we don't want to do this anymore," he said. "There are other ways to solve this problem, but we have to fix it now."

[A Simple \(But Hard\) Way for Governments to Stay Out of Pension Trouble.](#)

Chicago's fiscal 2016 budget is like a cautionary tale about what happens when state and local governments fail to deal with long-festered pension problems. A [policy brief](#) published in September by the libertarian Reason Foundation offers sound advice about one of the ways to avoid Chicago's fate.

The city's \$7.8 billion spending blueprint includes an historic \$543 million property-tax increase to be phased in over four years, along with fee increases and spending cuts. The fact that Mayor Rahm Emanuel would propose such a budget and that the City Council would approve it — and by a 35-15 margin — is testament to the lack of viable options in the face of a state-mandated \$550 million payment to Chicago's police and firefighter pension systems, each of which is less than 30 percent funded.

Draconian as it may seem, Chicago's budget may not go far enough. It assumes that the Illinois Supreme Court will find the city's 2014 pension reforms constitutional when it takes up the matter this month. It also assumes that the state will pass legislation allowing the city to spread out the mandated pension payment over a longer period.

There's no silver bullet when it comes to helping state and local governments avoid what has happened to Chicago, but one thing that would certainly help would be for them to base their pension contributions on more realistic investment assumptions. The Reason brief proposes several options, such as tying assumed pension-fund returns to the yield on the jurisdiction's own bonds or on the expected rates of return on municipal or high-grade corporate bond indexes.

As I have written previously, another reasonable approach would be to base assumed returns on actual long-term pension-fund returns; to avoid manipulation, the period on which historical returns are calculated should include at least two economic downturns.

Whichever approach is used, the Reason brief wisely recommends phasing in the change in anticipated returns over a period of years. A typical assumed rate of return for pension investments is around 8 percent. Cutting that to 5 or 6 percent, as one of the approaches mentioned above would likely do, would require state and local governments to significantly increase their pension contributions.

Calculating reasonable pension investment return assumptions is simple. Actually adopting them is hard because it runs contrary to human nature. Why should an elected official make painful budgetary decisions now when the benefits — or the harm from kicking the can down the road — won't likely be felt until he or she is long out of office?

Yes, the solution is simple. The hard part is finding courageous public officials who will implement it.

GOVERNING.COM

BY CHARLES CHIEPPO | NOVEMBER 6, 2015

Foley: New IRS Regulations For Mixed Use Projects Financed With Tax-Exempt Bonds Have Practical Importance.

On October 27, 2015 the U.S. Treasury Department and Internal Revenue Service published final regulations concerning the treatment of “mixed-use” projects financed with tax-exempt bonds. These new regulations have significant and immediate importance for tax planning and tax compliance of tax-exempt bond issuers and borrowers.

A copy of the new final regulations can be obtained [here](#). See 80 FR 65637.

The new regulations, which are published as “general allocation and accounting regulations” most importantly provide rules for the measurement of private use of a project that is financed in part with proceeds of tax-exempt bonds and in part with other funds of an issuer or borrower. The new regulations also facilitate the use of tax-exempt bonds in certain “public-private partnerships.” In addition, the new regulations clarify the rules for taking “remedial actions” to correct noncompliance.

The new regulations apply to both bonds issued for the benefit of State and local government projects (“governmental bonds”) and bonds issued for the benefit of borrowers that are section 501(c)(3) exempt organizations (“qualified 501(c)(3) bonds”).

For convenience, references in this alert to “issuers” of tax-exempt bonds refer to both State or local government issuers of governmental bonds and borrowers that are section 501(c)(3) organizations. Reference to “private persons” in this alert refer to nongovernmental persons, in the case of governmental bonds, and to nongovernmental persons and persons that are not governmental persons or section 501(c)(3) organizations, in the case of qualified 501(c)(3) bonds.

Background

The Internal Revenue Code generally restricts the amount of “private business use” of projects to small amounts (generally, 10% for governmental bonds and 5% for qualified 501(c)(3) bonds, although other limitations apply in some circumstances). Although tax-exempt bond issues technically fail to comply only if the bond issue also fails to comply with a second “private security or payment” test, in most cases issuers rely on the private business use test to comply. Over the years, application of these “private business tests” has become increasingly burdensome and complex. In particular, in 1997 the Treasury Department published final regulations that require private use compliance to take into account “deliberate actions” after the date of issuance, which rule requires tax compliance monitoring throughout the term of a bond issue.

One of the most helpful strategies that issuers use to manage compliance with these complex rules is to finance the costs of a project that will be used for private uses with funds other than proceeds of tax-exempt bonds. Under that approach, the proceeds of the tax-exempt bonds are not treated as used for private uses, because the portion of the project paid with the “equity carve out” is instead treated as privately used. The new regulations set forth detailed new rules for how and when this commonly-used “equity carve out” approach works.

The Treasury Department published proposed regulations on this topic on September 26, 2006. Since the publication of the proposed regulations in 2006, issuers and practitioners have looked to the proposed regulations for general themes about how mixed-used projects should be treated, but have not been bound to follow all the specific details of the proposed regulations.

The 2006 proposed regulations also suggested that the Treasury Department would consider permitting projects financed with tax-exempt bonds to be used by a partnership including private persons. The Service has historically taken the position that use of projects financed with tax-exempt bonds by a partnership including private persons results in private business use.

Summary of the Final Regulations

Rules for equity contributions that are generally more flexible, but not in all cases more favorable. The new regulations provide that private business use of a project is allocated first to the portion of the project financed with “qualified equity.”

The rules for “qualified equity” contain important limitations. Qualified equity generally means proceeds of taxable bonds (other than taxable bonds that are tax-advantaged, such as tax credit bonds) and funds that are not derived from proceeds of a borrowing. For example, qualified equity includes an issuer’s cash derived from revenues and cash donations. Qualified equity does not include equity interests in real property or personal property. This approach is consistent with prevailing practice and the proposed regulations.

The rules for “qualified equity” also contain new limitations that may be problematic in some cases.

Qualified equity must be contributed to a project as part of the “same plan of financing” as the tax-exempt bonds and must pay for capital expenditures of the project on a date that is not earlier than the date on which the expenditures would be applicable to reimbursement by proceeds of the applicable tax-exempt bonds. Among other things, this appears to mean that the tax-exempt bonds generally can qualify for the “qualified equity” benefits only to the extent bonds are issued no later than 18 months after the date of the expenditure (or 18 months after the placed in service date of the project, if later, but no more than three years after the date of the expenditure), although a definitive interpretation of certain aspects of this timing limitation may require clarification from the Service. This timing rule is new, and may raise a number of problems, including particular problems for projects that have a long construction period. Similarly, the new regulations may present difficulties in some cases where a single project is financed with a series of bond issues.

The new regulations also state that qualified equity contributions must be made before the placed in service date of the financed project, except for reasonable retainage.

“Floating use” is expressly permitted. The new regulations expressly and helpfully permit “floating” use of the portion of a project treated as financed with qualified equity. For example, suppose the costs of a 10-story building are funded 70% with tax-exempt bonds and 30% with an issuer’s cash. The new regulations generally provide that private use of three floors will not be treated as private use of the tax-exempt bonds, even if the particular three floors change from year to year. The new regulations remove certain limitations on “floating” use that were set forth in the proposed regulations.

A “project” that may be treated as funded in part with qualified equity is defined very broadly. One of the most favorable rules in the new regulations is a very flexible definition of a “project.” These rules are particularly important in light of the rules that permit private use to “float” within a mixed-use project. The new regulations permit an issuer to treat as a single “project” one or more facilities or capital projects, including land, buildings, equipment, or other property financed in whole or in part with the proceeds of a bond issue. The proposed regulations generally permitted only certain functionally related facilities, such as adjacent buildings, to be treated as part of the same project. The more flexible rule in the new regulations may present significant tax planning opportunities and tax compliance relief, although it may in some cases be complex to apply.

Annual measurement is required, except for output facilities. The final regulations expressly provide that the “qualified equity” rule must be applied on an annual basis, except for “output facilities.” In an example in the new regulations, a building is funded 70% with tax-exempt bonds and 30% with the issuer’s cash. In one year, 44% of the building is used for a private business use. The example states that the amount of private business use for that year is 20% (that is, 14% divided by 70%), regardless of whether there is any private business use in any other year.

The rules for “output facilities” are significantly more flexible. Output facilities generally consist of electric and gas generation, transmission, distribution and related facilities and water collection, storage and distribution facilities. In the case of output facilities, the benefits of “qualified equity” may generally be applied on an average basis over the term of a bond issue. This more flexible approach is consistent with the special treatment in the regulations for output facilities, including more flexible rules for how private business use is measured.

No special elections or recordkeeping requirements. The new regulations helpfully do not require any special elections or record retention requirements to make use of the “qualified equity” rules. The proposed regulations contained a number of such requirements that could have been traps for the unwary. Thorough and rigorous identification of qualified equity contributions to projects and retention of records relating to such contributions and identifications, however, will continue to be important in practice. In addition, the time limits for making allocations of bond proceeds in the existing final regulations may have relevance for taking actions under the new regulations. The existing regulations generally require that an issuer must allocate proceeds to expenditures no later than 18 months after a project is placed in service.

Favorable treatment of partnerships. The new regulations facilitate “public-private partnerships” by permitting tax-exempt bonds to be used to finance an issuer’s contribution to a partnership which includes private persons. Under this new rule, the amount of private business use by a private person resulting from the use of property by a partnership is the nongovernmental partner’s greatest percentage of any partnership item of income, gain, loss, deduction, or credit attributable to the period the partnership uses the property during the period private use needs to be taken into account. The rule generally requires that a State or local government (or, in the case of qualified 501(c)(3) bonds, a 501(c)(3) organization) be one of the partners.

This favorable rule for partnerships expressly applies to qualified 501(c)(3) bonds issued to benefit 501(c)(3) organizations. For that purpose, ownership by a partnership does not violate the requirement that all bond-financed property needs to be owned by a 501(c)(3) organization or a State or local government.

This rule can be expected to make tax-exempt financing eligible to some extent for public-private partnerships not previously eligible for tax-exempt bond financing to any extent.

Clarification of “remedial action” rules. Since 1997, the regulations have permitted certain remedial actions to correct noncompliance with the private use rules. One remedial action is the redemption or defeasance of “nonqualified bonds.” The new regulations make important revisions and corrections to these remedial action rules.

The most important “remedial action” rule in the new regulations concerns “anticipatory” remedial actions. The prior regulations expressly permitted remedial actions only in response to a deliberate action that resulted in noncompliance. Prevailing practice has been to permit redemption or defeasance in anticipation of such a deliberate action, but practice standards have varied. The new regulations permit redemption or defeasance of bonds in an anticipatory remedial action, but only if the issuer first declares an official intent on or before the date on which it defeases or redeems such

bonds which identifies the financed property or loan with respect to which the anticipatory remedial action is being taken and describes the deliberate action that potentially may result in the private business tests being met. This rule states that it applies in a manner “similar” to the rules for declarations of intent for tax-exempt bond reimbursements. The required degree of specificity for declarations of intent for these anticipatory remedial actions will require consideration on a case-by-case basis.

Subsequent to 1997, the Treasury Department has published proposed regulations to make certain technical corrections to make the remedial action rules more readily administrable. The final regulations adopt in final form these favorable technical provisions. First, the final regulations confirm that an issuer may pick and choose the maturities of the nonqualified bonds that are required to be redeemed or defeased, provided that the weighted average maturity of the nonqualified bonds is not less than the weighted average maturity of the other bonds of the bond issue. Second, the new regulations confirm that the amount of nonqualified bonds does not need to correct all private use, but only an amount so that the remaining bond issue is compliant.

Clarification of “multipurpose allocation” rules. The new regulations include additional examples explaining how the rules for “multipurpose allocations” apply. The “multipurpose allocation” rules permit an issuer to break a bond issue into different portions, and to apply the private activity bond rules separately to each portion. The most helpful new example clarifies that an issuer may make a multipurpose allocation to treat governmental bonds and qualified private activity bonds for airport facilities as separate issues, even when sold on the same date pursuant to the same plan of finance.

The multipurpose allocation rules can be applied at any time and can be an important and useful tax planning and tax compliance tool, but may be complex to apply in many contexts.

Effective dates. Issuers are generally required to apply the new regulations to bonds that are sold on or after January 25, 2016, although certain special effective date rules apply.

Issuers are generally required to apply the rules for remedial actions to any “deliberate actions” that occur on or after January 25, 2016, even if the bonds were sold before that date. In this regard, it is important to note that, although the remedial action rules in the new regulations are generally favorable, the new regulations contain certain new requirements. In particular, the new rule for “anticipatory” remedial actions will generally apply to any deliberate action occurring on or after January 25, 2016. The new regulations also contain a special transition rule for remedial actions that is intended to accommodate existing bond indentures that require optional redemptions of a portion of a term bond to be applied first to reduce the earliest mandatory sinking fund payments on that bond; that special transition rule only applies to bonds issued before January 25, 2016.

Issuers may apply the new regulations to bonds sold before that date, but the effective date rules impose certain limitations on such retroactive application. An important limitation is that the effective date provisions provide that retroactive application is generally permitted only if all of the provisions of the new regulations are applied in whole. The clarification in the new regulations for “multipurpose allocations,” however, may be applied separately.

Except as described above, the application of the new regulations to bonds sold before the effective date is expressly permissive. There is no implication that bonds sold before the effective date need to comply with the new regulations, although as a practical matter issuers and practitioners may look to principles in the new regulations in taking positions with respect to pre-effective date bonds.

Implications for tax-exempt bond compliance procedures. Many issuers may wish to consider

whether to revise their tax-exempt bond compliance procedures to reflect certain provisions of the new regulations. For example, an issuer may be able to make best use of the favorable provisions in the new regulations by adopting a formal process to review how those provisions can be applied to particular bond issues.

Expected future developments. In 2014, the Treasury Department published Notice 2014-67, which provided for more flexible safe harbors for management contracts for use of property financed with tax-exempt bonds that have a term not exceeding five years. Accordingly, the new regulations are the second significant recent action by the Treasury Department to facilitate more flexible public/private arrangements involving projects financed with tax-exempt bonds. In that light, there is reason to anticipate that the Treasury Department may follow the new regulations with guidance that provides additional safe harbors for longer-term management contracts involving projects financed with tax-exempt bonds.

Last Updated: October 29 2015

Article by Michael G. Bailey, David Y. Bannard, Chauncey W. Lever and Mark T. Schieble

Foley & Lardner

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

[Fox Rothschild: Cong. Committee Considers Bill Limiting Eminent Domain for Power-Line Projects.](#)

Members of the Arkansas Congressional Delegation have introduced legislation aimed to give more leverage to states faced with new interstate power-line projects. Sen. John Boozman and Rep. Steve Womack have submitted matching versions of the Assuring Private Property Rights Over Vast Access to Land, or APPROVAL, Act, which would rewrite Section 1222 of the 2005 Energy Policy Act in the House and Senate. They recently testified before a house subcommittee in support of their bills

The bill is a response to a proposal by Clean Line Energy Partners of Houston to construct a \$2 billion, 700-plus-mile, 3,500 megawatt, high-voltage-direct-current power line from Great Plains wind farms to the Tennessee Valley Authority. The APPROVAL Act would require the Department of Energy to obtain approval from a governor and state public service commission prior to approval of any Section 1222 transmission project and subsequent use of federal eminent domain, as well as the approval of any tribal government for the affected lands.

“States and local communities must know their voices will be heard in the transmission siting process and that a transparent process will be followed,” Boozman said Wednesday to the House Natural Resources Committee’s Subcommittee on Water, Power and Oceans.

Last Updated: November 2 2015

Article by David B. Snyder

Fox Rothschild LLP

The content of this article is intended to provide a general guide to the subject matter. Specialist

advice should be sought about your specific circumstances.

[Orrick: Obama Administration's Legislative Proposal to Address Puerto Rico's Fiscal Crisis.](#)

On October 21, 2015, U.S. Treasury Secretary Jacob J. Lew, National Economic Council Director Jeff Zients, and Health and Human Services Secretary Sylvia Mathews Burwell unveiled a legislative proposal, a copy of which is attached, to help Puerto Rico address its serious fiscal challenges. The Administration has requested Congress to act promptly to amend chapter 9 of the Bankruptcy Code authorizing the troubled public corporations to file bankruptcy petitions. More than twenty Democrats have become co-sponsors of that proposed amendment, but no Republicans making passage of the proposed amendment unlikely.

The Administration's proposal has four central elements:

- Legislative amendments to provide Puerto Rico with an orderly restructuring regime to comprehensively address its financial liabilities by restructuring its debts.
- Establishing an independent fiscal oversight to certify that Puerto Rico adheres to the recovery plan it is implementing in a credible and transparent way.
- Reforming the Commonwealth's Medicaid program to ensure that the program provides better access to healthcare services.
- Providing the Commonwealth with access to the Earned Income Tax Credit (EITC).

As part of the bankruptcy proposal, the Administration has proposed a "Super Bankruptcy" for the Commonwealth itself. The Administration's proposal contemplates a "Super Bankruptcy" that would be reserved for U.S. territories to allow a comprehensive restructuring of all of the territory's liabilities. The outline states that:

The restructuring regime should provide the basic protections of bankruptcy: a stay on creditor collection actions, priority for new private short-term cash flow financing, and voting by creditor classes on any proposed restructuring. Such an approach would, among other things, provide breathing space for consensual negotiations and ensure the uninterrupted provision of essential public services.

[View the proposal.](#)

Last Updated: November 3 2015

Article by Editorial Board

Orrick

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

[MSRB to Implement Gifts Rule for Municipal Advisors.](#)

Alexandria, VA - The Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission to limit the size and nature of gifts given by municipal

advisors in their professional capacity advising state and local governments. The [new restrictions](#) seek to address conflicts of interest that may arise from gift-giving in connection with municipal advisory activities. The SEC also approved extending to municipal advisors related recordkeeping requirements. The new regulations, which are effective May 6, 2016, largely conform to existing MSRB regulations on gifts and related recordkeeping for municipal securities dealers.

“Applying the MSRB’s existing gifts rule for dealers to municipal advisors will help ensure that municipal advisory business is awarded on the basis of merit and not special favors,” said MSRB Executive Director Lynnette Kelly. “The changes approved today to MSRB Rule G-20 establish common standards for all municipal financial professionals and, together with MSRB’s rules on fair dealing, help preserve the integrity of the municipal market.”

Amended MSRB Rule G-20 will apply to municipal advisors and their associated persons: the general prohibition of gifts or gratuities in excess of \$100 per person per year in relation to the municipal securities activities or municipal advisory activities of the recipient’s employer; the exclusions contained in existing Rule G-20 from that general prohibition (including certain consolidations and the codifications of prior interpretive guidance) and the addition of bereavement gifts to those exclusions; and the existing exclusion relating to contracts of employment or compensation for services. In addition, Rule G-20 will explicitly prohibit both dealers and municipal advisors from receiving reimbursement of certain entertainment expenses from the proceeds of an offering of municipal securities.

The MSRB will host a webinar on the amendments to Rule G-20 on Thursday March 24, 2016 at 3:00 p.m. ET. Amended MSRB Rule G-20 is effective May 6, 2016. [Register for the webinar.](#)

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing a comprehensive regulatory framework for municipal advisors. The MSRB has implemented supervision and compliance requirements for municipal advisors, and is continuing to develop standards of conduct, including fiduciary duties, for municipal advisors. The MSRB also plans to amend its existing rule on political contributions to address the potential for pay-to-play activities by municipal advisors. [Read more about the status of the MSRB’s rulemaking for municipal advisors.](#)

Date: November 9, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer
(703) 797-6600
jgalloway@msrb.org

TAX - OHIO

[Sears, Roebuck & Co. v. Franklin Cty. Bd. of Revision](#)

Supreme Court of Ohio - November 3, 2015 - N.E.3d - 2015 WL 6742213 - 2015 -Ohio- 4522

School board sought review of valuation of property by the Board of Tax Appeals.

The Supreme Court of Ohio held that:

- Board had no obligation to make particularized findings of fact and conclusions of law in upholding appraiser’s valuation, and
- Evidence supported appraiser’s methodology.

Board of Tax Appeals had no obligation to make particularized findings of fact and conclusions of law in upholding appraiser's valuation of property. Board determined a value based on record that contained owner's appraisal as the only substantive evidence of value, and Board predicated its determination on that value and said so.

Evidence supported appraiser's methodology, which lumped together automobile service center and mall department store in order to create one building that was then valued as a mall department store. Appraiser advanced several grounds in support of her method, school board that opposed method did not remotely negate appraiser's reasons, and appraiser had valued analogous properties using same method.

[S&P: Atlantic City, NJ GO Rating Remains On Watch Neg Pending Key Report, Action On Approved Bills.](#)

NEW YORK (Standard & Poor's) Nov. 4, 2015 — Standard & Poor's Ratings Services today said that its ratings on Atlantic City, N.J. remain on CreditWatch with negative implications, pending the release of an updated report from the city's Emergency Manager and action on several bills approved by the state legislature. Standard & Poor's expects to resolve or update its CreditWatch within the next 60 days.

We lowered the general obligation (GO) bond rating to 'B' and placed it on CreditWatch with negative implications on Aug. 3, 2015 (for more information on the GO rating, please see the summary analysis on Atlantic City, published on Aug. 3, 2015, on RatingsDirect).

While the state's Local Finance Board approved the city's fiscal 2015 budget last month, an anticipated updated report from the city's Emergency Manager has not been released and there has been no action yet on several bills passed by the state legislature.

In compliance with state law, the city's 2015 budget is balanced. However, this is achieved through anticipated revenues of \$33.5 million in redirected casino taxes and \$38.9 million in deferred pension and health care expenses. The governor hasn't signed into law the legislature-approved redirection of casino taxes. The Atlantic City budget fully funds its annual requirements for settled tax appeals and was adopted in time for the mailing of fourth-quarter tax bills. The city reports that it will be able to make its \$11 million December 2015 debt service payment if it does not receive the anticipated redirected casino tax revenue.

We have determined, based solely on the developments described herein, that no rating actions are currently warranted. Only a rating committee may determine a rating action and, as these developments were not viewed as material to the ratings, neither they nor this report were reviewed by a rating committee.

Primary Credit Analyst: Timothy W Little, New York (212) 438-7999;
timothy.little@standardandpoors.com

Secondary Contact: Lisa R Schroeer, Charlottesville (1) 434-220-0892;
lisa.schroeer@standardandpoors.com

S&P: Dallas GO Debt Rating Lowered to 'AA' on Rising Pension Costs.

DALLAS (Standard & Poor's) Nov. 4, 2015 — Standard & Poor's Ratings Services said today it lowered to 'AA' from 'AA+' its long-term rating and underlying rating (SPUR) on Dallas' parity general obligation (GO) bonds. We also assigned our 'AA' rating to the city's series 2015 GO refunding and improvement bonds. The outlook is stable.

In addition, Standard & Poor's lowered to 'A' from 'A+' its long-term rating and SPUR on the Downtown Dallas Development Authority's (DDDA) tax increment contract revenue bonds, issued on behalf of the city of Dallas. We also lowered to 'A' from 'A+' the rating on the Dallas Convention Center Hotel Development Corp.'s series 2009A, B, and C hotel revenue bonds, issued on behalf of Dallas. The outlook for both ratings is stable. (For more information, see the summary analyses on DDDA and Dallas Convention Center Hotel Development Corp. published Nov. 4, 2015.)

Standard & Poor's also affirmed its 'A-1+' short-term rating on Dallas' series 2010A and C GO commercial paper notes. The rating reflects our view of the city's strong general creditworthiness and liquidity.

"The GO debt downgrade is due to the city's rising pension liabilities and lack of a sufficient plan to address them in the near term," said Standard & Poor's credit analyst Jennifer Garza. "The stable outlook reflects our view of the city's consistent financial performance and economy, which is supported by very strong management."

The pledge of an ad valorem property tax, limited to \$2.50 per \$100 of assessed valuation (AV) by state law, secures the GO bonds. In our opinion, the city has ample flexibility under the tax cap given its current tax rate of 79.7 cents per \$100 of AV.

The GO debt rating reflects the city's:

- Adequate economy, with access to a broad and diverse metropolitan statistical area;
- Very strong management, with "strong" financial policies and practices under our Financial Management Assessment methodology;
- Adequate budgetary performance, with an operating surplus in the general fund but an operating deficit at the total governmental fund level;
- Strong budgetary flexibility, with an available fund balance in fiscal 2014 of 14.4% of operating expenditures;
- Very strong liquidity, with total government available cash of 46.0% of total governmental fund expenditures and 1.8x governmental debt service, and access to external liquidity we consider exceptional;
- Very weak debt and contingent liability position, with debt service carrying charges of 14.6% of expenditures and net direct debt that is 145.3% of total governmental fund revenue, as well as a large pension and other postemployment benefit liability and the lack of a plan to sufficiently address the obligation; and
- Strong institutional framework score.

'Smart Poles' Will Earn City Money While Improving Quality of Life.

Los Angeles is starting to host a new type of hybrid infrastructure — a street light that doubles as a

mini-cell tower — through a public-private partnership.

Royal Philips, which makes energy-efficient LED light bulbs, has teamed up with communications technology firm Ericsson to create the “smart pole,” which features energy-efficient lighting and 4G LTE wireless service, reported [Los Angeles Magazine](#). The poles also can “monitor and regulate energy usage in real time,” reported [Annenberg TV News](#).

Philips will cover the costs of providing and installing the poles on city streets and pay Los Angeles a portion of the rent it charges wireless carriers to use the cell towers. The city expects to receive \$1,200 per year from each of the 100 poles to be installed this year. Revenues will rise to \$720,000 annually from a network of 600 poles by 2018, said Ed Ebrahimian, director of the city’s street lighting bureau.

Ebrahimian hopes to negotiate additional P3s to continue expanding coverage. “I would think two or three thousand over the next five years. We are working with other carriers, not just Philips or Ericsson,” he said.

[San Jose](#) is preparing to install this infrastructure as well.

The smart pole concept is just one of the P3-based approaches states and cities are using to provide universal access to wireless technology. Kentucky is conducting a partnership to install statewide broadband and Lake Oswego, Ore., is considering a deal to install its own network as well.

NCPPP

November 6, 2015

[Orrick Opinion Helps SDUSD GOs to AAA.](#)

Changes Rating Prospects for other California General Obligation Bonds

For the last several years, Orrick’s General Obligation Bond Group has led an effort to improve the rating agencies’ understanding of the special character of California local agency general obligation bonds. The purpose of the effort was to improve the ratings and reduce the borrowing costs associated with California General Obligation Bonds for all school and community college district, city, county, and other local governments that issue General Obligation Bonds. Today that effort has borne fruit.

In partnership with San Diego Unified School District, Orrick drafted and assisted in the enactment of Senate Bill 222, which established a statutory lien for the benefit of bondholders on the property taxes levied to pay general obligation bonds. SB 222 was signed into law on July 13, 2015. Several rating agencies reacted by saying that while SB 222 was positive, it was not likely sufficient to change the ratings on California General Obligation Bonds because, while the property taxes levied to pay California General Obligation Bonds would ultimately be required to be applied to pay the bonds, the application of the taxes to the payment of the bonds could be temporarily interrupted by the automatic stay in the event of an issuer bankruptcy.

In response to the ratings agencies, Orrick drafted and delivered an opinion to certain rating agencies addressing whether the property taxes levied to pay general obligation bonds would be considered “special revenues,” and thereby not subject to the automatic stay.

Orrick and San Diego Unified School District presented the opinion and its bankruptcy analysis to several rating agencies. On November 4, 2015, Fitch assigned a “AAA” rating to \$550 million of San Diego Unified School District 2016 General Obligation Bond (Dedicated Unlimited Ad Valorem Property Tax Bonds). Fitch’s announcement refers to and concurs with the opinion it received that the property taxes levied to repay the bonds would be “special revenues” in the event of a district bankruptcy, and states that “as a result, the rating is based on special tax analysis without regard to the District’s financial operations.”

This signals what should become a sea change in the rating and sale of school district, community college district and other local agency general obligation bonds in California.

Please contact any of the following members of the Orrick General Obligation Bond Group with questions or for further discussion:

Mary Collins
415-773-5998
marycollins@orrick.com

Eugene Clark-Herrera
415-773-5911
ech@orrick.com

Don Field
213-612-2287 / 949-852-7727
dfield@orrick.com

John Palmer
415-773-4246
jpalmer@orrick.com

11-04-2015

[S&P’s Public Finance Podcast: \(How Climate Change Could Affect Ratings and the Outlook for the City of Los Angeles\).](#)

In this week’s segment of Extra Credit, Managing Director Geoff Buswick discusses how climate change could affect ratings and Director Jennifer Hansen explains what’s behind our outlook on the City of Los Angeles.

[Listen to the Podcast.](#)

Nov. 6, 2015

[Hawkins Delafield & Wood LLP Opens Michigan Office.](#)

Hawkins Delafield & Wood LLP, a national leader in municipal finance and public law, announced today that it will open a new office in Ann Arbor, Michigan. The new office will be the firm’s first

office in the Midwest region. A new partner, Lisa Hagan, will be resident in the Ann Arbor office. She previously was a senior principal in the Ann Arbor office of Miller, Canfield, Paddock and Stone, P.L.C.

Howard Zucker, a member of the Hawkins management committee, commented on the new office and the lateral hire: "For many years, Hawkins has enjoyed an active public finance practice in the Midwest. The opportunity to welcome a new lawyer to our firm, and to open an office near so many of our valued clients at the same time, is extraordinarily exciting. For existing Hawkins clients, this represents yet another example of Hawkins' continued commitment to public finance and public projects."

Lisa Hagan received her LL.M. in Taxation from Georgetown University Law Center, her J.D. from Michigan State University College of Law, and her B.A. from Michigan State University. Her practice is focused primarily on health care, higher education and housing financings.

Hawkins is of the municipal industry's more storied law firms. Founded in 1854, the firm gained a reputation in the 19th Century for specialized expertise in the area of governmental finance. The firm continues to break new ground for its clients in finance transactions, including public power, transportation, housing, health care, higher education, cultural institutions and public contract representation, including public/private partnerships. Hawkins is perennially rated among the very top bond counsel and underwriters' counsel nationally.

Hawkins has more attorneys (approximately 100) devoted to public finance and public projects than any law firm in the nation. The new Ann Arbor office will be the firm's ninth office, joining New York, Washington D.C., Newark (NJ), Hartford, Los Angeles, San Francisco, Sacramento and Portland (OR).

[CDEFA // BNY Mellon Webcast Series: Exploring the Newark Development Renaissance.](#)

Exploring the Newark Development Renaissance

November 17, 2015

@ 1:00 pm Eastern

In the past few years, Newark, New Jersey has become a showcase for urban revitalization demonstrating how public and private financing can help build thriving communities. Hundreds of properties have been recreated through multi-million dollar capital projects financed through successful partnerships, tax credits, and tax-exempt bonds. During this installment of the CDEFA/BNY Mellon Development Finance Webcast, hear from the public sector officials and financiers behind Newark's downtown renaissance and learn how building strong partnerships has created a competitive and dynamic atmosphere that has attracted investment and spurred economic development.

Moderator:

Rena Nakashima

Senior Product Manager

The Bank of New York Mellon

Speakers:

Scott Blow
Executive Vice President & Chief Business Development Officer
Newark Community Economic Development Corporation

Carmelo Garcia
Executive Vice President & Chief Real Estate Officer
Newark Community Economic Development Corporation

Jorge Santos
Vice President of Economic Development
Newark Community Economic Development Corporation

Mat Abraham
Program Manager
New Jersey Economic Development Authority

[Click here](#) to confirm your participation and receive login information.

Registration is free and open to all interested stakeholders.

[USDA Provides \\$314 Million in Water and Waste Infrastructure Improvements in Rural Communities Nationwide.](#)

WASHINGTON, Nov. 2, 2015 - USDA Secretary Tom Vilsack today announced loans and grants for 141 projects to build and improve water and wastewater infrastructure in rural communities across the nation.

“Many rural communities need to upgrade and repair their water and wastewater systems, but often lack the resources to do so,” Vilsack said. “These loans and grants will help accomplish this goal. USDA’s support for infrastructure improvements is an essential part of building strong rural economies.”

USDA is awarding \$299 million for 88 projects in the [Water and Waste Disposal Loan and Grant Program](#) and \$15 million for 53 grants in the [Emergency Community Water Assistance Grant \(ECWAG\) program](#).

ECWAG grants enable water systems that serve eligible rural communities to prepare for, or recover from, imminent or actual emergencies that threaten the availability of safe drinking water. Water and Waste program recipients can use funds to construct water and waste facilities in rural communities.

The Big Sandy Rancheria Band of Western Mono Indians in Fresno, Calif., has been selected to receive a \$494,300 ECWAG grant to drill a well and connect it and another well to the water system.

The Columbia Heights Water District in Caldwell, La., has been selected to receive a \$736,000 water and waste loan to upgrade the water storage tank and related equipment at the wastewater treatment plant. The community is in an area of persistent poverty that USDA has targeted for special assistance through the [StrikeForce for Rural Growth and Opportunity Initiative](#).

Three recipients receiving funding today were given priority points through a provision in the 2014

Farm Bill that encourages communities to adopt regional economic development plans. These projects are centered on regional collaboration and long-term growth strategies. They leverage outside resources and capitalize on a region's unique strengths.

The recipients are the West Stewartstown (N.H.) Water Precinct, the Lowcountry Regional Water System in Hampton, S.C., and the city of Waubun, Minn. All three projects involve upgrades to water and wastewater systems. The Hampton, S.C., project is in a high-poverty area designated as a [Promise Zone](#). In areas designated as Promise Zones, federal, state and private-sector partners work with local communities and businesses to create jobs, increase economic security, expand educational opportunities, and increase access to quality, affordable housing.

Six of the projects announced today will provide \$3.9 million to benefit Native American areas. These water and waste awards include the Red Lake Band of Chippewa Indians in Minnesota and five projects in California, including Big Sandy Rancheria, two awards to the Cortina Band of Wintun Indians, the Grindstone Indian Rancheria and the Yurok Tribe.

Two projects will provide \$9.1 million for colonias in New Mexico. The recipients are the Garfield Mutual Domestic Water Consumers & Mutual Sewer Works Association and the La Luz Mutual Domestic Water Association. Colonias are unincorporated, low-income, mostly Hispanic U.S. communities along the Mexico border that lack adequate housing, drinking water and wastewater infrastructure.

Since 2009, USDA has helped provide improved water and wastewater services to nearly 18 million rural residents by investing \$12.3 billion in 5,174 projects.

Funding of each award announced today is contingent upon the recipient meeting the terms of the grant and loan agreement.

Here is an example of how a previously funded project has helped improve water service in a rural community. In Sparta, Tenn., antiquated equipment could not handle rainwater runoff, causing sewage to spill out of drains. In 2011, USDA provided \$2.9 million to Sparta to build a new wastewater system, ending the major sewage problem.

USDA Rural Development is accepting applications for loans and grants to build rural water infrastructure. Applications may be completed online through [RDAPPLY](#), a new electronic filing system, and at [state and local Rural Development offices](#). Public entities (counties, townships and communities), non-profit organizations and tribal communities with a population of 10,000 or less are eligible to apply. Interest rates for this program are at historically low levels, ranging from 2 percent to 3.25 percent. Loan terms can be up to 40 years.

President Obama's plan for rural America has brought about historic investment and resulted in stronger rural communities. Under the President's leadership, these investments in housing, community facilities, businesses and infrastructure have empowered rural America to continue leading the way - strengthening America's economy, small towns and rural communities.

#

USDA is an equal opportunity provider and employer. To file a complaint of discrimination, write: USDA, Office of the Assistant Secretary for Civil Rights, Office of Adjudication, 1400 Independence Ave., SW, Washington, DC 20250-9410 or call (866) 632-9992 (Toll-free Customer Service), (800) 877-8339 (Local or Federal relay), (866) 377-8642 (Relay voice users)

McCarter & English: At Long Last - Allocation and Accounting Rules.

Good things come to those who wait. The tax-exempt bond industry has waited 18 years for a missing reserved section of the private activity bond regulations, the allocation and accounting regulations, Treas. Reg. Section 1.141-6. The regulations released by the IRS in final form October 27, 2015, (the “Regulations”) provide welcome guidance on allocation of bond proceeds and equity to expenditures and to particular uses within a financed project. The Regulations also take steps to accommodate public-private partnerships by providing for aggregate as opposed to entity treatment of a partnership that includes governmental entities or 501(c)(3) organizations and private persons. In addition, the Regulations amend Treas. Reg. Section 1.141-12 to provide a rule for anticipatory remedial action that permits bonds to be redeemed or defeased prior to an expected action that would cause the private activity limits to be exceeded.

The promulgation of the Regulations gives issuers and conduit 501(c)(3) borrowers the opportunity to rethink relationships with private entities as potential users of bond-financed property and consider the use of different, non-tax-exempt bond funding sources as part of a financing package to accommodate these relationships. The Regulations also provide planning opportunities relating to disposition of bond-financed property and remedial action. At the heart of all of these changes continues to be the IRS’ focus on effective post-issuance compliance procedures. The efforts by the IRS to provide simpler and more straightforward rules should make post-issuance compliance more manageable.

Undivided Portion Allocation

The Regulations provide a special, undivided portion allocation method as the exclusive method of allocation of sources of funding to expenditures and uses for eligible mixed-use projects. Under this method, qualified equity is allocated first to private business use of the eligible mixed-use project and then to governmental use, and tax-exempt bond proceeds are allocated first to governmental use and then to private business use. This allocation method inherently permits “floating private use”—private use that may move within a building from time to time.

An eligible mixed-use project is a project wholly owned by one or more governmental persons (or 501(c)(3) organizations) or by a partnership with at least one governmental partner that is financed with governmental bonds (or qualified 501(c)(3) bonds) and with qualified equity pursuant to the same plan of financing. Qualified equity includes proceeds of taxable bonds other than tax-credit bonds, and funds not derived from a borrowing. The qualified equity is treated as financing the project under the same plan of financing if it pays for capital expenditures of the project on a date no earlier than the date on which such expenditures would be eligible for reimbursement under the reimbursement regulations and no later than the date the measurement period begins, generally the placed-in-service date.

Read in conjunction with the allocation timing rule of Treas. Reg. Section 148-6(d)(1), which requires allocation of proceeds to expenditures not later than the later of 18 months after the expenditure is paid or the date the project is placed in service, and in no event later than 60 days after the fifth anniversary of the issue date, the issuer will at that time be able to identify qualified equity that was part of the plan of finance and allocate private business use to that equity.

Partnerships

In response to recent pressure for the development of tax-exempt bond rules that accommodate the

participation of private entities in partnership with governmental entities in financing major projects, the Regulations permit the governmental share of a project used in joint ventures to be financed with governmental bonds by treating the partnership of governmental entities and private entities as an aggregate of the partners rather than as a separate taxable entity. The private business use by a private entity partner will be determined based on that partner's greatest percentage share of any of the specified partnership items, income, gain, loss, deduction or credit attributable to the partnership during the measurement period. Taken together with the undivided portion allocation method, this treatment will permit qualified equity to be allocated to the private entity partner's private business use.

Anticipatory Remedial Action

The Regulations provide a rule that would permit an issuer to redeem or defease bonds in advance of an action that would cause the private activity limits to be violated, a remedial action not addressed by current regulations. To meet this new remedial action rule, an issuer must declare its official intent to redeem or defease all the bonds that would become nonqualified bonds as a result of a subsequent deliberate action and redeem or defease such bonds prior to the action occurring. The declaration of intent must precede the redemption or defeasance, identify the financed property with respect to which the remedial action is being undertaken and describe the deliberate action that is expected to occur. The redemption or defeasance of the nonqualified bonds must not result in an extension of the weighted average maturity of the bonds, subject to a limited transition rule.

Effective Dates

The Regulations generally apply to bonds sold on or after January 25, 2016, and the new remedial action rule applies to deliberate actions that occur on or after January 25, 2016. The partnership rules and the allocation and accounting rules may be permissively applied in whole, but not in part, to any bonds to which the private activity bond regulations apply.

McCarter & English LLP

by Jeannette M. Bond

November 3, 2015

[With Risks, P3s and Design-Build Seen as Beneficial to Infrastructure Planning.](#)

At an Urban Land Institute conference last week, two panels of transportation experts - one from the public sector, the other from the private sector - discussed the issues plaguing tri-state transportation systems and the potential of public-private partnerships to address them.

"Transportation agencies are great at delivering state-of-good-repair projects, delivering normal replacement projects," former New York State Department of Transportation Commissioner Joan McDonald said during the first panel. "I'm not so sure that transportation agencies are the entities best-suited to do some of these mega projects that are not just about transportation."

With transportation infrastructure, a public-private partnership, or P3 agreement, is used most often in a design-build contract - design-build is a method of project-delivery in which a private contractor wins a bid to design and construct a project. Ongoing regional public-private infrastructure projects

include the construction of a new Port Authority Bus Terminal and an MTA project to build a Long Island Rail Road station beneath Grand Central Terminal (known as East Side Access).

Organized by the Urban Land Institute's New York, New Jersey and Westchester/Fairfield chapters, the forum was hosted at Shearman & Sterling's East Midtown headquarters, drawing a crowd of around one hundred.

During the panel of current and former public officials, moderated by CityLab New York bureau chief Eric Jaffe, the speakers disagreed on the role of public-private partnerships in terms of their potential for improving transportation infrastructure.

"The bigger you get, when you have many more stakeholders, many more local zoning laws, then it becomes more difficult," Steve Santoro, New Jersey Transit's assistant executive director of capital planning, said of expansive P3 projects.

All agreed, however, that area transportation infrastructure is in a state of crisis.

"The term 'transportation Armageddon' has been used," Jaffe said, referring to Senator Chuck Schumer's remarks about the potential results of the damaged Hudson River tunnels. If the existing New York-to-New Jersey tunnels close - a plausible scenario given their age, deterioration and the fact that they have reached current capacity - it would be disastrous for commuters and the regional economy.

In remarks after the panel, Drew Galloway, Amtrak's Northeast Corridor chief of planning and performance expressed openness to working with a private sector contractor on the Gateway Project, a proposed high-speed rail corridor planned to help solve a potential crisis with the tunnels, which are used by NJTransit and Amtrak and bring many commuters into New York City.

"We absolutely intend to consider [public-private partnerships] and will welcome the proposals as it goes forward," Galloway told Politico New York.

After the conference's 15-minute networking break, the private sector panel convened to discuss the best P3 business practices globally, as well as the potential hazards and benefits of P3s.

"You have competition among entities of the private sector to come up with the best and most cost-effective design," Karen Hedlund, national P3 advisor for Parsons Brinckerhoff, said at the panel, which was moderated by Urban Land Institute's senior vice president, Rachel MacCleery.

For underfunded tri-state transportation agencies, design-build can be an attractive method of cutting project costs. As Mike Parker, of Ernst & Young Infrastructure Advisors, LLC, pointed out, the Port Authority of New York and New Jersey estimated that it saved ten percent by using a P3 for the Goethals Bridge reconstruction versus a public plan.

In the case of Amtrak's Northeast Corridor, Hedlund explained, its dire need for infrastructure repair may repel potential private partners.

"Would they be willing to accept the cost of bringing the Northeast Corridor up to a state-of-good-repair?" Hedlund asked. "It's a much more complicated question than sometimes some politicians would like you to believe."

Last year, P3s, especially as design-build, were recommended by the MTA Transportation Reinvention Commission, a team of 24 local, regional, and international transportation experts. In July, New York State Budget Director Mary Beth Labate again endorsed their use in a letter to MTA

Chair Thomas Prendergast, calling design-build and other P3 tools a means of reducing the agency's capital program costs and achieving "faster project delivery."

Certainly, the MTA needs faster project delivery - a recent report by the Citizens Budget Commission (CBC), a nonpartisan watchdog group, estimated that MTA repair and upgrade projects will be finished by 2067 at their current rate. The Second Avenue Subway extension is notoriously behind schedule and beyond budget.

But though public-private partnerships are recommended for MTA repair projects, the CBC report warns that a "P3 can leave public agencies at risk when private parties fail to perform adequately," as they did in the early 2000s with a London Underground repair project.

"The London experience showed that there's some problems with P3s that dealt with a lot of maintaining existing assets and bringing existing infrastructure up to a state-of-good-repair," Jamison Dague, the report's author, told Gotham Gazette. "And that's not to say that you can't have a P3 that does those things successfully, but that was one challenge that they saw there."

Meanwhile, design-build contracts for New York infrastructure, Dague added, have proven successful in the past. The newly approved (and controversial) MTA five-year capital plan was reduced by billions of dollars after the agency accounted for increased use of design-build and other cost-saving strategies.

From a policy standpoint, measures can be taken to prevent private sector malfeasance when engaging companies in major infrastructure projects. In his remarks, Galloway emphasized the need for transportation officials to independently estimate a project's cost before private sector involvement.

"Otherwise, they will price their own investment in such a way to cover that risk," Galloway said. "And you very quickly lose some of the advantages that you would otherwise see in a public-private partnership."

Transportation officials and others have suggested oversight mechanisms as a means of preventing similar problems before. Independent evaluation of projects before private-sector involvement was recommended by New York State Comptroller Thomas DiNapoli in a 2013 report, which also calls for the creation of an oversight entity for public-partnership agreements and other changes to the state's P3 policies.

Jaffe mentioned the ongoing concern: "The fear is always that in the long run, the public will end up paying more than they said they would pay up front."

by Ryan Brady, Gotham Gazette

Nov 04, 2015

@GothamGazette

[**Experts Offer Strategies for Educating Stakeholders, Public on Benefits of**](#)

P3s.

Never underestimate the importance of educating key stakeholders and the public about the benefits of using public-private partnerships to develop social infrastructure both before and after project launch. Failure to convey the advantages of P3s to those who will be affected by such projects could lead to pressure on public agencies to reject this procurement method in the future. This message was delivered repeatedly by a broad range of successful P3 partners during NCPPP's second annual P3s for Public Buildings Summit, Oct. 22-23 in Washington, D.C.

The list of people who should be educated thoroughly on the advantages of P3 procurement is extensive. It includes investors, public agencies, local and state residents, legislators and the media. It equally is important to engage with individuals and organizations located near the project, unions and local contractors, session participants stressed.

All descriptions of P3s also should simply and thoroughly define the procurement method, which often is poorly understood, these experts added. Confusion over what P3s are abounds even in Canada, where unlike the United States, they are used to build a range of public buildings, including schools and hospitals.

"When we talk about P3s, we're not talking about privatization. The government owns, controls and is accountable for that asset. But we also have to dispel the notion many government officials have that P3s don't involve any government funding. They don't know what private financing means. We have a saying: 'P3 — not P-free,'" said Mark Romoff, president and CEO of the Canadian Council for Public-Private Partnerships, who moderated a session on how to garner community and stakeholder support for P3.

He described other myths that surround P3s in Canada, such as the assumption that unions universally distrust them. "Several large unions, such as Laborers' International, are part of a P3 group and all of the collective bargaining agreements we have negotiated with them are observed," he explained.

Romoff also stressed the importance of publicizing the beneficial effects P3s have on people's quality of life. "It's not enough to keep saying that a project has been completed on time and under budget. Tell a story simply and connect emotionally. You'll make more headway."

The highly successful Long Beach, Calif. courthouse P3 is a case in point, recounted Stephen Reinstein, director of integrated delivery at AECOM and former CEO of Long Beach Judicial Partners. "Judges' complaints about the poor condition of the facilities they'd been working in didn't make a difference. What was compelling was hearing about someone who had a heart attack and died on the sixth floor because the elevators weren't working," he said.

Reinstein also stressed the importance of attracting support from public officials at various levels of government for such projects. Then-Gov. Arnold Schwarzenegger, who sent aides to Canada to study its P3 procurement models, endorsed the courthouse project, as did officials at the county and city levels, in part because the new construction was seen as the first step in rehabilitating a blighted neighborhood.

The developers also heeded the concerns expressed by influential members of the community in designing the project. When administrators at a nearby school questioned the safety of having a courthouse next door, developers promised that no doors would be built on the side of the building that faced the school, which eased the school officials' misgivings, reported Reinstein.

“We also signed a good agreement with the public union that was afraid its members would be negatively impacted by developing the courthouse as a P3. The union became a big supporter and we were able to the message across that, ‘No public jobs were harmed in building this project,’” he added.

Reinstein took pains to communicate with all of the local newspapers and the other Los Angeles media about the project and the P3 concept but acknowledged that he found it difficult to explain the procurement method “in a sound bite.”

“I used simple language and analogies that I thought people would easily understand, such as likening it having a house mortgage that includes the services of a gardener and a handyman for 39 years,” he explained.

Jessica Murray, who recently joined Walsh Construction as vice president of strategic initiatives, recalled state officials’ reluctance to educate the media to counteract the effects of negative stories about a P3 to expand Interstate 70 in northeast Denver. While working for Skanska, which is part of a consortium that is bidding for the project, she reached out to reporters and created an informational video about the P3. As a result, “reporters started calling me to check on the accuracy of what other people were saying,” she recalled. She urged state officials to capture the media’s attention in a project’s early stages, especially if they anticipate negative reactions. “If you can’t do that, talk to the cab drivers who talk to everyone on the planet. Bad word-of-mouth snowballs,” she warned.

The importance of engaging internal and external stakeholders early in the planning process also is vital, stressed participants in the summit’s opening general session.

When The College of New Jersey decided to build a multi-use development that included student housing as a P3, faculty and students expressed concern that they no longer would be dealing solely with the college, a trusted agent, over quality-of-life issues. Some faculty members criticized the decision to allow a tanning salon to locate on retail space in the complex, for example, said Stacy Schuster, the college’s associate vice president for college relations. The school was pleased with the pace at which work and approval processes were conducted, however, and ultimately, “the campus community came on board,” paving the way for development to enter into a second phase. “People on campus had trouble at first accepting that an external company would manage the project and handle maintenance. Now everyone is comfortable with this project, but if we take on another P3, we might hold internal conversations differently,” she said.

“Agencies need to pay attention to the facility user — the customer. You need to explain how it will be used and how it will accommodate changes in the future,” advised Douglas Koelemay, director of the Virginia Office of Public-Private Partnerships (VAP3). Agencies used to convey this information through public hearings but that avenue alone is no longer sufficient, he noted.

“It’s not just about telling people what is going to happen but answering their questions. You have to, as the saying goes, ‘get sticky’ with them. Social media is a big help with that,” Koelemay said, adding that it is important to know what citizens want, value and will support. “They can give you permission to proceed, even if they’re not actually promoting a project.” With this in mind, VAP3 adopted a new set of guidelines to conduct risk management and to engage the public.

P3 developers should make the time to reach out to their elected legislators to educate them on the benefits of using this procurement model to build public infrastructure as well, said Timothy Merriweather, president of the Texas Infrastructure Council. “We’re represented by U.S. senators and representatives, and state, county and city officials. Take the time to make calls, visit their

offices, leave a flyer and tell them, 'If you have a question about P3s, ask me. I'm your constituent and this is what I do.' My county judge calls me to ask questions about P3s."

One woman "with an extensive e-mail list" advocated so tirelessly against a proposed P3 that she "killed it singlehandedly," he recalled. "The people who don't understand what P3s are and can do and complain, they're the squeaky wheel. They are heard. We're the larger group but we're not making that noise. We have to counter misinformation and misunderstanding with facts," he said.

NCPPP

November 2, 2015

[**Here's Why RIDOT Says a Truck-Toll Bond Would Save RI \\$612M.**](#)

PROVIDENCE, R.I. (WPRI) - The debate over Gov. Gina Raimondo's toll proposal is actually multiple debates rolled into one.

Among the questions: Should the state spend more money on bridge repairs, and if so, how much should it spend? Should the state institute a toll on large trucks, and if so, how should it work? Should the state float a bond backed by the toll revenue and get the money up front, even though it will have to pay interest?

It's that last debate - whether toll revenue should be promised in exchange for a big infusion of capital, or used on a pay-as-you-go basis as it comes in each year - that may be the wonkiest.

The current version of RhodeWorks, as the governor has dubbed her big transportation plan, calls for the state to float a roughly \$600-million bond on July 1 to be repaid by toll revenue. The bond proceeds would yield \$500 million for bridge repairs, with the rest of the money covering toll-gantry construction, financing costs, and a debt reserve fund.

Borrowed money has to be repaid with interest, of course, and the RhodeWorks bond is no exception: the R.I. Department of Transportation says the state would need to make \$578 million in interest payments over 30 years to pay off the bond in full, bringing its full cost to \$1.16 billion. Critics have choked on that number, noting the bond will cost the state more in interest (\$578 million) than it yields for bridge repairs (\$500 million).

RIDOT officials don't dispute that \$578 million in interest payments is a lot of money. But they argue critics are being penny-wise, pound-foolish, because they're not including what RIDOT estimates will be \$1.2 billion in construction savings from floating the bond. The reason, they say, is that it will let bridges get fixed before they deteriorate further and become much more costly to repair.

Officials compare the concept to a homeowner who borrows money to repair a roof, or an individual who borrows money to fill a cavity, avoiding a future root canal.

"We're engineers," RIDOT Director Peter Alviti told WPRI.com. "If giving money to the lending institutions ends up costing taxpayers less during that same 10-year period, then we should do it that way."

RIDOT has developed a list of all 827 bridges that would be tackled under RhodeWorks, ranked by priority based on what the agency calls its Bridge Improvement Program (BIP) scores. The score

includes factors such as condition, size, average traffic, weight limits, route importance, and the cost of detours. The projects would be tackled in roughly the same order under either the bond plan or the pay-as-you-go plan, officials said.

(The worst-ranked bridge in Rhode Island, according to RIDOT: the Huntington Avenue Viaduct in Providence, which carries the Olneyville Expressway section of Route 6 over Troy and Westminster streets.)

RIDOT's engineers calculate that if the \$500 million in bond money is available immediately, it will cost \$1.7 billion to do all the projects, and the state's bridges will be 90% structurally sufficient by 2025. However, they say, if the bond money is not available and toll revenue can only be used as it comes in, the same projects will cost \$2.9 billion, and the state's bridges won't be 90% structurally sufficient until 2034.

RIDOT attributes that \$1.2 billion in savings to the benefits of a "surge" in bridge projects that the bond will allow. By using the infusion of borrowed money, the level of construction spending on bridges is forecast to quickly hit a peak of \$266 million in 2017-18 before falling, versus a gradual increase under the pay-as-you-go budget:

RIDOT Bridge Repair Budget w Tolls paygo vs bond Oct 2015

RIDOT Deputy Director Peter Garino said that "surge" would allow the agency to preserve a large group of bridges that will otherwise deteriorate to the point where they need to be rehabilitated or even reconstructed, which is far more expensive to do. That is the reason his team recommended a bond rather than a pay-as-you-go approach, he said.

"What we looked at is, how do we compress things so they cost the least amount of money?" Alviti said.

The bottom line: RIDOT says even after making the \$578 million in interest payments on the toll-backed bond, the "surge" approach will still save taxpayers a net \$612 million thanks to the \$1.2 billion in construction savings due to projects happening earlier.

"It's only because we have a one-time upfront cost to get us to a regular place where we can normalize bridge repair that it makes sense," Garino said. "If we did a deep dive on bridges when we first got here and if that was a flat curve, then you need an ongoing revenue source. But it wasn't a flat curve. It was a bell upfront. And because of that, this is really the only reason why it makes sense to bond."

Alviti said part of the reason for the "bell curve" in RIDOT's projected needs is because so many of Rhode Island's bridges were all built during the same period, the postwar era of major transportation expansions nationwide in the 1950s and '60s. That's left many of them falling into worse shape on roughly the same schedule, he said.

"More than 70% of our infrastructure is over 50 years old," said Dave Fish, RIDOT's acting chief engineer. "We've got so many of those bridges that are on the brink."

As an example of how the cost of a bridge changes depending on how long it takes to tackle it, RIDOT offered four internal estimates: the Greenwich Avenue Bridge in Warwick, which would need \$2.6 million in 2017 while it's still a preservation project, but \$10.4 million in 2025 when it would be a reconstruction project; the Concord Street Bridge, a \$1.9-million preservation project in 2018 but a \$7.5-million reconstruction project in 2028; the Phenix Avenue Bridge East in Cranston, a \$3.8-million rehabilitation project in 2022 but an \$8.1-million reconstruction project in 2032; and the

Goat Island Bridge in Newport, an \$8-million rehabilitation project in 2017 but an \$11.9-million rehabilitation project in 2025.

The infusion of bond money would allow RIDOT to do those lower-cost projects for each bridge, while the pay-as-you-go plan would require the more expensive ones, according to Alviti. "The real savings is getting the ones that we can get preserved," he said.

Alviti acknowledged the "surge" plan - and the costly bond - only make sense if RIDOT goes on to invest the necessary money to maintain the bridges once they're back in good shape. The agency is beefing up its maintenance department by hiring 40 new employees there and is budgeting more money for those projects in the future, he said.

"If all we were doing was planning to do the surge, fix the bridges and leave everything else the same, you're right, it would be cyclical," Alviti said. "By increasing maintenance, we'll get that capability up so that now instead of these 30-year cycles we get into, of having to reconstruct the bridges, we're making them last longer."

If bridges are properly maintained going forward, RIDOT officials think they could potentially last for 80 to 100 years, if not indefinitely. "If we can even just extend from 50 years to 80 to 100 years, we're cutting the cost of these bridges in half over time," Alviti said.

Critics have also questioned the type of bond called for under RhodeWorks. The governor wants to float what's known as a revenue bond, with repayment directly tied to the money from tolls, as opposed to a general-obligation bond. Choosing the former is more costly: RIDOT is projecting an interest cost of roughly 5% for the toll-backed revenue bond, compared with an average rate of 2.4% on a general-obligation bond the state floated earlier this year.

From the Raimondo administration's perspective, there are multiple benefits to the revenue bond: the governor can continue to argue taxpayer money will never be used to pay the bond, and unlike with a general-obligation bond, no voter referendum is required to approve the borrowing.

Garino also said the revenue bond provides a safeguard to prevent future governors or lawmakers from redirecting toll revenue to other types of spending. "We really want to make sure that the revenue from the tolling goes to those bridges," he said.

RIDOT hasn't won over critics with those arguments, however. Rep. Patricia Morgan, a leading Republican opponent of the toll bond, tweeted Monday: "Governor's gift to Wall St banks: Revenue bonds with no voter approval carry higher Interest rates. Make repairs more expensive." She has called for bridge repairs to be funded out of existing state revenue, and does not include the same "surge" RIDOT wants.

Other groups have also called for alternatives to RIDOT's proposal, with the Rhode Island Trucking Association suggesting about \$13 million a year in new revenue last week, and the Rhode Island Center for Freedom & Prosperity suggesting a public-private partnership modeled on Pennsylvania that could cost \$570 million with interest.

State House leaders have suggested the General Assembly will take up the toll proposal next year, and could act on it within the first few months of the annual legislative session. If that happens, RhodeWorks-funded projects could begin next summer, Alviti said.

WPRI.com

By Ted Nesi

Published: November 2, 2015, 6:40 pm Updated: November 3, 2015, 9:30 am

Ted Nesi (tnesi@wpri.com) covers politics and the economy for WPRI.com. He hosts Executive Suite and writes The Saturday Morning Post. Follow him on Twitter: @tednesi

[Beer Bonanza Has Virginia Capital Backing Bonds for Craft Brews.](#)

Virginia's capital is raising beer money — \$23 million of it.

Richmond will sell bonds next week to build a brewery for Escondido, California-based Stone Brewing Co., the ninth-largest U.S. craft-beer maker, on property that's been vacant for four decades. Stone will pay the 218,000-person city to lease the facility and won't be on the hook to repay investors. Taxpayers will.

It may be the first time a U.S. city has put its credit on the line for a maker of the beverage Americans swill millions of barrels of, and it shows how the craft-beer boom has been drafted into the long-running bidding wars among states and cities for businesses. Elsewhere, the decision to stand behind less-flourishing corporations hasn't always panned out: Rhode Island is stuck with debt that lured a now-bankrupt video game startup, while Moberly, Missouri, was burned by issuing bonds for an artificial-sweetener plant that was never built.

"There's a growing movement for craft brewing, and if there are cities and states out there trying to encourage it, it's a way of creating a new revenue base," said Howard Cure, managing director of municipal research in New York at Evercore Wealth Management, which oversees \$6 billion. "These companies are smart and they play one city against another."

Craft beer, which comes from breweries that make no more than 6 million barrels a year, is the fastest-growing segment of the \$102 billion U.S. market.

With the deal, Richmond is counting on the popularity of Stone's brands such as Arrogant Bastard Ale and Stone Cali-Belgique IPA. The 19-year-old company's production jumped 35 percent last year, twice as fast as craft breweries nationwide, despite a surge in competition from upstarts and behemoths such as Anheuser-Busch InBev NV.

With 22 million barrels produced in 2014, such small-scale producers account for 11 percent of the U.S. beer market, up from 5 percent in 2010, according to the Boulder, Colorado-based Brewers Association.

The growth of the industry — and its power as a tourist draw — has caught the attention of elected officials across the country, said Bart Watson, the chief economist for the association, which represents more than 2,800 companies.

"As the craft beer market has grown and these companies have grown into bigger job creators and bigger sources of economic impact, the reception from government officials has grown as well," Watson said. "We've entered this era of second facilities in different parts of the country. There's a lot more courting going on."

Sierra Nevada Brewing Co. and New Belgium Brewing Co., the third- and fourth-largest craft brewers, have begun operating East Coast facilities in North Carolina after receiving government incentives. Lagunitas Brewing Co., the sixth-largest, set up its second facility in Chicago, though it rebuffed the junk-rated city's offers of assistance.

Job Creator

Stone picked Richmond over more than 300 other potential sites for the brewery, which will also have a restaurant and beer garden. It's projected to create 288 jobs.

Economic incentives were available at all of its other top sites, said Pat Tiernan, Stone's chief operating officer. What set Richmond apart was the opportunity to revamp an area near the James River that was never rebuilt after flooding in the 1970s, he said.

"We wanted to gauge where we got the most buzz and enthusiasm and excitement, not just with fans, but with the community, the governments at the state and local level," Tiernan said. "How they decided to fund it really had nothing to do with the selection of the site."

Tammy Hawley, a spokeswoman for Richmond Mayor Dwight Jones, said no one from the city finance department was available to comment until after the bond sale, which is scheduled for next week. Moody's Investors Service rates the \$23 million of taxable debt Aa2, its third-highest grade. The credit-rating company said Stone's payments to lease the brewery will match or exceed what the city will spend on principal and interest.

"The dollar amount for the city of Richmond is not particularly burdensome, and the city of Richmond is budgeting to pay for debt service every year," said Julie Beglin, a Moody's analyst. The city has \$740 million of general obligations. "That's different from other projects that we've occasionally seen where the anticipation is the project will pay and the city may or may not have available funds to pay debt service if that project failed."

One example of a bust: Key West Brewery Inc. Based near the southernmost point of the continental U.S., it defaulted in 2001 on \$7.4 million of revenue bonds that it was responsible for repaying. That company was tiny in comparison to Stone: By borrowing the money, it was seeking to boost production to 39,600 barrels a year from 3,000.

By contrast, the California brewer's output will exceed 300,000 barrels for the first time in 2015, Tiernan said. He said the Richmond facility will eventually be able to make 700,000. Stone is also planning to open a brewery in Berlin.

Beer Lovers

In a sign of Stone's influence in the industry, it has the fourth-most-popular India pale ale on the website BeerAdvocate and the three most-noted American strong ales. The brewery is known for flaunting the superiority of its beers with names like Sublimely Self-Righteous.

Stone even taunts its customers, questioning whether they should drop the bottle and pick up something a bit more banal.

"It is quite doubtful that you have the taste or sophistication to be able to appreciate an ale of this quality and depth," says the Arrogant Bastard label.

Richmond is betting on the opposite.

Bloomberg

by Brian Chappatta

November 1, 2015 — 9:01 PM PST Updated on November 2, 2015 — 7:31 AM PST

Hedge-Fund State Stung as Stock-Price Swings Leave Budget Gap.

Connecticut passed a budget in June that boosted funding for transportation projects, made required pension contributions and scaled back a tax increase on businesses. It appeared balanced, removing the risk of a downgrade from Fitch Ratings.

The good news didn't last long.

Four months into the fiscal year, Connecticut is facing a \$118 million deficit, thanks in part to a stock-market slide that erased more than \$3 trillion from share prices before it ended in late September. With just \$406 million in its rainy-day fund, about one-third of the pre-recession peak, Democratic Governor Dannel Malloy and lawmakers are working this week to figure out how to shore up the finances of a state that's home to more hedge-fund money than any state but New York.

With Illinois and Pennsylvania still without budgets for the year that began July 1, Connecticut's struggle shows that passing a spending plan isn't enough if projected revenue doesn't materialize. To stabilize the state's finances, Malloy, who has already cut funding for hospitals and welfare programs, is aiming to eliminate 500 government jobs, overhaul the retirement system and change the way businesses are taxed to keep companies from leaving.

"That a budget gap has opened up so early in fiscal 2016 is definitely concerning," said Paul Mansour, head of municipal research in Hartford, Connecticut, at Conning, which holds the state's bonds among its \$11 billion of local debt. "You have revenue coming in below projections, low reserves and political pressures not to cut social services. It's when you combine all these things together that you get concerned."

Connecticut is the wealthiest U.S. state by per-capita income, with an economy fueled by the finance industry. It had some 250 hedge-fund companies overseeing about \$335 billion in 2013, according to the Connecticut Hedge Fund Association. Only New Yorkers rely on capital gains for a greater share of their income, said Carl Thompson, a municipal analyst in Boston at Eaton Vance Management, which oversees about \$30 billion of local debt.

That leaves the government's revenue sensitive to market routs like the one in August, when the Standard & Poor's 500 index lost 11 percent in six days. The bout of selling, the worst in four years, wreaked havoc with the Connecticut's tax-collection forecasts, despite the rebound that's left stocks with gains for the year.

Rippling Down

That volatility is one reason tax collections will likely fall short of expectations, Office of Policy and Management Secretary Ben Barnes said in a letter to Comptroller Kevin Lembo last month. Lembo said the state's economy has also been restrained by the disappearance of 14,900 financial-services jobs since the recession, which has weighed on wage growth.

"Until the overall growth in the state employment numbers results in higher wage growth, which is consistent with an expanding economy, the withholding portion of the income tax will continue to present significant budget challenges," Lembo wrote.

Municipal-bond investors are demanding higher yields to hold Connecticut debt instead of other securities. Ten-year Connecticut general obligations yield 2.61 percent, about half a percentage point more than benchmark debt. That gap is near the most since Bloomberg data began in January

2013 and up from as little as 0.27 percentage point in January.

Stable Outlook

Fitch took Connecticut away from the brink of a downgrade in July, when it lifted the outlook on its AA rating to stable because of the balanced budget. Under that plan, Malloy kept his pledge to maintain full pension contributions. He also won a higher sales-tax rate for transportation projects, one of his biggest initiatives, and reduced business-tax increases after companies including General Electric Co. threatened to move.

Connecticut has ample time in the current year to make adjustments to the deficit, said Douglas Offerman, the Fitch analyst in New York who monitors the state. It's easier to tweak a passed budget than govern without one, like Illinois and Pennsylvania, he said.

"This was from all perspectives a pretty decent budget that happens to be in a state that has very volatile revenue streams," said Thompson, the analyst at Eaton Vance, which owns Connecticut bonds. "With the stock market, their revenue projections change and that can really be a very sudden, unpredictable thing."

Faced with the latest deficit forecast, Malloy said Oct. 28 that the state should cut its workforce by 500 in the current fiscal year. Connecticut is also deferring scheduled raises for 1,600 managers and negotiating over contracts with most bargaining units, according to a presentation titled "Connecticut's Economic and Budgetary Reality."

Barnes, Malloy's budget official, is involved in negotiations over curbing the deficit and wasn't available to comment, said Christopher McClure, a spokesman for the office of policy and management. Connecticut will release new revenue estimates on Nov. 10.

"Our plan is to set priorities and make smart, pragmatic decisions about spending cuts now, so that Connecticut continues to live within its means," McClure said in a statement.

Bloomberg

by Brian Chappatta

November 3, 2015 — 9:01 PM PST Updated on November 4, 2015 — 5:58 AM PST

[Alaska Dusts Off Plans for \\$1.6 Billion Pension-Obligation Bond.](#)

Alaska may double this year's supply of pension obligation bonds as it considers borrowing \$1.6 billion to help fund its cash-strapped retirement trust.

As of 2013, Alaska had the fourth-worst funded pension among U.S. states, reporting it had 52.3 percent of the money needed to pay retirees, better than only Illinois, Connecticut and Kentucky, data compiled by Bloomberg show.

Since then, the state has done some one-time fixes — like a \$1 billion cash injection into the trust last year — but hasn't made strides to permanently fix the fund, said Deven Mitchell, the state's debt manager at the Alaska Department of Revenue.

Prompted by Governor Bill Walker, Alaska is looking into the possibility of a \$1.6 billion general

obligation pension bond, Mitchell said. "It appears that this interest rate environment provides an opportunity for us to get in on the leveraging side at a low rate," Mitchell said. "We're thinking it's not a bad time to consider this alternative."

The state's plan isn't new. Alaska almost issued pension obligation bonds in 2008, back when its funded ratio was at 75.7 percent, Mitchell said. At the time, the state legislature created the Pension Obligation Bond Corporation, a conduit that the securities could be issued through, and approved up to \$5 billion of debt, Mitchell said.

The deal team published a preliminary offering statement, gave rating company presentations and was in the process of picking a sale date when the stock market started to crash. The pension obligation bond dreams were over.

"The funny thing is, if we had bitten the bullet and ate the high interest rates [in early 2009], we would have been doing great now," Mitchell said. For a pension obligation bond to be "in the money," the eventual investment returns made with the proceeds have to exceed the initial borrowing rates.

This time around, Governor Walker has asked Mitchell to pick up from where they left off in 2008 and see if the economics still make sense. Mitchell said the deal will be ready to come to market if Governor Walker gives the green light. Because of the work done in 2008, the governor won't need legislative approval to issue the potential bonds.

Selling bonds to pay back other debts may not seem intuitive, but it's becoming a regular occurrence for those struggling to fund their pension systems. This year, state and local governments have sold the most GO pension obligation bonds since 2008 even as sentiment against them has grown.

The Government Finance Officers Association recommended, in a January advisory, that state and local governments refrain from issuing the bonds, reminding its 17,500 members that the proceeds from the deal might not return as much as the interest rate on the bond itself.

"People really don't know what's going to happen in the market, a lot of folks in the market don't know what's going to happen in the market," said Dustin McDonald, a director at the federal liaison division of the GFOA. "Ultimately you're betting on positive market outcomes that you may or may not see."

Fitch reiterated the concerns in an Aug. 13 report, telling investors the debt "won't fix U.S. public pensions" and the issuance of these types of bonds will only ever be neutral or negative for a credit. According to Matt Fabian, a partner at Municipal Market Analytics, "they're always a bad idea."

If Alaska goes through with its deal, this year's total pension obligation bonds issues will be more than \$3 billion, almost ten times last year's supply, according to data compiled by Bloomberg.

Issuers have argued that not all pension obligation bonds are equal. If the bond proceeds go directly to the pension trust and just reduce rather than replace annual payments, then there's nothing for investors to be concerned about, said Kansas State Treasurer Ron Estes. Kansas sold \$1 billion of pension obligation bonds in August, raising its funded ratio to 65 percent from 62, Estes said.

"There are risks in doing this, but the biggest risk is not funding your pension," Estes said. Mitchell said he's framing Alaska's potential deal to mimic Kansas's. So far Mitchell has arranged an underwriting syndicate and put together a "shell" of a preliminary offering statement.

As Alaska considers ways to repair its pension system, it also faces a \$3.5 billion structural budget

deficit, equal to about 55 percent of general fund expenditures, according to a note from Standard & Poor's from Nov. 2.

Bloomberg

by Kate Smith

November 4, 2015 — 6:52 AM PST

[Puerto Rico Governor Submits Electric Utility Restructuring Bill.](#)

Puerto Rico Governor Alejandro Garcia Padilla's administration sent to the island's legislature a bill that would give its main electricity provider power to restructure about \$8.3 billion of debt.

The Puerto Rico Electric Power Authority, known as Prepa, has been negotiating since August 2014 with its creditors on how to ease the utility's debt payments and modernize a system that relies heavily on crude oil to produce electricity. Prepa faces a \$1 billion shortfall for the fiscal year ending June 30, 2016, according to the governor's legislation. The utility has a \$196 million interest payment due to bondholders on Jan. 1.

"With this legislation we can realize the debt relief and savings offered by the creditor compromises and make the changes and investments needed to ensure that Prepa can provide the people and businesses of Puerto Rico with reliable power, stable rates and outstanding customer service for generations to come," Javier Quintana Mendez, Prepa's executive director, said Wednesday in a statement.

The utility has been hindered in its attempts to reorganize its finances because the commonwealth's agencies don't have access to bankruptcy, as do their counterparts in the U.S. A restructuring of the utility's debt, which would be the largest ever in the \$3.7 trillion municipal market, would serve as a key first step in Garcia Padilla's plan for the island to reduce its \$73 billion debt burden. The governor said in June that the island's debt is unsustainable and has sought to gain concessions from creditors.

Electric Rate

The legislation will seek "a reasonable and stable electric rate" Jesus Manuel Ortiz, a spokesman for Garcia Padilla, told reporters Wednesday in San Juan.

Prepa should submit a request to change energy rates so revenue will cover annual debt servicing, "including principal, interest, reserves and other requirements imposed by the accords with creditors," according to the legislation. Revenue should also cover costs such as the purchase of fuel, investments and general administration, according to the bill.

The legislation would enable Prepa to invest \$2.4 billion to upgrade plants and give Prepa the authority to enter into public-private partnerships to help finance infrastructure improvements. Prepa's new board would consist of seven members, including two people to represent citizens, Ortiz said.

The bill also seeks to improve Prepa's process for collecting outstanding bills from public and private entities and change the utility's ability to collect payments from municipalities.

Prepa and some of its bondholders reached a temporary agreement in September that would require investors to take a 15 percent loss in a debt exchange. The utility is also negotiating with bond-insurance companies that guarantee about \$2.5 billion of Prepa debt against default.

The bill would give legislative authority to a deal that may emerge from the negotiations.

Bloomberg

by Michelle Kaske and Alexander Lopez

November 4, 2015 — 10:22 AM PST Updated on November 4, 2015 — 1:31 PM PST

[Puerto Rico Crisis Spurs U.S. Bill Seeking Hedge Fund Disclosure.](#)

Hedge funds' involvement in the Puerto Rico debt crisis is leading U.S. Representative Nydia Velazquez, a New York Democrat born on the island, to propose legislation that would force the firms to reveal more about their investments.

Velazquez, who sits on House Financial Services Committee, wants hedge funds to file with the Securities and Exchange Commission whenever they acquire at least 1 percent of a company's stock, down from the current 5 percent threshold. The bill she has drafted would apply the same disclosure requirement to debt and derivatives.

Hedge funds have drawn scrutiny for snapping up Puerto Rico bonds, whose prices have tumbled as the island's fiscal crisis escalated. Velazquez said the funds may be advocating for spending cuts that would hurt Puerto Ricans and against legislation that would let some agencies file for bankruptcy, which would allow them to cut their debts in U.S. court.

"It has become increasingly clear that hedge funds, which have purchased a sizable part of Puerto Rico's debt, are exacerbating the crisis and profiting from the island's misery," she said in an e-mailed statement. "This bill will allow regulators and the public to see exactly what role these funds are playing in Puerto Rico's financial crisis and in our broader economy."

Hedge funds hold as much as \$25 billion, or about a third, of Puerto Rico's debt, according to an estimate by Mikhail Foux, Barclays Plc's municipal-debt strategist in New York. Funds that invested in Puerto Rico debt include Brigade Capital Management, Fir Tree Partners and Monarch Alternative Capital. The funds were part of a group that in July released a study challenging Governor Alejandro Garcia Padilla's contention that the government can't afford to repay what it owes.

Velazquez's bill follows calls from Democrats on the House Natural Resources Committee for a hearing on the funds' role in Puerto Rico's crisis.

Bloomberg

by Kasia Klimasinska

November 4, 2015 — 5:00 PM PST Updated on November 5, 2015 — 4:45 AM PST

The Teacher Who Could Gut Unions.

Rebecca Friedrichs's challenge to mandatory fees could reduce labor's political clout.

A Supreme Court decision coming by the end of June could be devastating for organized labor. The case, *Friedrichs v. California Teachers Association (CTA)*, challenges a 1977 ruling allowing public-sector unions to charge nonmembers covered by union contracts mandatory fees to pay for the costs of collective bargaining. The lead plaintiff, Rebecca Friedrichs, is an elementary school teacher. She claims that being forced to pay money to California's politically powerful and overwhelmingly Democratic teachers' union as a condition of her employment violates her First Amendment rights.

Conservatives want the court to ban the mandatory fees. That would create a crisis for organized labor, about half of whose members are in the public sector; dues and fees made up \$174 million of CTA's reported \$186 million in revenue in 2013. It could also cause trouble for Democrats, who depend on union support during elections. CTA reported spending \$211 million on campaigns and lobbying from 2000 to 2009, according to Friedrichs's suit, including \$26 million to oppose a school-voucher proposition.

The Supreme Court has already said government workers can't be required to fund union activities if they're unrelated to collective bargaining. But the plaintiffs argue that collective bargaining is inherently political when the government is the employer. "One of the things people fight about in politics is, should you spend more money on teachers or police?" says Ronald Cass, a former dean of Boston University School of Law, who co-wrote an amicus brief in support of Friedrichs.

Unions' best hope of winning rests with an unlikely ally: Antonin Scalia. He wrote in a 1991 case that, because the government requires public-sector unions to provide equal representation to nonmembers, it has an interest in making sure that service is paid for. "Where the state imposes upon the union a duty to deliver services, it may permit the union to demand reimbursement for them," he wrote.

Scalia has also argued that the government has much more leeway to exercise control over its employees than over private citizens, a view that could help unions. "Private citizens perhaps cannot be prevented from wearing long hair, but policemen can," he wrote in a 1990 dissent involving public employees in Illinois.

Scalia brought up police officers' First Amendment rights again last year in a union fees case involving home-health-care workers supported by Medicaid. In oral arguments, Scalia posited a discontented cop who insisted on meeting over and over with the police commissioner to bug him for a raise: "The commissioner finally is fed up and tells his secretary, I don't want to see this man again—has he violated the Constitution?" In that case, Scalia ended up joining the 5-4 majority opinion, which found that "quasi-public employees," like home aides, can't be required to pay union fees.

The biggest public-sector unions, including the American Federation of State, County & Municipal Employees (AFSCME), are already canvassing workers, asking them to become dues-paying members before the court rules on the case. Even pro-union workers may be tempted by the chance to have their representation for free, says Lee Saunders, president of AFSCME. "That's going to be a hard choice for some people."

by Josh Eidelson

[Puerto Rico Exodus a Boon for Florida Counties, Moody's Says.](#)

The migration of Puerto Ricans to the U.S. mainland in search of work and better living conditions is proving to be an economic benefit to growing Florida municipalities such as Orange and Hillsborough Counties, according to Moody's Investors Service.

The number of employed Puerto Rican workers in Orange County increased by almost 18 percent between 2010 to 2014, according to a Moody's report released Tuesday. Coastal Hillsborough's work force from the commonwealth has increased 31 percent during the period. The state's September unemployment rate was 5.2 percent, less than half Puerto Rico's 11.4 percent rate.

"With the in-migration feeding the ongoing expansion of industries in Orange County, the resulting dynamic is positive for the county's credit strength," Nisha Rajan, a Moody's analyst in New York wrote in the report. "This expansion further increases the need for goods and services, augmenting sales tax and other local government revenues."

Puerto Rico's out-migration has increased by 40 percent from 2010 to 2014, according to Moody's. The island's economy has struggled to grow since 2006. Officials have increased taxes, curbed government hiring and cut social programs to help fix budget deficits. The commonwealth is seeking to reduce its \$73 billion debt load by negotiating with bondholders to accept losses.

Transportation and tourism-related jobs in Orlando, the center of Orange County and home to Disney World, are attracting Puerto Ricans to the area. Puerto Ricans comprised 14 percent of the population of Orange County and 8.4 percent of Hillsborough, Moody's said.

Residents of Puerto Rico are U.S. citizens and many are bilingual, making it easy to leave the island for work on the mainland. Moody's estimates the commonwealth's negative migration will continue through at least 2020. About 5 million Puerto Ricans lives in the U.S., compared with about 3.65 million in the island.

Bloomberg

by Michelle Kaske

November 3, 2015 — 2:54 PM PST

[Illinois Faces Millions in Extra Debt Costs From Budget Fiasco.](#)

When Illinois returns to the municipal market after its unprecedented 18-month borrowing drought, it may find its budget impasse will cost taxpayers millions of dollars in the coming decades.

On a \$1 billion offering of 25-year tax-exempt bonds, it would cost about \$175 million more now than if an equal amount was issued with spreads at 2014 levels, based on data compiled by Bloomberg that assumes the yield equals the interest rate paid. Now in its fifth month without a spending plan,

signs are mounting that debt sales for cash-strapped Illinois are only going to get more expensive.

After initially planning to sell \$1.25 billion in general obligations for capital needs, the governor's office said in September that it wasn't ready to announce any amounts or sale dates. The state's credit rating has been cut by two of the three largest rating companies, it's missing pension payments, and yield premiums demanded by investors are hovering near the highest since 2013. Illinois last sold debt in April 2014 for a top yield of 4.5 percent, about 1.1 percentage points more than benchmark securities. That spread has widened by about 70 basis points.

"Investors are going to ask for wider spreads over the near term if there's not a resolution for this budgetary crisis," said Dennis Derby, a money manager in Menomonee Falls, Wisconsin, at Wells Fargo Asset Management, which holds some of the state's bonds among its \$39 billion of municipal debt. "It's a headline risk. It's the potential for spreads to widen out even further."

The Land of Lincoln's lack of borrowing contrasts with localities nationwide that are selling bonds at the fastest pace since at least 2003. That's saving states and cities millions of dollars as interest rates are near the lowest in half a century. Meanwhile, Illinois is sidelined by political gridlock. Republican Governor Bruce Rauner and the Democrat-controlled legislature are showing no signs of nearing an agreement for a spending plan.

Catherine Kelly, Rauner's spokeswoman, said Illinois plans to sell bonds this fiscal year, which ends June 30. She declined to comment on why the state has gone so long without borrowing. Illinois can legally still borrow.

"Speaking very generally, state law allows bond sales in these circumstances," according to an e-mailed statement from the Office of the Attorney General Lisa Madigan.

Kelly Hutchinson, formerly of A.C. Advisory Inc., started Monday as Illinois's director of capital markets and will handle bond sales for the state.

But returning to the market would come at a cost, and the state doesn't have extra money to spend these days. Investors demanded 1.7 percentage points more yield to own Illinois 30-year bonds on Nov. 3 versus benchmark munis. That's the most of all 20 states tracked by Bloomberg.

Debt Service

Illinois is running out of funds on a daily basis, according to Comptroller Leslie Geissler Munger. Unpaid bills totaled \$6.8 billion, as of Nov. 3. Still, debt service remains a priority "above everything else," Munger said Oct. 14, after announcing the delay of a \$560 million monthly pension payment in November because of the cash crunch. The December payment may also be postponed.

The postponed contributions led the State Employees' Retirement System to request the largest-ever sum of cash from the Illinois State Board of Investment to cover retiree benefits. Its pensions are already underfunded by more than \$100 billion after years of skipped contributions.

Moody's Investors Service slashed Illinois's rating to Baa1, three steps above speculative grade, on Oct. 22, following a downgrade from Fitch Ratings three days earlier to an equivalent BBB+. Moody's also lowered the ratings of six public universities less than a week later, citing their exposure to the budget turmoil.

"The state's low rating and trading levels preclude them from taking much advantage, if any, of lower interest rates," said Paul Mansour, head of municipal research in Hartford, Connecticut, at Conning, which holds Illinois debt among its \$11 billion of state and local securities. "It does hurt

that way.”

Market Access

In the past, credit downgrades have delayed bond deals for the state. Illinois had to cancel a planned \$500 million general-obligation bond sale in January 2013 because Standard & Poor’s dropped its rating five days before. Yet about two months later it returned with an even bigger \$800 million offering that had narrower 10-year yield spreads than the market average.

Not everyone expects Illinois will stay a stranger to the \$3.7 trillion municipal market despite its financial woes.

“We’ve seen them in the past when market access seemed to be somewhat tenuous come to market with a big deal that they priced very cheap,” said Jason Diefenthaler, who runs a high-yield muni fund at Wasmer Schroeder & Co. in Naples, Florida. The company owns Illinois bonds. “Problem issuers tend to come to market more often.”

Long-term, the budget situation is fixable, according to Ty Schoback, a senior analyst in Minneapolis at Columbia Threadneedle Investments LLC, which holds some Illinois debt among its \$30 billion of municipal holdings.

“As long as there’s adequate compensation in price, in addition to us having a view that they will ultimately come to a fix and get past this political gridlock, we certainly would consider additional purchases,” said Schoback. “You need to be compensated for the headline risk and the political uncertainty and these BBB+ downgrades.”

Bloomberg

by Elizabeth Campbell and Brian Chappatta

November 4, 2015 — 9:00 PM PST Updated on November 5, 2015 — 6:30 AM PST

[Munis Least Attractive to Treasuries Since 2014 as Payrolls Jump.](#)

Prices in the \$3.7 trillion municipal-bond market are the most expensive of 2015 relative to Treasuries after U.S. payrolls increased by the most this year, causing yields to jump on federal government debt on bets that stronger employment data will spur the Federal Reserve to raise interest rates.

Benchmark 10-year munis yield 2.18 percent, compared with 2.31 percent on similar-maturity Treasuries, data compiled by Bloomberg show. The ratio is a measure of relative value between the asset classes. It touched 93.7 percent Friday, the lowest since December 2014, signaling that tax-free bonds are pricey relative to their federal counterparts.

Ten-year Treasury yields jumped as much as 0.1 percentage point after a Labor Department report showed the U.S. gained 271,000 jobs, the most this year and higher than all estimates in a Bloomberg survey of economists. Average hourly earnings climbed from a year earlier by the most since July 2009, signaling Fed officials may move forward with a December rate increase.

Muni yields rose 0.05 percentage point to 2.18 percent on Thursday, the largest increase since July,

data compiled by Bloomberg show. The figure, which was little changed as of 9:09 a.m. in New York, is the highest since Sept. 24.

The 10-year muni-Treasury ratio was as high as 111.3 percent in March. Over the past decade, the figure has averaged 97 percent.

Bloomberg

by Brian Chappatta

November 6, 2015 — 6:34 AM PST

[Bloomberg Brief Weekly Video - 11/05/15](#)

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

[Watch the video.](#)

9:28 AM PST

November 5, 2015

[Puerto Rico Government Development Bank at Risk of Receivership.](#)

Puerto Rico's Government Development Bank, which oversees the island's finances, said it may fail to comply with legal reserve requirements by the end of December, putting the bank at risk of falling into receivership.

Puerto Rico's Commissioner of Financial Institutions is examining the financial condition of the GDB, according to the commonwealth's most recent financial disclosure, posted on the bank's website late Friday.

The GDB serves as a source of liquidity for the Caribbean island and its municipalities. The bank estimates it may fall short of its legal reserve requirement by the end of 2015, according to the filing. That would put the bank in danger of operating under a receiver and further limit the commonwealth's access to funds.

"If GDB is not in sound financial condition or becomes insolvent, the Secretary of Treasury may file a petition to a Puerto Rico court for the appointment of a receiver to suspend GDB's operations and settle its obligations," according to the filing.

The bank's net liquidity as of Sept. 30 was \$875 million, down from \$1.1 billion in March. The GDB faces a \$354 million debt-service payment on Dec. 1 and is working to raise funds to meet that obligation, according to the filing.

Outstanding Debt

Puerto Rico and its agencies had \$70 billion of debt, including \$12.7 billion of general-obligation

bonds, as of Sept. 30, according to the filing. Commonwealth officials are seeking to reduce that debt load by asking bondholders to take losses or wait longer for repayment through a voluntary debt exchange. The island's economy has contracted every year since 2006. It has \$357 million of general-obligation interest due Jan. 1, yet the commonwealth's cash flows show a negative balance in November, according to the filing.

Some investors believe general-obligation bonds would receive the strongest repayment because the commonwealth's constitution stipulates that those securities must be repaid before other expenses. Yet bondholders cannot require Puerto Rico to raise taxes and no physical assets of the commonwealth may be foreclosed on to raise cash to pay general obligations, according to the filing.

Available Resources

If Puerto Rico failed to make a general-obligation payment, "the bondholders are only entitled to require the Secretary of the Treasury to apply available resources according to the constitutional priority provisions and do not have the right to compel the exercise of any taxing power of the commonwealth," according to the filing.

Puerto Rico may take revenue currently used to repay certain highway bonds and convention center debt and redirect it to pay down general-obligation securities, if there are no other available resources, according to the filing.

"It is not certain what steps a commonwealth bondholder would be required to take or what proof such bondholder would be required to produce to compel the diversion of such funds from any such instrumentality to the payment of public debt," according to the filing.

Bloomberg

by Michelle Kaske

November 6, 2015 — 7:20 PM PST

[Voters Approve 79% of U.S. Municipal Debt Ballot Measures.](#)

U.S. voters approved 79 percent of the \$23.8 billion in municipal debt that local governments sought permission to sell on Tuesday's ballots, according to Ipreo, a New York-based financial-market data provider.

The \$18.9 billion included new bond authorizations for roads and water systems, economic development and other capital projects. The amount sought was the most in an odd-year November election since 2007, before the worst recession since the 1930s cut tax revenue and pushed states and cities into a period of austerity.

In this year's biggest proposal, the Dallas Independent School District, won approval to sell \$1.6 billion of debt to be used to replace and renovate schools that are more than a half-century old. Denver voters approved \$778 million of debt to upgrade a facility for the National Western Stock Show and for improvements to a convention center. Meanwhile in Harris County, where Houston is located, voters endorsed \$848 million of debt for road improvements, parks and flood control, according to county election returns.

Voters last year approved about 85 percent of the \$44 billion on the ballot, more than twice the

amount sought in 2010, according to Ipreo.

Bloomberg

by Darrell Preston

November 5, 2015 — 8:31 AM PST

[Discerning the True Policy Debate over Donor-Advised Funds.](#)

This brief summarizes discussion at a June 2015 Tax Policy and Charities Project session where the nation's leading Donor Advised Fund (DAF) providers, nonprofit leaders, and policy experts sought to clarify and distinguish the policy issues and debates surrounding DAFs, as well as to lay out a research agenda for the DAF field. This brief also contains a useful summary comparison, prepared by Victoria Bjorklund, retired partner of Simpson Thacher, of major differences in the laws and regulations applicable to public charities providing DAFs, other public charities and private foundations.

[Download the brief.](#)

Tax Policy Center

by C. Eugene Steuerle, Ellen Steele

Published: October 21, 2015

[Fitch: CA School District Special Revenue Recognition Could Have Broader Rating Implications.](#)

Fitch Ratings-New York-04 November 2015: Fitch Ratings' assignment of an 'AAA' rating to San Diego Unified School District's (SDUSD) upcoming general obligation bonds recognizes that tax revenues supporting repayment of debt would be considered 'special revenues' under the bankruptcy code. As such, Fitch believes the revenues and timely debt service payments would be uninterrupted in the unlikely event of a bankruptcy filing by the district.

Fitch's conclusion was supported by legal opinions applying specifically to SDUSD bonds but many California school district GO bonds have been issued under constitutional provisions similar to SDUSD's proposed bonds. Fitch is in the process of determining its protocol for applying the special tax analysis to other California school district bonds with the same legal construct, and expects to provide further guidance to the market in the near term.

Contact:

Amy Laskey

Managing Director

+1-212-908-0567

Fitch Ratings, Inc.

33 Whitehall St.

New York, NY 10004

Laura Porter
Managing Director
+1-212-908-0575

Fitch: Nevada School District Reorg Plan May Hike Credit Risk.

Fitch Ratings-New York-06 November 2015: Clark County, NV, School District's ('A', Stable Outlook) reorganization plan presents mid-term risks, Fitch Ratings says. District reorganization plans might present uncertainties for bondholders - as a 2010 restructuring in Utah did - because the resulting distribution of property taxes, potential limits of future bond issuance, and operating environments of the smaller districts are unknown. Several steps must occur for a reorganization to take effect. Therefore in the short term we expect there to be no impact on Clark County School District.

Nevada Assembly Bill 394 requires that an advisory committee submit a plan to reorganize the Clark County School District to the State Board of Education by Jan. 1, 2017. The bill requires the committee to consider a number of issues, including equitable funding, the authority to issue bonds and raise revenues, and personnel contracts and collective bargaining. The school district superintendent has outlined a proposal to break the district into seven local precincts. The plan calls for continued centralization of operational departments with each precinct having flexibility on instructional issues. Under either a true district division or a hybrid scenario, Fitch expects outstanding debt to continue to be payable from the current levy that includes the taxable property of the entire school district.

However, new entities could emerge, each with a portion of the tax base and with potentially different tax rates. Depending upon the size and scope of the potential reorganization, precincts could have different operational aspects, including management and financial policies and practices. A reorganization plan could also affect the recent reauthorization of the district's 10-year, \$4.1 billion rolling bond program under which taxable property is assessed at \$0.55 per \$100 of AV. The program comes after several years in which the district lacked the capacity to issue bonds and in response to continued deferred maintenance and a backlog of new construction needs.

A district reorganization occurred in Utah when voters approved a ballot measure to break up the previous Jordan School District (ULTGO rated 'AAA' Stable Outlook) into two districts in 2007. The new district, Canyons School District (ULTGO rated 'AAA' Stable Outlook), began operations in fiscal 2010 under a separate school board. Following modest credit uncertainty at the time of the breakup, Fitch's ratings recognize the strength of each district's operations and the tax base from which the bonds are repaid.

Bonds issued prior to the breakup continue to be payable from the proceeds of unlimited ad valorem taxes levied on the taxable property of the prior combined district. Each district's separate tax levy for the debt is set according to the size of their respective annual debt service repayment. The resulting revenues are restricted solely for the purpose of repaying those bonds, alleviating bondholders' mid-term risks of the reorganization. Any other use would be against state law.

Contact:

Shannon Groff

Director
US Public Finance
+1 415 732-5628
650 California Street
San Francisco, CA

Rob Rowan
Senior Director
Fitch Wire
+1 212 908-9159
33 Whitehall Street
New York, NY

[Bond Dealers of America Hires Federal Policy Advisor.](#)

October 29, 2015 - Washington, D.C. - The Bond Dealers of America is pleased to announce the hiring of Justin Underwood to serve as Federal Policy Advisor, an internal staff position at the BDA. Justin comes to the BDA from FINRA where he served as Regulatory Analyst - Market Regulation, Trading Analysis. Justin will work in conjunction with current policy staff, Jessica Giroux and John Vahey, to advance member's interests, both among federal regulators and on Capitol Hill. In particular, Justin will be responsible for analyzing federal regulatory and legislative policy and will staff the BDA's newly formed Fixed Income Technology and Operations Committee.

Justin has analyzed trading activity and has experience in monitoring, reviewing and investigating unusual market activity for evidence of violations of relevant rules and regulations enforced by FINRA across NYSE, NASDAQ, and other U.S. stock market exchanges.

"The hiring of Justin to compliment the work Jessica and John are doing to represent our membership at the BDA simply means the BDA is better resourced and more equipped to provide the exceptional representation that we have worked hard to deliver since being founded in 2008," said BDA CEO Mike Nicholas.

About the Bond Dealers of America

Since its founding in 2008, the Bond Dealers of America has been the Washington, DC based organization that represents securities dealers and banks predominantly focused on the U.S. fixed income markets. The BDA remains the only organization representing the unique interests of national, middle-market dealers. In addition to federal advocacy and formulation of market practice guidelines, the BDA hosts a series of meetings and conferences specific to domestic fixed income, in addition to industry surveys and reports. For more information, visit www.bdamerica.org

For more information please contact Jessica Giroux at jgiroux@bdamerica.org or 202- 204-7905.

[National League of Cities Local Jobs Report.](#)

NLC's monthly analysis of the jobs report released by the Bureau of Labor Statistics, with a specific focus on local government employment.

October 2015

City and county governments gained 2,400 jobs in October, marking the 10th month in the past 11 that local government employment (excluding education) has increased. September's jobs report was revised up to reflect the 12,100 jobs that were added in local government and the highest increase since October 2014. NLC's recently released [City Fiscal Conditions 2015](#) report showed that city fiscal conditions are stabilizing in the wake of the Great Recession, and the local employment gains provide further evidence of an economic recovery in cities. In the past year, city and county governments have gained 45,000 jobs, although employment remains approximately 170,000 jobs below the post-recession peak in December, 2008.



[New Report from the National League of Cities Explores the Future of Mobility and Technology in Cities.](#)

NASHVILLE, TENN.—A new report released today from the National League of Cities (NLC) explores trends in mobility and technology in cities and identifies what cities can do to move seamlessly and efficiently into the future of mobility. *City of the Future: Technology & Mobility* explores how transportation will change with coming technological disruptions, draws on knowledge from leading experts in the field and delves into city and regional transportation planning documents from the 50 most populous U.S. cities—as well as the largest cities in every state—providing an unprecedented look into what is happening next.

“Transportation is critical for our cities. This report is part of a multi-year research project that focuses on five different factors affecting cities: technology, economics, climate resilience, culture and demographics,” said National League of Cities CEO and Executive Director Clarence E. Anthony. “By exploring mobility and the impact technology is having on how we all get around, NLC is highlighting specific issues that will help cities anticipate changes in the urban landscape and prepare accordingly.”

The report finds widening gaps between innovation in the private sector, the expressed preferences of citizens and the visions of city planners regarding transportation investment. The mobility environment in cities is rapidly shifting—primarily due to technology—and this will impact cities' future land-use decision-making, as well as infrastructure planning. Specifically, a majority of cities do not have concentrated efforts to prepare for new transportation innovations. Though half of the cities surveyed have explicit plans for new highway and infrastructure construction and maintenance, the majority of cities are not taking into account the effect of driverless technology or private transportation network companies.

“Our collective thoughts on the future of transportation have moved from Deloreans to driverless cars in what seems like the blink of an eye,” said Brooks Rainwater, director, NLC Center for City Solutions and Applied Research. “With the mobility environment rapidly changing, cities are central and leading the effort toward better, more seamless and equitable transportation systems.”

The report also outlines a forecast for 2020, 2030 and beyond:

Forecast for 2020

- There will be extensive demographic and workforce changes that will impact transportation

networks, such as changing commuting choices, office location and workspace changes, decreased vehicle miles traveled and an increase in contract jobs.

- More states will establish infrastructure banks, paid road models will be on the rise in cities and there will be an increase in public-private partnerships for mobility projects.
- There will be more modal and transit options available to cities, with optimized bus lines and integration of apps and fare payment systems.
- Transportation network companies will be the main modes of personal and freight transportation in cities of all sizes, and there will be an increase of driverless cars and electric cars on the roads.

Forecast for 2030 and Beyond

- Urban areas will continue to grow, commuting patterns will change and rush hour will be dispersed over longer periods of time.
- A national infrastructure bank and other public/private financing options will change the way transportation projects are evaluated.
- Public transportation will begin to go driverless and cities will see a reduction in single occupancy vehicles.
- Bike communizing will become more attractive, though electric assist technology, and high-speed rail systems will be constructed in the east and west coast travel corridors.
- Additional modes of transportation, such as inner-city rail and air travel, will expand and there may also be first-class amenities on some public transportation services as well.

[Click here read the full report.](#)

The National League of Cities (NLC) is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans.

NOVEMBER 6, 2015

Municipal Bonds Shine in Bleak Landscape.

Investing in boring bridges and sewers is paying off once again.

Municipal bonds sold by U.S. state and local governments are returning about 2% this year, according to Barclays PLC data, beating corporate bonds and many other supposedly higher-performing asset classes.

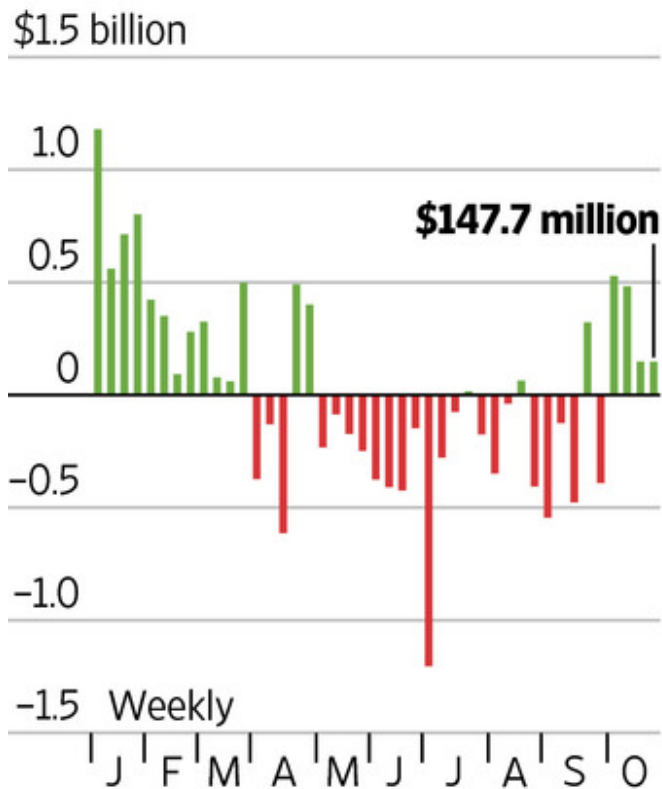
It is the second year of near market-leading returns from a sector typically prized for its low, steady performance. Muni bonds last year posted a total return of 9%, which comprises price appreciation and interest payments, approaching the S&P 500's total return of 14%.

At a time of low returns and high volatility in other markets, the concerns facing muni bonds—including the threat of defaults from Puerto Rico, the U.S. commonwealth that has some \$72 billion of debt outstanding—seem relatively manageable to many investors, compared with the risk of a steep pullback in stocks or other riskier assets.

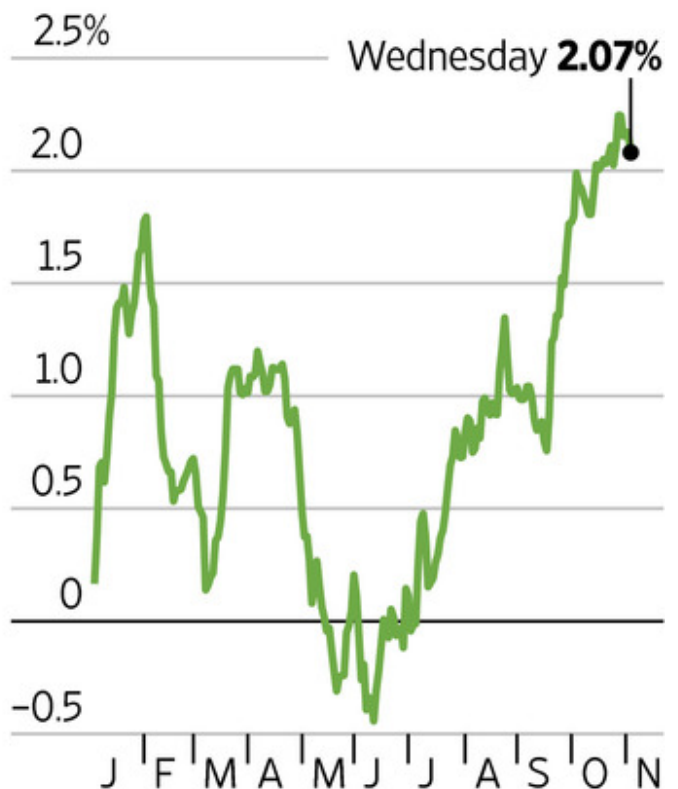
Bouncing Back

Municipal bonds have drawn renewed interest from investors, following a second-half rally that has pushed up returns.

Flows into U.S. municipal-bond funds



Total returns



Sources: Lipper (flows) Barclays (returns)

THE WALL STREET JOURNAL.

Municipal bonds are considered nearly as safe as Treasuries because they are backed by tax revenue or fees on critical public services, such as water. The debt also is boosted by interest payments that are typically tax-free, often used to fund peoples' retirements.

Even buyers who can't enjoy the tax breaks are purchasing municipal debt, said David Kotok, chief investment officer at Sarasota, Fla.-based Cumberland Advisors. "If you look around the world, the forces in the advanced economies that would drive interest rates lower, or keep them low, are in place," he said.

Investors have struggled to find better performance.

Total returns in 2015 amount to about 1% for Treasury debt and near-flat returns for highly rated corporate bonds. The S&P 500 has returned 3.9%.

Other market sectors have fared worse. Hedge funds were down an average of about 1.5% in 2015 through September, according to research firm HFR Inc. Commodities are down 17% year to date as measured by the Bloomberg Commodity Index.

The durability in the \$3.7 trillion sector persisted even as municipal debt faced challenges throughout the year, including the first default from Puerto Rico and concerns about the financial health of Chicago and states such as Illinois. Investors also spent several months on the sidelines, concerned about possible interest-rate increases earlier in the year.

Those worries diminished when the Federal Reserve didn't move rates, and demand for municipal debt increased. Investors have added money to municipal-bond mutual funds in five of the past six weeks, after withdrawing more than they put in every month from May to September, according to Lipper data. About \$2 billion has flowed into municipal-bond mutual funds this year through October.

"Investors began to get more comfortable with the fact that we weren't going to see increased interest rates, which led to more robust demand, and that's helped recent performance," said Peter Hayes, head of municipal bonds at BlackRock Inc., which manages about \$111 billion in tax-exempt debt. Mr. Hayes also noted rates have begun to tick up of late.

Investors have returned to munis after a 2013 selloff spurred by fears of a Fed rate increase and another that began after analyst Meredith Whitney predicted widespread defaults in a December 2010 television interview. There were no defaults on debt rated by Moody's Investors Service in 2014, and several analysts said the market includes thousands of diverse municipal entities, many of which have improving resources after the recession.

Meanwhile, the supply of bonds for new borrowing has dwindled, even as state and local governments rushed to take advantage of low rates, according to research firm Municipal Market Analytics. Though issuers have sold almost one-third more debt than during the same period of last year, most refinanced outstanding bonds, constricting the total available.

A supportive foundation leaves municipal bonds poised to benefit as rates increase, said David Hammer, executive vice president and municipal bond portfolio manager at Pacific Investment Management Co. Historically, the debt has outperformed other bonds when interest rates rise, and with state and local finances improving along with the U.S. economy, investors are facing less risk than in recent years, he said. "That creates a pretty attractive backdrop," Mr. Hammer said.

Some analysts said persistent demand has driven up prices, reducing the tax-free income that makes the debt attractive. Many in the market would prefer lower prices and higher yields, which would make it easier to sell bonds or mutual funds, said Matt Fabian, partner at Municipal Market Analytics. Bond yields fall as prices rise.

"You don't buy an income-producing asset if it doesn't produce income," he said.

Still, several investors said the market has provided enough income relative to other assets to shrug off concerns about potential defaults from Puerto Rico, which skipped its first debt payment in August.

Lyle Fitterer, managing director for Wells Fargo Capital Management, which oversees about \$39 billion in municipal bonds, said he is still concerned about the impact of possible Puerto Rico defaults. Still, such risks are low marketwide, and once investors consider their tax bill, municipal debt still looks compelling, he said. "Sometimes, superboring can be good," he said.

THE WALL STREET JOURNAL

By AARON KURILOFF

Bill Introduced to Require Hedge Funds to Disclose Holdings More Frequently.

A bill requiring hedge funds to disclose their holdings more frequently was introduced in Congress on Wednesday, a move that if signed into law would represent a seismic change for the hedge-fund industry.

Rep. Nydia Velazquez, a Democrat from New York who introduced the bill, tied the effort to the fiscal crisis in Puerto Rico, which has battled a sluggish economy and high debt load for years. Hedge funds and other investors who own the island's bonds have negotiated with island officials over a possible debt restructuring and cost-cutting measures.

"This bill will allow regulators and the public to see exactly what role these funds are playing in Puerto Rico's financial crisis and in our broader economy," Rep. Velazquez said in a statement.

The measure would require hedge funds to disclose positions where they own 1% or greater of a company's stock within five days, compared with the current requirement of 5% within 10 days. The bill would also create a new requirement for hedge funds to disclose investments with a 1% or greater stake—in either stocks or corporate and municipal bonds—every quarter.

Labor groups like the AFL-CIO and the American Federation of State, County and Municipal Employees are supporting the bill, called the Hedge Fund Sunshine Act of 2015, according to Ms. Velazquez's office. Another supporter is Hedge Clippers, a group that seeks to "expose the mechanisms hedge funds and billionaires use to influence government and politics," according to its website.

It wasn't immediately clear whether the bill, introduced in the U.S. House of Representatives and expected to be referred to the House Financial Services Committee, would muster enough momentum to become law. Even some supporters of the bill said it could be an uphill climb.

"It's always difficult to do things that large and powerful financial institutions don't like," said Lisa Donner, executive director at Americans for Financial Reform, an advocacy group. Still, Ms. Donner said the bill is a "very valuable proposition to have on the table," given the size of the hedge-fund industry and how little is disclosed compared with other institutions.

Hedge funds will likely balk at the proposal because frequent disclosures of smaller stakes could make it more costly for managers to build their positions. With more disclosure, other investors would know sooner that a manager is buying certain stocks or bonds, allowing them to mark up the price before selling.

"Given how low the 1% threshold is, the proposal could have a chilling effect on managers employing their optimal strategy," said George Silfen, a partner at Kramer Levin Naftalis & Frankel LLP who represents hedge funds and mutual funds.

A spokesman for the Managed Funds Association, which lobbies for hedge-fund interests in Washington, didn't immediately respond to a request for comment.

Ms. Velazquez, who represents parts of Manhattan, Brooklyn and Queens, is the first Puerto Rican woman elected to Congress. In September, she introduced another bill, the Puerto Rico Investor Protection Act of 2015, that would bring federal oversight for Puerto Rico's mutual-fund industry in line with mainland funds. The bill was referred to the House Financial Services Committee.

THE WALL STREET JOURNAL

By MIKE CHERNEY

Nov. 4, 2015 8:00 p.m. ET

— Rob Copeland contributed to this article.

Illinois Bond Sale Drought Hits Schools, Mass Transit.

ALGONQUIN, Ill. — District 300, Illinois' sixth-largest public school system, has been waiting a decade for state dollars to complete a construction and improvement project that began with voter approval of \$185 million of bonds in 2006.

The 21,000-student district in Chicago's far northwest suburbs sold the bonds and was able to build, expand and update schools, officials said.

But not all of the projects that the district promised to parents, teachers and students were completed, and hopes for state money any time soon have been dampened by Illinois' prolonged absence from the bond market and exacerbated by an ongoing state budget impasse.

District 300 had been counting on \$30 million to \$40 million in state construction grant money intended for roofs, asbestos abatement and heating and cooling systems for schools.

"There is part of us that feels we haven't fulfilled the obligation to the community 100 percent," said district Superintendent Fred Heid. "We were counting on leveraging those (state) dollars."

A budget stalemate between Illinois' new Republican governor and Democrats who control the legislature has led to gridlock and fed into last month's downgrades of the state's general obligation bond ratings to just three steps above the "junk" level by Fitch Ratings and Moody's Investors Service.

Illinois, once a top issuer of municipal bonds, has been absent from the debt market for a year and a half despite having more than \$4.8 billion of untapped bond authorization left from a \$31 billion, partially bond-funded "Illinois Jobs Now!" program the state enacted in 2009.

Money on hand from state bond sales shrank to \$552 million at the end of fiscal 2015 from \$2.68 billion at the end of fiscal 2014, according to Moody's.

Bruce Rauner, the state's first Republican governor in 12 years, had pledged to pour "billions" into infrastructure. He has signaled Illinois will be resuming debt sales despite the lack of a state budget five months into fiscal 2016.

BIG SCHOOL CONSTRUCTION GRANT BACKLOG

In 2006, District 300 passed a "fairly contentious" referendum, and wants to avoid going back to

voters for more money, Heid said.

He added that going back to voters could impede the district's ability to finance future growth in students.

District 300 is one of 52 Illinois school systems on a 2004 list for grants funded through state bond sales. Lists maintained by the Illinois State Board of Education show 228 additional and unfulfilled grant requests made by schools between 2005 and 2015.

INFRASTRUCTURE PROJECTS STALLED

Metra, the Chicago area's commuter train operator, said about \$400 million of projects, including improvements to 16 stations, two rail yards and a major bridge replacement program, are on hold due to the lack of state bond money.

The transit agency, which is in the midst of a multiyear fare increase, said fares may have to rise even higher than expected in 2017 if it does not obtain proceeds from state bond sales next year.

"If you don't take care of things in the beginning stage, they tend to need more comprehensive work done on them," Metra Executive Director Donald Orseno said.

Illinois' finances are sagging under a \$105 billion unfunded pension liability and a chronic budget deficit that have left it with the lowest credit ratings and highest borrowing costs among the 50 states.

While the budget battle will delay a pension contribution, state bond payments are continuing.

A package of fees and taxes meant to pay off the "Jobs Now" bonds has fallen short of its revenue target. This is largely due to underperformance of a video gambling tax as some communities, most notably Chicago, blocked the gaming machines.

The package is expected to generate \$830 million this fiscal year, short of legislative projections from 2009 that it would raise \$943 million to nearly \$1.2 billion annually, according to the Chicago-based Civic Federation.

By REUTERS

NOV. 3, 2015, 5:48 P.M. E.S.T.

(Editing by Daniel Bases and Matthew Lewis)

[Federal Lawsuit Questions St. Louis Suburb's Municipal Fines.](#)

ST. LOUIS — A federal lawsuit filed Wednesday alleged a St. Louis suburb whose population is largely black relentlessly tickets for things such as mismatched curtains, walking on the wrong side of a crosswalk and barbecuing in front of a house.

The Arlington, Virginia-based Institute for Justice, a public interest law firm, filed the suit on behalf of two Pagedale residents and is seeking class-action status. The lawsuit also asks a judge to halt the 33,000-resident suburb that's just north of St. Louis from future enforcement of codes that the suit considers an unconstitutional tactic to feed city coffers.

The number of non-traffic municipal fines issued in Pagedale, which has a roughly 93 percent black population, has soared by nearly 500 percent in the past five years, the lawsuit said, with revenue from non-traffic tickets making up nearly one-fifth of the city's budget.

Last year, the lawsuit said, 2,255 non-traffic tickets were doled out under the municipal code that authorizes citations for such things as having mismatched curtains, walking on the left side of a crosswalk, wearing saggy pants, having holes in window screens and having a barbecue in front of a house, according to the lawsuit.

"This case demonstrates that property rights are fundamentally civil rights," said William Mauer, the law firm's senior attorney and the plaintiffs' lead counsel. "Pagedale treats its residents like walking, talking ATMs, making withdrawals by issuing tickets for ridiculous things that no city has a right to dictate."

An Associated Press message seeking comment from Pagedale Mayor Mary Louise Carter was not immediately returned.

The lawsuit comes four months after Missouri Gov. Jay Nixon signed into law a measure that limits cities' ability to profit from traffic tickets and court fines. That marked the first significant step taken by state lawmakers to address concerns raised after the August 2014 police shooting in the St. Louis suburb of Ferguson. Eighteen-year-old Michael Brown, who was black, was unarmed when he was shot to death by white Ferguson police officer Darren Wilson during a confrontation in a street.

A St. Louis County grand jury and the U.S. Justice Department cleared Wilson in Brown's death, concluding evidence backed his claim that he shot Brown in self-defense after Brown first tried to grab the officer's gun during a struggle through the window of Wilson's police vehicle, then came toward him threateningly after briefly running away.

But the Justice Department issued a report in March, saying there was racial bias and profiling in Ferguson's policing as well as a profit-driven municipal court system that frequently targeted blacks, who make up about two-thirds of Ferguson's populace.

Since then, practices of many municipal court systems throughout the St. Louis area came under increased scrutiny.

Wednesday's lawsuit was filed on behalf of Valarie Whitner and Vincent Blount, housemates who the suit alleges have received more than \$2,800 in fines for such alleged infractions as having a downspout with chipping paint, not having a screen door behind their home and having weeds in their vegetable garden.

By THE ASSOCIATED PRESS

NOV. 4, 2015, 5:43 P.M. E.S.T.

[Long Lives and Rocky Markets Have Some Pension Systems Recalibrating.](#)

For decades, state and local pension systems thought of themselves as America's ultimate long-term investors.

Companies could go bankrupt by the thousand; corporate boards could show C.E.O.s the door. But

the states and cities would be there forever. That meant their pension funds — and the local taxpayers who guarantee them — could invest aggressively, even if that meant taking more risk. In an infinite time frame, today's loss would always be offset by tomorrow's gain.

Or so the thinking went. Now, a long-living baby boom generation, rapidly fluctuating global markets and municipal bankruptcies are blowing holes in the notion that for public pension funds, time is infinite. It turns out that the short term matters too.

And it matters now more than ever. According to the National Association of State Retirement Administrators, virtually all public pension funds are in what is called a "cash-flow negative" state. That means that every year, they pay more in benefits to retirees than they receive in contributions. And that signals, for some at least, an urgent need to reconsider traditional investment strategies.

The trustees of California's giant pension system, known as Calstrs, are among them.

"It's really very simple," said Allan Emkin, co-founder of Pension Consulting Alliance, in a recent presentation to the board of the organization, officially the California State Teachers' Retirement System.

"The actuary is saying that you're going to get 7.5 percent every year," he said, referring to the grail-like investment assumption that virtually all public pension boards factor into their decisions, which affect millions of people and trillions of dollars.

"And that may well be your average," he said. "But getting to that average, if you take a really big hit in the early periods, you may not be able to recover."

He paused to let the heresy sink in: It is possible to hit your long-term actuarial target and still go insolvent. And the long term will not matter if you run out of money in the short. Think Central Falls, R.I., or Prichard, Ala. Think Puerto Rico.

It is possible for two funds, each starting with the same balance, and with the same average return over 20 years, to have vastly differing performances over the period. In the two cases below, the annual returns are the same, but occur in the opposite chronological order. When losses happen in the early years, as for Fund B below, the balance can be wiped out well before the 20 years are up.

Mr. Emkin was helping Calstrs's trustees with an asset-allocation review, a monthslong process in which the board was examining its investment approach in detail and considering changes. The board is scheduled to vote on a proposed new approach, called Risk Mitigating Strategies, this month. The general idea is to cut back on stocks and increase investments that are expected to rise when the stock market falls.

It was necessary, Mr. Emkin said, because reducing the \$194 billion pension fund's exposure to another stock-market rout is "the single most important decision you'll make on the investment side."

Indeed, cutting back on stocks means backing away from the approach that virtually all public pension funds have taken for decades. Some of the trustees seemed concerned that none of their peers were going this way, but Mr. Emkin told them that company pension funds had been moving away from stocks for years.

Public pension funds have "matured," and that means doing things differently, he urged. Plans that were young in the 1950s or 1960s now have lots of retirees, who are living longer, healthier lives than their actuaries assumed they would. Assuming shorter life spans meant setting aside less

money, and this is one reason so many state and local pension funds have shortfalls today.

This is not a death knell, but it means investment losses have outside impact.

“When you’ve got negative cash flow, the math gets wicked bad,” said Sean McShea, president of Ryan Labs Asset Management, an investment management firm that specializes in bonds. “Poor performance gets amplified.”

Since annual contributions do not cover the payouts, pension funds with negative cash flow generally rely on investment income to close each year’s gap. They need every year to be a good year, but they tend to invest heavily in equities, and the stock market can, of course, fall. A couple of back-to-back bad years — like 2001 and 2002, or 2008 and 2009 — can wreak havoc.

“If the pension fund has a bad sequence of returns, all of a sudden it’s, ‘How are you going to pay this?’” Mr. McShea said. “You can’t grow your way out. It’s almost mathematically impossible to close the gap.”

The crash of 2008 showed what can happen. Public pension funds in growing, relatively prosperous places could fall back on their local taxpayers to fill the giant holes that opened. But not all “mature” pension funds are sponsored by wealthy states or cities. In many places, the obligations that workers and retirees have earned now dwarf the jurisdictions that sponsor them.

Many of the roughly 1,700 California school districts paying in to Calstrs are like that. And there is an added complication: The annual pension contributions are set by state lawmakers in Sacramento, not by Calstrs.

From Wall Street to Washington and in the towers of academia, people are buzzing about what some say is the pernicious focus in corporate America on short-term profits.

For years, lawmakers set Calstrs’s rates far too low to cover what its promised benefits cost. Time passed, the system matured, cash flow went negative and then came the crash of 2008.

Calstrs lost \$54 billion and could not bounce back. By 2014, it was paying out \$12 billion to roughly 270,000 retired teachers and surviving spouses, and taking in only \$6 billion a year in contributions. By conservative measures, it had an \$80 billion shortfall. Even if it achieved its long-term investment-return assumption of 7.5 percent, its actuary said, it would probably run out of money around 2047. And if it missed its target, it would run out of money even sooner.

In 2014, Gov. Jerry Brown signed a law to substantially increase the money going to Calstrs every year, starting at \$450 million a year and rising to \$4.5 billion. The biggest increase, about \$3.2 billion, is to come from California’s school districts, community colleges and other local governments. Additional amounts are to come from the state, and from Calstrs’s 480,000 teachers and other school employees.

If everyone does their share, Calstrs projects it will close the gap in about 30 years as long as the invested money returns an average 7.5 percent per year over the long term. It is not going to be easy. Fitch Ratings has warned that less affluent school districts may have a hard time keeping up as the amounts rise. Until 2014, they were expected to contribute 8.25 percent of each payroll to Calstrs; by 2021 it will be 19.1 percent.

And for the state, a temporary tax increase that helps cover the increase will expire in 2019.

It was hard to get the promised billions, and the last thing Calstrs wants is to put the money into

stocks, then see it vanish in another stock crash.

Calstrs still aspires to 7.5 percent average annual returns — otherwise everybody would have to kick in even more — but it now wants to “reduce downside risk” at the same time. The idea behind Risk Mitigating Strategies is to attempt that by selling off as much as \$20 billion of its equities and placing the money instead in Treasury securities, two types of hedge funds and possibly infrastructure projects.

Specifics were deferred until later. Much of the board meeting was devoted to comparing the results of modeling various hypothetical portfolios. Calstrs’s current portfolio was shown to have about a 30 percent chance of another big fall by 2019 — the year, ominously, when the state tax increase is scheduled to expire.

Other modeled portfolios seemed to have a lower probability of a crash in the near term.

“I’m putting on my skeptic’s hat,” said one trustee, Paul Rosenstiel. “This sounds too good to be true, that we have figured out a way to eliminate downside risk, without sacrificing return, but no one else has.”

But Mr. Emkin quickly countered: “We’re not talking about eliminating risk. We’re talking about reducing it at the margin,” he said. “What we’re trying to do here is to minimize potential for there to be increased costs to the employer, or the employee, going forward. That’s the goal.”

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

NOV. 4, 2015

[**Lawsuit Accuses Missouri City of Fining Homeowners to Raise Revenue.**](#)

PAGEDALE, Mo. — This spring, officials in this tiny city near St. Louis ordered Valarie Whitner to replace her siding; repaint her gutters, downspout and foundation; and put up screens or storm covers outside every window and blinds or curtains on the inside.

And that was before the list of demands moved on to her roof, fence and yard.

Ms. Whitner, 57, who works nights at a hospital, said she and her longtime partner felt swamped beneath the costs of paying for the city-mandated repairs and for fees, fines and court costs, which her lawyers say included at least \$2,400 in violations. She took out a high-interest payday loan, which she still owes hundreds of dollars on and calls her “Pagedale money.”

“It was horrible,” Ms. Whitner said the other day from her living room, which she has decorated with do-it-yourself vases and paintings. “Pagedale just kept coming back to us, bothering us. At some point, this is all just a way for the city

In the aftermath of the fatal shooting of an unarmed teenager named Michael Brown by a white police officer in Ferguson, residents in this region described a pattern of mounting traffic fines, fees and arrests in the 90 municipalities that make up St. Louis County. Many such abuses were described in a scathing Justice Department report about Ferguson.

But the problems facing Ms. Whitner in Pagedale represent another issue: what many residents consider the abusive levying of fines or fees for minor nontraffic ordinances, often involving unsightly lawns or houses.

On Wednesday, lawyers from the Institute for Justice, a libertarian public-interest firm based in Arlington, Va., filed a civil rights complaint against Pagedale, which like Ferguson is in north St. Louis County. The complaint, filed in United States District Court for the Eastern District of Missouri, accuses the city of violating due process and excess-fines protections in the Constitution by turning its code enforcement and municipal court into “revenue-generating machines” to go after residents.

The complaint, which seeks class-action status, calls for an injunction against the city’s reliance on such fines.

“We hope that if the court agrees with us, the residents of Pagedale will no longer be treated as walking cash machines by their city government and that the city will limit its regulatory authority to things that actually affect health or safety,” said William R. Maurer, the managing attorney of the Institute for Justice’s office in Washington State. The three named plaintiffs in the lawsuit include Ms. Whitner and her partner, Vincent Blount.

Sam Alton, the city attorney for Pagedale, said the city strongly disagreed with any assertion that it had pursued housing violations to make money. The portion of revenue the city derives from such tickets is small, Mr. Alton said, adding: “It’s got nothing to do with driving up revenue. And it’s got everything to do with making the properties code compliant and safe.”

After the Justice Department’s report, which asserted that Ferguson was using law enforcement to generate revenue for its budget, Missouri lawmakers enacted legislation that lowered a cap on how much of a city’s revenues may come from traffic fines; in St. Louis County, cities were limited to 12.5 percent of their revenues.

But that law addresses only traffic violations, and some here worry that St. Louis County municipalities are turning to nontraffic fees and fines to make up the lost revenue. In the case of Pagedale, Mr. Maurer said he believed the city had begun doing that years ago when an earlier limit on traffic revenues was imposed. In the mid-1990s, the traffic-fine cap had been 45 percent until legislation began gradually reducing it.

“I think it’s appropriate for policy makers to be mindful that there may be another wave of profiteering that manifests itself in a different form, and continues to create a cycle of poverty,” Eric Schmitt, a Republican state senator who had pressed for the tougher limits on traffic fines, said in an interview. “If we see that, all options are on the table.”

The practice of many St. Louis County municipalities of using traffic and nontraffic fines and fees to finance their budgets has also led to calls for some of those towns to consolidate operations as a means of reducing government costs. A commission assigned by Gov. Jay Nixon to study the underlying causes of the Ferguson unrest issued a long list of recommendations that included consolidating some of the 60 police departments and 81 municipal courts that serve the county.

Residents here say leaders in Pagedale, a predominantly black city of trim homes and about 3,300 people a few miles south of Ferguson, pride themselves on the city’s appearance and on a recent burst of new development, which includes a grocery store and a movie theater that was set to open this week. Some spoke with pride of the city’s Police Department and carefully kept sidewalks.

Yet in recent years, some here say, warning notices have begun appearing on house after house. In 2013, the city generated 17 percent of its \$2 million in revenue from all fines and fees, documents show, though Mr. Alton said the portion was lower now. According to an article in The St. Louis Post-Dispatch that first described the rise in nontraffic cases in the region's municipalities, Pagedale officials issued 495 percent more tickets and citations unrelated to traffic in the years since 2010. City officials dispute that claim, saying the increase was smaller.

To hear residents here tell it, the violations can seem endless: having a wading pool in front of the front line of the house; having a dish antenna on the front of the house; wearing pants below the waist in public; having a hedge above three feet in the front yard.

Mildred Bryant, who has lived here for nearly 47 years, got a warning letter in May. Her house is old, she says, but not unsafe. Still, she was given no more than 30 days to fix a dozen violations, the letter said, or face a court summons.

"I've never really gotten in trouble before," said Ms. Bryant, 84, the third plaintiff in the class-action lawsuit. "I wasn't sure what to think. What is this all about all of the sudden? Is it about wanting more money?"

Ms. Bryant said she found several of the violations baffling, not to mention beyond her limited retirement income. "All windows need screens and window treatment such as blinds and or matching curtains, slats, etc.," the letter said. She also was ordered to repaint her porch and building foundation, "touch up paint or repaint entire house," cut back weeds and "treat fence line with brush killer."

In the months since, Ms. Bryant said, her sons have helped her try to meet the requirements.

Mr. Alton said that the city was working with Ms. Bryant to help her get her home up to code, as it is with other residents. She has not been fined, only warned. The point, Mr. Alton said, is to make sure properties are safe and code compliant, not to collect money.

"You have a city that's trying to live within the law and to make the city nice for its residents and make its properties safe," he said.

THE NEW YORK TIMES

By MONICA DAVEY

NOV. 4, 2015

[U.S. Voters OK 81.6 Percent of Bonds in Tuesday Elections.](#)

(Reuters) - U.S. voters gave the green light on Tuesday to the sale of \$18.9 billion or 81.6 percent of the about \$23 billion of bonds cities, schools, parks and other issuers in the municipal debt market placed on ballots, according to results on Thursday compiled by data company Ipreo.

Nearly \$3.2 billion of proposed bond issuance was rejected by voters while election results for about \$1 billion of bond issues were still pending, Ipreo data showed.

Chris Mier, a muni analyst at Loop Capital Markets, said while the approval rate was a little higher

than in recent years, the amount of bonds put up for voter approval has been dropping from a peak of over \$100 billion in 2006.

The biggest issue winning approval was \$1.6 billion of bonds for the Dallas Independent School District, while the biggest single referendum to lose was \$287 million of bonds for a courthouse project in Travis County, Texas. Voters in Arizona's Pima County rejected seven bond referendums totaling \$815.7 million.

Issuance of muni bonds in 2015 totaled \$332.5 billion as of the end of October, up 32.9 percent from the same period in 2014, according to Thomson Reuters data.

By REUTERS

NOV. 5, 2015, 5:30 P.M. E.S.T.

(Reporting By Karen Pierog; Editing by Bernard Orr)

[House Committee Approves Bill to Classify Investment Grade Munis as High Quality Liquid Assets.](#)

On November 3, 2015, the House Financial Services Committee approved [HR 2209](#), bipartisan legislation that would require federal regulators to classify all investment grade municipal securities as high quality liquid assets (HQLA). This important legislation is necessary to amend the liquidity coverage ratio rule approved by federal regulators last fall, which classifies foreign sovereign debt securities as HQLA while excluding investment grade municipal securities in any of the acceptable investment categories for banks to meet new liquidity standards.

Not classifying municipal securities as HQLA will increase borrowing costs for state and local governments to finance public infrastructure projects, as banks will likely demand higher interest rates on yields on the purchase of municipal bonds during times of national economic stress, or even forgo the purchase of municipal securities. The resulting cost impacts for state and local governments could be significant, with bank holdings of municipal securities and loans having increased by 86% since 2009.

The next stop for HR 2209 is the House floor, but the date for its consideration has not been determined yet. GFOA is urging its members to send letters to their congressional delegations urging support for this bill. A draft letter has been developed for your use which is available [here](#). Please reach out to your House members today and urge them to support HR 2209.

GFOA

Thursday, November 5, 2015
