

Bond Case Briefs

Municipal Finance Law Since 1971

Two More Wisconsin Cities Weigh Redemptions of New CREBs, BABs.

The cities of Kaukauna and Oshkosh Wis. have announced they can redeem taxable direct-pay bonds because their redemption provisions were triggered by federal subsidy reductions that went into effect in March.

The cities disclosed the potential redemptions in event notices filed with the Municipal Securities Rulemaking Board's EMMA system on July 1 and 2.

Kaukauna issued \$25.35 million in taxable new clean renewable energy bonds in 2012. It also issued \$3.665 million of taxable electric system revenue Build America Bonds in 2010, of which about \$3.29 million remains outstanding, and another \$6.775 million of taxable electric system revenue BABs the same year, of which \$6.025 million remain outstanding.

Oshkosh issued \$5.74 million in taxable water revenue BABs in 2010, of which \$5.55 million remain outstanding.

Kaukauna and Oshkosh are the latest in a handful of issuers who have announced their intent to take advantage of their extraordinary redemption provisions to refund their direct-pay bonds because their subsidy payments were reduced by 8.7% from the \$85 billion in federal sequestration budget cuts for the current fiscal year.

The Bond Buyer first reported in April that at least 12 small Wisconsin cities were weighing their options for redeeming their BABs or other direct-pay debt. Eleven of those issuers were clients of advisory firm Ehlers Inc., which considered redemptions at par plus accrued interest. Ehlers Inc. also advised Oshkosh. Baird was underwriter and Chapman and Cutler LLP was bond counsel for Oshkosh.

Quarles & Brady LLP served as bond counsel on those 12 original transactions. The firm also bond counsel for the Kaukauna's new CREBs. Hutchinson, Shockey, Erley & Co. was underwriter.

Kaukauna wrote in its new CREB event notice that it "has determined that the extraordinary redemption provision has been triggered," but added: "At this point, the governing body of the issuer has not taken any action to redeem the obligations but may do so in the future."

The obligations are subject to redemption prior to maturity, in whole or in part, at the option of the issuer, on any day, at a redemption price equal to 100% of the principal amount redeemed plus accrued interest to the date of redemption, both the Oshkosh and Kaukauna notices said.

The new CREBs were issued to pay a portion of the costs of a hydroelectric project, according to bond documents. Kaukauna Utilities historically operated a hydroelectric plant on the Fox River. The project was to decommission a more than 100-year-old powerhouse and another powerhouse built in 1928 in order to construct a new powerhouse 150 feet upstream from the two locations.

The project would modify the power canal and install two new identical 3.6 megawatt turbines. The estimated cost for all related hydroelectric improvements was \$37 million, according to bond documents.

The BABs were issued for the acquisition of a hydroelectric generating facility and funding the reserve account.

New CREBs are taxable bonds that can be used either as direct-pay or as a tax-credit bond. CREBs are used by state and local governments, as well as public providers and electric cooperative companies, to finance renewable energy projects. Their subsidy payments are equal to 70% of interest costs.

In March the Treasury Department, in coordination with the Internal Revenue Service's chief counsel's office, announced they would issue guidance for a new process of allocating unused volume cap authority for new CREBs.

The new process will emphasize the allocation of volume-cap authority to issuers who demonstrate a readiness to timely issue bonds to finance projects. The Treasury Department has not yet issued the guidance.

Oshkosh wrote in its event notice that the city made the interest payment on the bonds on July 1 in full with the direct pay subsidy it received along with other available funds. Therefore there is no interest payment delinquency on the bonds.

"At this time, the city has not made any decision whether or not to redeem the bonds, but reserves its right to do so," the notice said.

Oshkosh's BABs were issued to provide funds for the public purpose of financing improvements and extensions to the city's water system, bond documents said.

BABs were first issued in 2009 as part of the American Recovery and Reinvestment Act but expired in 2010. Almost \$188 billion of BABs were issued since they were created.

by: JENNIFER DEPAUL