Bond Case Briefs

Municipal Finance Law Since 1971

State Budget Crisis Task Force: Revisit the Tower Amendment.

WASHINGTON — Congress should reexamine the Tower amendment and consider authorizing the Securities and Exchange Commission to require issuers to comply with “sensible” disclosure requirements as well as robust accounting standards, the State Budget Crisis Task Force recommended Tuesday in its final report.

The task force — led by former Lt. Gov. of New York Richard Ravitch and former Federal Reserve Board Chairman Paul Volcker — also made other recommendations aimed at improving accountability and transparency of state and local governments’ budgeting and financial reporting. It also said the federal government should be more aware of the impact of federal deficit reduction on state and local governments.

The Tower amendment, which was added in 1975 to the Securities Exchange Act of 1934 by former Sen. John Tower, R-Tex., prohibits the SEC and Municipal Securities Rulemaking Board from requiring issuers to directly or indirectly to file any information with them before the sale of their munis.

No other entity has the obligation or authority to require full transparency and disclosure of risk from municipal issuers, the report said. The SEC and MSRB place disclosure requirements on underwriters of munis rather than issuers. The task force wants there to be adequate disclose of the terms, conditions and risks of municipal finances.

In an interview with The Bond Buyer, Ravitch noted that the task force is not recommending repeal the Tower amendment but rather wants the issue to be publicly discussed.

In October, the National Association of State Treasurers readopted a resolution that opposes repealing or modifying the Tower amendment.

Ravitch acknowledged that requiring more disclosures ahead of sales “would be unpopular for mayors and governors and the municipal bond industry” but said that investors would be appreciative of such a change.

“It’s important to maintain liquidity for cities and states,” he said, adding that “these markets have to be sound, liquid, creditworthy.” Sometimes governments have appetites for borrowing when they should refrain from issuing debt, such as Puerto Rico and Detroit, Ravitch said.

The former New York lieutenant governor was not aware of any interest in Congress to revisit the Tower amendment, but said, “We’re going to try to rev some up.”

The recommendation was among many the report made in an effort to improve states’ accountability and transparency. Having reliable budget estimates and accessible data on financial and programmatic results is important for preventing and solving financial problems and could increase the public’s trust in government, the report said.

The financial crisis that began in 2008 revealed states' and localities' structural budget problems, as opposed to creating the problems. "This suggests that had government, the media, taxpayers, and the electorate been aware of the poor fiscal condition of state governments and the underlying trends and causes of those conditions, they may have been able to implement preventive and ameliorative steps," the task force said.

"At their heart, the economic events beginning in 2008 generated a severe revenue crisis. Lack of transparency and accountability constitutes bad financial, government, and political practice. Self-deception, either deliberate or unwitting, causes inaction and ignorance," the report continued. "Thus, not only is transparency in budgetary and fiscal reporting desirable, the absence of it can be a major cause of government fiscal problems."

Other recommendations for state and local governments include: using modified accrual budgeting instead of cash-based budgeting; having multi-year financial plans; having reserve funds that are adequate to meet any reasonably anticipated need; and making sure that the proceeds of short-term borrowings are repaid and not treated as an element of revenue.

Ravitch said many of the recommendations in the report were similar to actions taken for New York City to avoid bankruptcy in 1975.

The task force also recommended in its report that: states have statutory processes for imposing corrective actions on local governments that have a high risk of not meeting their obligations; state and local governments produce easily understandable financial reports; the federal government be more aware of the effects of its actions on the fiscal condition of states and localities; and, the federal government be required to make projections about how its actions and policies will impact state and local finances and services.

In addition, the report makes recommendations about how to better manage the impact of federal deficit reduction. "There can be an alarming disconnect between federal and state policymakers," the task force said.

The report urged the creation of a centralized, independent mechanism for improved reporting and analysis of state financial data, which could be housed in a federal department or the Congressional Budget Office. It also recommended the president issue an executive order to require cabinet agencies to coordinate with state and local governments on major actions affecting them. Additionally, the task force recommended that the federal government work with states to engage in a major review of policies affecting state governments.

BY NAOMI JAGODA

JAN 14, 2014 12:01am ET