Bond Case Briefs

Municipal Finance Law Since 1971

Archive:

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- **Program Note:** It has come to our attention that the typographical errors issue has unexpectedly returned with the proverbial vengeance. This problem does not appear when we internally view and test the newsletter on various platforms. The issue arises only when the publication is sent out and then opened in Microsoft Outlook, an increasingly outdated application. Should you see any of these glitches in your version of the newsletter, please simply scroll to the bottom of the page and click the "View it in your browser" link, which will fix the problem. Once again, our sincerest apologies.
- McDermott: SEC No-Action Letter Permits Non-ERISA Retirement Plans to Issue Participant Fee Disclosures Without Violating Securities Laws.
- SIFMA Submits Comments to SEC on Placement Agent Activities of Municipal Advisors.
- SIFMA: SEC 15c2-12 Estimates Full of Gross Inaccuracies.
- Pennsylvania Issues Mandatory RFQ for State Bond Counsel.
- A Pension for Trouble.
- *Pat Harrison Waterway Dist. v. County of Lamar* – Supreme Court of Mississippi holds that waterway district's duties to operate and maintain its water parks and other improvements under its federal contracts were not outstanding contractual obligations that county was responsible for paying when county withdrew from the district.
- And finally, the homeowners in *Brost v. City of Santa Barbara* thoroughly obliterate the otherwise fine line between persistence and idiocy when they convince the court to let them rebuild their homes – incinerated in a wildfire – on top of an active landslide. Yeah, those look like locusts to me too. I'm sure they'll fly on by.

EMINENT DOMAIN - CALIFORNIA

Brost v. City of Santa Barbara

Court of Appeal, Second District, Division 6, California - March 25, 2015 - Not Reported in Cal.Rptr.3d - 2015 WL 1361196

Plaintiffs own three parcels of land in an active landslide area known as Slide Mass C of the Conejo Slide. An ordinance adopted by the City of Santa Barbara in 1997 prohibits new construction on properties entirely within that slide mass. Plaintiffs resided on the properties until their homes were destroyed by a wildfire in November 2008.

When plaintiffs inquired about rebuilding their homes, the City maintained it had no discretion to permit reconstruction and declined to amend the ordinance to provide an exemption. The trial court determined the ordinance, as applied to plaintiffs, constituted an unlawful regulatory taking of their properties. To avoid having to compensate plaintiffs for a permanent taking, the City amended the ordinance in April 2012 to allow reconstruction. The court awarded plaintiffs damages for a

temporary taking plus attorney fees and costs. City appealed.

The Court of Appeal held that:

- City was not entitled to claim that plaintiffs' takings claim were not ripe for consideration because they failed to file formal applications to rebuild their homes, as the filing of development applications would have been futile because the City lacked discretion to permit any development on plaintiffs' properties; and
- The moratorium on new construction was not justified under principles of state nuisance law as, at best, uncertainty existed regarding the stability of the geology within Slide Mass C.

EMINENT DOMAIN - GEORGIA

Evans v. Department of Transp.

Court of Appeals of Georgia - March 19, 2015 - S.E.2d - 2015 WL 1244058

Department of Transportation (DOT) filed petition for condemnation of property for road construction project. The trial court entered judgment on jury verdict, valuing the condemned property at $50,000. Condemnees appealed.

The Court of Appeals held that:

- Evidence regarding city's zoning ordinance prohibiting mining on the property at issue was relevant to jury's valuation of property;
- Expert real estate appraisers' testimony regarding likelihood of a zoning change was not wholly speculative; and
- Jury instructions on mineral deposits and zoning considerations were not improperly conflicting.

Evidence regarding the city's zoning ordinance prohibiting mining on agricultural property, and the reasonable probability that a special exception for kaolin mining would be granted by the city in the future, was relevant to the jury's valuation of the condemned agricultural property in condemnation case initiated by Department of Transportation (DOT).

Opinion testimony of expert real estate appraisers regarding the likelihood of a change in zoning was not wholly speculative, and thus was admissible in condemnation proceedings involving property containing mineral deposits whose extraction was not permitted under property's present agricultural zoning classification. Experts testified regarding the information they relied upon in forming their opinions on property value, experts concluded that highest and best use of condemned property was its current agricultural use as timberland, experts distinguished a neighboring mine on the ground that it had started operation prior to zoning ordinance and had thus had been grandfathered in, and experts concluded that the grant of a special exception would be unlikely.

In condemnation proceedings involving property containing mineral deposits whose extraction was not permitted under property's present agricultural zoning classification, instructions charging jurors to consider existence of the kaolin deposit on the property in determining its value did not improperly conflict with instructions that jury should consider uses of property that were lawful under the zoning ordinance presently in effect, or uses for which there was a possibility or probability would become lawful under the zoning ordinance in the immediate future sufficient to have an effect on the value of the property; mineral deposits had intrinsic value as part of the land that were to be considered in valuing the property, and consideration of the intrinsic value of mineral deposits did not rule out the jury's also considering the uses to which the property could

lawfully be put.

CONTRACTS - GEORGIA

City of College Park v. Sekisui SPR Americas, LLC

Court of Appeals of Georgia - March 20, 2015 - S.E.2d - 2015 WL 1260157

Subcontractor that worked on city sewer project brought action against city when general contractor failed to pay subcontractor for work performed, alleging that city was liable because it had failed to ensure that general contractor obtained payment bond, and also asserting claims of quantum meruit, unjust enrichment, and implied obligation to pay. The trial court granted subcontractor's motion for summary judgment. City appealed.

The Court of Appeals held that:

- Subcontractor was not required to give ante litem notice to city prior to bringing action, disapproving *Jacks v. City of Atlanta*, 284 Ga. App. 200, 644 SE2d 150;
- Sewer project was necessitated by emergency, such that city was not required to obtain payment bond for project; and
- Subcontractor could not recover against city under implied contract theories of unjust enrichment, quantum meruit, or implied obligation to pay, absent direct contractual relationship between city and subcontractor.

IMMUNITY - GEORGIA

Tift County School Dist. v. Martinez

Court of Appeals of Georgia - March 20, 2015 - S.E.2d - 2015 WL 1260071

Mother of student filed negligence suit against county school district, school bus driver, and motorist who fatally struck student when he was attempting to board bus. The trial court denied district and bus driver's motion for summary judgment filed on sovereign immunity grounds. District and bus driver appealed.

The Court of Appeals held that:

- District waived immunity under statute, and
- Potential liability was limited to amount and scope of motor vehicle insurance coverage.

County school district was "any other political subdivision" of the State, and thus, its immunity was waived under statute providing for waiver of sovereign immunity for a municipal corporation, a county, or any other political subdivision of State for accidents arising from operation of its motor vehicles to the extent of coverage of motor vehicle insurance purchased, even though school districts were excluded from waiver of immunity under other circumstances. If General Assembly had intended to exclude school districts from statutory wavier of immunity, it could have used explicit language it had already employed, but it instead retained the different, more inclusive language.

County school district's potential liability to mother arising from death of son, who was hit by automobile while attempting to board school bus, was limited to amount and scope of district's

motor vehicle coverage in effect, rather than to every case of negligence, under statute waiving immunity for injuries sustained in accidents arising from operation of district's motor vehicles only while insurance was in force and only to extent of limits or coverage of insurance policy.

LIABILITY - MASSACHUSETTS

Saldivar v. Pridgen

United States District Court, D. Massachusetts - March 17, 2015 - F.Supp.3d - 2015 WL 1227818

Alleged victim brought action in state court against former police officer who allegedly assaulted and raped her, chief of police, and city, under various causes of action, including violation of § 1983 and Massachusetts Civil Rights Act. Chief and city removed the case to federal court and moved to dismiss the complaint.

The District Court held that:

- Chief did not have actual or constructive knowledge of the likelihood or possibility that officer would assault and rape a woman while on duty as required for § 1983 claim for supervisory liability;
- City did not have notice that police officer might assault and rape a woman while on duty as required to demonstrate that city had a policy amounting to deliberate indifference to the rights of victim under § 1983; and
- City did not have notice that police officer might assault and rape a women while on duty as required to demonstrate city's negligence in disciplining or properly supervising officer.

ZONING - MICHIGAN

Muslim Community Ass'n of Ann Arbor v. Pittsfield Charter Tp.

United States District Court, E.D. Michigan, Southern Division - March 20, 2015 - Slip Copy - 2015 WL 1286813

Pittsfield Charter Township, through its Planning Commission and Board of Trustees, denied a rezoning application submitted by the Muslim Community Association of Ann Arbor, doing business as Michigan Islamic Academy ("MIA"). According to MIA, the denial of the rezoning application meant that it could not build a new Islamic school on property within Pittsfield Township that it wished to utilize for that purpose. MIA claimed that the Township's decision to deny the rezoning application was based on hostility toward Islam, and asserted claims under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the United States Constitution, and the Michigan Constitution.

The District Court granted the Township's motion for Summary Judgment (with leave to amend) on the grounds that MIA had not offered any evidence showing that it had, or had ever had, a legally cognizable interest in the property.

EMINENT DOMAIN - MISSISSIPPI

Coleman v. Mississippi Transp. Com'n

Supreme Court of Mississippi - March 19, 2015 - So.3d - 2015 WL 1249572

The Mississippi Transportation Commission (MTC) brought eminent domain action against property owner. Following a bench trial, the Special Court of Eminent Domain entered a directed verdict in favor of the MTC, and property owner appealed.

The Supreme Court of Mississippi, en banc, held that:

- The Special Court of Eminent Domain's exclusion of the MTC's initial appraisal and cross-examination of the appraiser thereon, constituted reversible error;
- MTC's appraiser's initial appraisal did not constitute an "offer" for purposes of evidentiary admission in eminent domain proceeding;
- The Special Court of Eminent Domain erred by excluding the MTC's quick-take deposit and initial offer of compromise and settlement; and
- Issue of whether or not greater compensation was due property owner than offered by the MTC in its statement of value, and why MTC's appraiser changed his appraisal from $380,300 before the MTC brought its eminent domain action to $289,400 after the action was brought, was for the jury.

The initial appraisal by the Mississippi Transportation Commission's (MTC) appraiser was relevant and admissible for the purpose of determining the amount of just compensation due property owner following condemnation under the quick-take statutes, and thus, the trial court's exclusion of the initial appraisal and cross-examination of the appraiser thereon, constituted "reversible error."

The Mississippi Transportation Commission's (MTC) appraiser's initial appraisal of property owner's land did not constitute an "offer" for purposes of evidentiary admission in eminent domain proceeding, even if it was used to prepare an offer of settlement. To initiate condemnation of property owner's property, the MTC was required to both conduct an initial appraisal and make the landowner a fair-market-value offer, and an offer of compromise could not occur in an eminent domain proceeding prior to the filing of the complaint.

Trial court erred by excluding the Mississippi Transportation Commission's (MTC) quick-take deposit and initial offer of compromise and settlement which had been sent to landowner prior to MTC's filing of its eminent domain action, as neither the offer nor the deposit constituted the type of offer of compromise covered by the rule of evidence governing compromise offers and negotiations.

Issue of whether or not greater compensation was due property owner than offered by the Mississippi Transportation Commission (MTC) in its statement of value, and why MTC's appraiser changed his appraisal from $380,300 before the MTC brought its eminent domain action to $289,400 after the action was brought, was for the jury.

WATER DISTRICT - MISSISSIPPI

Pat Harrison Waterway Dist. v. County of Lamar

Supreme Court of Mississippi - March 19, 2015 - So.3d - 2015 WL 1249679

After independent auditor was appointed to determine amount county was responsible for paying following its withdrawal from waterway district, district filed objections to auditor's report. Following trial, the Chancery Court adopted auditor's schedule of liabilities. District appealed.

The Supreme Court of Mississippi held that:

- District’s future operations and maintenance costs were not outstanding contractual obligations county was responsible for paying;
- District’s lease agreement was not contractual obligation county was responsible for paying;
- Auditor’s exclusion of operations and maintenance costs from contractual obligations did not constitute impermissible legal opinion; and
- Substantial evidence supported trial court’s finding regarding amount county owed following withdrawal.

Waterway district’s duties to operate and maintain its water parks and other improvements under its federal contracts were not outstanding contractual obligations that county was responsible for paying when it withdrew from district. While it was possible that district’s duties to operate and maintain improvements would become outstanding in the future, district’s future operations and maintenance costs were not presently due and owing when county withdrew from district, duty to share in future maintenance and operational costs rested on counties that remained in district, and county’s withdrawal did not threaten district’s purposes, but merely shifted burden of paying to achieve those purposes to other counties or to the state.

EMINENT DOMAIN - NEW JERSEY

62-64 Main Street, L.L.C. v. Mayor and Council of City of Hackensack

Supreme Court of New Jersey - March 23, 2015 - A.3d - 2015 WL 1280829

Property owners filed action in lieu of prerogative writs, challenging city’s classification of their lots as blighted within meaning of the Local Redevelopment and Housing Law. The Superior Court affirmed. Property owners appealed. The Superior Court, Appellate Division, reversed. City sought review.

The Supreme Court of New Jersey held that:

- Definitions of blight in Local Redevelopment and Housing Law comply with standards set by the state constitutional Blighted Areas Clause, and
- Substantial evidence supported city’s blight determinations.

The state constitutional Blighted Areas Clause, granting municipal and public entities the authority to redevelop decaying neighborhoods, must coexist with individual rights enshrined in the state constitution, such as rights protected by the Eminent Domain Clause, which ensures that property will not be taken without just compensation. Redevelopment may not occur at the expense of individual rights of landowners.

Substantial evidence supported municipal planning board’s blight determination under Local Redevelopment and Housing Law, with respect to lot that had been part of a former automobile repair business and had been converted into a parking lot. Although owners sought to redevelop the property and the lot, standing alone, might not have met the definition of blight, expert testified that the lot could only be redeveloped in conjunction with neighboring lots containing vacant and dilapidated buildings, parking lot had no markings and no landscaping, and pavement was in disrepair and encroached onto sidewalk, creating a public-safety hazard.

EMINENT DOMAIN - NORTH DAKOTA

Irwin v. City of Minot

Supreme Court of North Dakota - March 24, 2015 - N.W.2d - 2015 ND 60

Landowners brought action against City for inverse condemnation in connection with City's removal of clay and topsoil from their property to construct emergency dikes to combat river flood. The District Court entered summary judgment in favor of City. Landowners appealed.

The Supreme Court of North Dakota held that genuine issues of material fact existed as to whether imminent danger facing City gave rise to an actual necessity for City to take landowners' property and thus precluded summary judgment.

UTILITIES - TEXAS

Southwestern Bell Telephone, L.P. v. Emmett

Supreme Court of Texas - March 20, 2015 - S.W.3d - 2015 WL 1285326

Telecommunications utility brought action against city, city director of public works and engineering, and county commissioners, seeking injunctive and declaratory relief, alleging that county flood control district was required to be responsible for cost of relocating utility's facilities located on city-owned bridge, in connection with flood control plan requiring demolition and reconstruction of bridge. The District Court granted commissioners' plea to the jurisdiction and entered summary judgment in favor of city and director. Utility appealed. The Houston Court of Appeals affirmed. Utility petitioned for review.

The Supreme Court of Texas held that:

- Statute required district to pay costs of relocation;
- Commissioners acted ultra vires in refusing to comply with statute; but
- Director did not act ultra vires in directing utility to relocate its facilities.

Statute, requiring flood control district to be solely responsible for expense of relocation of telephone properties or facilities when the district has "made necessary" the relocation, applied to require county flood control district to pay costs of relocation of telecommunications utility's facilities located on city-owned bridge, in connection with demolition and reconstruction of bridge as part of flood control project. Project was governed by contract between district and city, requiring city to name district as project manager and giving district power to require city to issue relocation notices to utilities.

PENSIONS - TEXAS

Klumb v. Houston Municipal Employees Pension System

Supreme Court of Texas - March 20, 2015 - S.W.3d - 2015 WL 1276557

City employees who had been transferred to a local government corporation brought action against municipal pension board, asserting constitutional violations and breach of contract and seeking declaratory and injunctive relief in connection with system's determination that plaintiffs remained municipal employees and were therefore not entitled to begin receiving retirement benefits or to defer their retirement status. City intervened. The District Court granted defendants' plea to the jurisdiction. Plaintiffs and city appealed. The Houston Court of Appeals affirmed. Plaintiffs and city

petitioned for review.

The Supreme Court of Texas held that:

- Pension board did not act ultra vires;
- Pension board did not violate employees' equal protection rights; and
- Pension board did not violate employees' state constitutional due process rights.

Municipal pension board did not act ultra vires, as an exception to unavailability of judicial review of the action under statute governing pension boards in cities of 1,500,000 or more, by interpreting term "employee" to include city employees who had been transferred to a third-party local government corporation. Definition of "employee" was composed of essential terms that were undefined in statute, board had authority to supplement the statute, and the supplemental language the board adopted neither inherently nor patently conflicted with the terms of the statute.

Municipal pension board did not act ultra vires, as an exception to unavailability of judicial review of the action under statute governing pension boards in cities of 1,500,000 or more, by delegating authority to a committee to determine whether city employees who had been transferred to a third-party local government corporation remained municipal employees, even if the delegation of authority violated a meet-and-confer agreement between board and city. Any claim that board violated meet-and-confer agreement was a breach-of-contract claim that could not be maintained absent a waiver of sovereign immunity.

Municipal pension board did not violate the equal protection rights of city employees who had been transferred to a third-party local government corporation by determining that the employees remained municipal employees required to pay into pension fund, even if board treated them differently than other former city employees who had been transferred separate legal entities due to municipal outsourcing, since action was rationally related to board's legitimate interests in preserving sources of pension funding and in lessening the risk of overpaying pensioners or allowing them to "double dip."

Municipal pension board did not violate the state constitutional due process rights of city employees who had been transferred to a third-party local government corporation by determining that the employees remained municipal employees required to pay into pension fund, since the action did not deprive employees of vested property rights. Employees had no vested property right to the pension plan contributions or future retirement benefits.

Puerto Rico Extends Deadline.

Puerto Rico's cash-strapped power utility got a reprieve from creditors at a time of heightened worry about the financial health of the U.S. territory.

Prices on some Puerto Rico bonds slumped to record lows last week amid concerns that problems at the Puerto Rico Electric Power Authority, known as Prepa, could be the harbinger of bigger trouble.

The utility on Monday said it reached another agreement with creditors to push back a deadline—this time by 15 days—to extend some loans. Without a deal, it may need to repay about $696 million borrowed to help fund operations. The most recent deadline was Tuesday.

"All parties believe advances have been made and there is merit to continue conversations with our

creditors to find feasible solutions," said Lisa Donahue, the authority's chief restructuring officer, in a news release.

Some general-obligation bonds backed by the island and issued last year as part of a $3.5 billion sale traded at about 82 cents on the dollar last week. Some bonds touched a record low of about 79.4 cents Friday, below the previous low in February of 81 cents. Yields, which rise as prices fall, rose to about 10%.

The S&P Municipal Bond Index Puerto Rico, a broad, market-value-weighted index of debt from the island, has fallen 1.3% this month, including prices and interest payments.

This contrasts with the rest of the bond market, where investors have shrugged off warnings about a rise in interest rates by the Federal Reserve, sending yields on the 10-year Treasury note to 1.959% on Monday and pushing the broad municipal market index up 0.2%.

"Puerto Rico seems to be moving on its own nowadays, meaning it moves down while the rest of the market is stable or up," said Daniel Solender, director of municipal-bond management at Lord Abbett & Co., which oversees about $17 billion in tax-exempt debt. He declined to discuss if he had bought or sold the commonwealth's bonds recently.

Investors have faced months of uncertainty from Puerto Rico's economic woes. The island has more than $70 billion in debt that is widely held because it is exempt from federal, state and local taxes.

A Puerto Rico law that attempted to create an orderly bankruptcylike process for the power authority and other agencies has been thrown out in court.

Plans for tax overhauls have bogged down. The commonwealth is working to borrow as much as $2.9 billion to fund operations. Several island lawmakers have proposed amending the island's constitution to remove protections for bondholders.

Mutual funds are among those paring holdings. Almost one-quarter of municipal-bond funds that owned Puerto Rico debt sold it last year, according to data from research firm Morningstar Inc.

More than half of municipal-bond mutual funds still have debt from the commonwealth, down from about 70% at the end of 2013.

Hedge funds and distressed-debt traders were among the buyers of the $3.5 billion sale in 2014. Some are now purchasing the debt below face value, expecting to recover more than they spent even in the event of a restructuring or default, several investors said.

Prepa is at the forefront of the island's financial woes. The authority, which has about $9 billion of debt, is struggling to find cash to fund operations and pay lenders as the commonwealth struggles with steep unemployment and a weak economy.

Prepa will likely default on a $400 million July payment to bondholders, according to Moody's Investors Service. The junk-rated authority has already missed a March 2 deadline to provide lenders with a restructuring plan.

According to Richard Donner, vice president and senior credit officer at Moody's, it is a good sign that creditors are still negotiating.

A spokeswoman for Prepa declined to comment, citing a confidentiality agreement.

Overhauling the island's public entities has been a priority for the administration of Gov. Alejandro García Padilla as it tries to restart the economy, eliminate budget deficits and reassure investors that the island's fiscal health is improving.

That included passing a law in June that would have allowed the island's power, water and transportation authorities to restructure about $20 billion in debt. Puerto Rico is barred from permitting its government entities to access Chapter 9 bankruptcy protections afforded cities like Detroit.

A spokeswoman for the commonwealth declined to comment.

Prepa bond prices, which fell after the law's passage, rose after a federal judge blocked it last month, saying it was unconstitutional. That ruling is under appeal. Also last month, a U.S. House of Representatives panel held a hearing on a bill that would permit Puerto Rico to allow its agencies access to Chapter 9 protections.

A report by Janney Capital Markets this month said that a Prepa default may be just the beginning. Population declines, increasing debt and pension burdens still drag on the economy, and other Puerto Rico bonds will probably also default or restructure in coming years, including general-obligation and sales-tax bonds.

Melba Acosta, president of the island's Government Development Bank, who is also fighting for the governor's tax-overhaul plan, said in a statement that the bank and administration both oppose the proposed legislation that would reduce investor protections on tax-supported debt.

"There seems to be a drumbeat on the island toward bondholders sharing pain," said Robert Donahue, managing director at Concord, Mass., research firm Municipal Market Analytics.

That could complicate efforts for a new bond sale by the government. Fitch Ratings last week downgraded Puerto Rico's general-obligation debt further into junk territory, citing recent statements by lawmakers that call into question the ability of the government to borrow the money and its willingness to repay debt.

John Mousseau, director of fixed income at Cumberland Advisors, Sarasota, Fla., said his firm bought the 2014 bonds and traded them quickly. While he now restricts Puerto Rico holdings to bonds protected by insurance, he said there may be value there eventually.

"You start to wonder at what price they would be a great buy," he said.

THE WALL STREET JOURNAL

By AARON KURILOFF

Updated March 30, 2015 10:02 p.m. ET

Write to Aaron Kuriloff at aaron.kuriloff@wsj.com

[Lumesis and Ipreo Announce Partnership to Deliver Time-of-Trade Disclosure Solution.]

via PRWEB – Lumesis Inc., a leading provider of data, business efficiency and regulatory compliance solutions for the municipal market, has announced a strategic partnership with Ipreo, a leading global provider of workflow solutions and market intelligence to financial services and corporate professionals. The two companies will now offer direct access to DIVER Advisor Municipal Bond Reports directly from Ipreo's Bookrunning system.

"This partnership brings a solution for time-of-trade disclosure regulations directly into the Ipreo new issue workflow," said Gregg L. Bienstock, Esq., CEO and Co-Founder of Lumesis. "Delivery of the Official Statement does not address disclosure obligations, so Ipreo users will benefit from the simplicity of accessing our comprehensive muni bond reports for new issue compliance."

The DIVER Advisor Municipal Bond Reports are the only solution to efficiently address the MSRB Time-of-Trade Disclosure Rule (G-47), amended Suitability Rule (G-19) and Supervisory requirements (G-27). The reports are comprehensive, CUSIP-driven municipal bond overviews for over 1.1 million bonds. A subscription to DIVER Advisor is available immediately through the Ipreo and Lumesis sales teams.

"Streamlining our clients' workflow through the integration of data and software is the core premise of our solutions," said Allen Williams, EVP & Managing Director, Global Fixed Income Capital Markets at Ipreo. "Having the DIVER Advisor reports directly available from our bookrunning application enhances our clients' compliance efforts in keeping with new regulations."

About Ipreo

Ipreo is a global leader in providing market intelligence, data, and technology solutions to all participants in the global capital markets, including sell-side banks, publicly traded companies, and buy-side institutions. By combining state-of-the-art new issuance systems with the premier global financial and investor data, Ipreo enables our capital markets clients to execute deals more efficiently, maximizing time and resources. Our applications include end-to-end bookbuilding systems, roadshow & conference management platforms, and electronic document delivery. Additionally, Ipreo's suite of investor prospecting and CRM solutions offer the most accurate and comprehensive institutional contacts data and profiles in the industry. Ipreo is the only financial services provider to offer solutions across all asset classes for the Equity, Fixed Income, Municipal, and Syndicated Loan markets. Ipreo is private-equity held by Blackstone and Goldman Sachs Merchant Banking Division, and has more than 800 employees supporting clients in every major financial center around the world. For more information, please go to http://www.ipreo.com.

About Lumesis, Inc.

Lumesis, Inc. is a financial technology company focused on providing business efficiency, data and regulatory solutions to the municipal bond marketplace. Founded in 2010, Lumesis is completely dedicated to serving the municipal market with industry-leading analysis and compliance solutions that meet the needs of an evolving regulatory environment. Today, the company's DIVER platform helps over 100 firms with over 30,000 users efficiently meet credit, regulatory and risk needs. Lumesis investors include Safeguard Scientifics, Inc. SFE, -0.28% Learn more at http://www.lumesis.com

Published: Mar 30, 2015 5:04 a.m. ET

Tobacco Bond Issuers Refinance Amid Smoking Decline.

Tobacco bonds may be on their way to the biggest volume since 2007, led by Wednesday's $1.7 billion sale from California, as issuers take advantage of historically low interest rates to refinance.

Amid a decline in smoking that's cut deeply into revenue, tobacco bond issuance this year is also highlighted by a $621 million sale last month in Rhode Island and a possible $875 million deal from Louisiana later in 2015.

Under the 1998 Master Settlement Agreement, tobacco companies agreed to pay 46 states for expenses related to smoking illnesses. Many states then formed corporations to raise cash by selling bonds backed by future settlement revenue streams from the tobacco firms.

Since 1999, more than $62 billion of tobacco bonds have been sold, according to Thomson Reuters. Most of the issuance took place in 2005 and 2007 when about $6 billion and $17 billion were issued, respectively. In 2014, only about $175 million of tobacco bonds were sold. Assuming all three deals are completed, 2015 issuance would bring the most supply in eight years.

Many of the older bonds were sold when U.S. cigarette consumption was higher, boosting revenue to the tobacco companies — the basis of their payments to the states. The revenue decline combined with lowered ratings on some issues has led market professionals to look at the sector as a source of both consternation and opportunity.

"One key thing to look at with these bonds is: `Who is doing the study of cigarette demand and consumption and how accurate is it?'," said Michael C. Craft, managing director of credit at Lumesis, Inc.

Craft said that original tobacco bonds performed acceptably, based on the assumption of consumption declines. The problem is that the declines have now outpaced the predictions.

"Within the tobacco sector, the bonds that were issued earlier have better credits for two main reasons: one is that the financial structure and degree of leverage was conservative," he said. "The other is that they have had a chance to pay down some of the bonds before factors became an issue, such as [non-participating manufacturer] adjustments and more rapid decline in consumption."

Legal experts caution investors to know what they are buying — both now and in the future.

"Whether investors are buying new bonds in the primary or existing bonds in the secondary, they would be well advised that after doing their credit analysis to look at the bond indentures," Leonard Weiser-Varon principal at the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo told The Bond Buyer. "They should look at the plumbing as to determine what the true risks are in what they are getting."

Both Weiser-Varon and colleague Paul Ricotta also foresee some legal skirmishes ahead.

"Many expect debt service defaults on some tobacco bonds to occur within the next five years," they wrote in a March 18 Bond Buyer commentary. "Although such defaults have not yet occurred, it is not too early for holders to take a hard look at the applicable bond documents to evaluate their rights and leverage in the restructurings or refinancings that have begun and which may proliferate in the years ahead."

Rhode Island Roughhouse

On March 11, Citigroup Global Markets priced the Rhode Island Tobacco Settlement Finance Corp.'s $621 million of asset-backed bonds. But the bonds weren't issued without a legal fight.

OppenheimerFunds Inc., in its capacity as a holder of Series 2007 B and C bonds, had filed a suit to halt the sale. It had argued the offering wrongfully created an amendment of the 2007 indenture and would have constituted a fraudulent transfer intended to circumvent a subordination structure.

In January, a judge dismissed the suit. The new issuance resulted in a $36 million payment to the corporation and the state, said Timothy Mungovan, a partner in the law firm of Proskauer Rose who represented the TSFC. The state is expected to save almost $1 billion over 40 years, he added.

Citi priced the TSFC's $15.26 million Series 2015A taxables at par to yield 0.59% in 2015 and 0.80% in 2016. The bonds were rated A by Standard & Poor's and triple-B-plus by Fitch Ratings. The TSFC's $288.64 million Series 2015B were priced at par to yield 2.25% in 2041, as 4 1/2s to yield 4.625% in 2045 and as 5s to yield 4.80% in 2050. The bonds were rated triple-B-plus by Fitch.

The TSFC's $317.05 million Series 2015A tobacco settlement asset-backeds were priced to yield from 0.46% with a 3% coupon in 2016 to 3.81% with a 5% coupon in 2030; a 2035 term was priced as 5s to yield 4.09% and a 2040 term was priced as 5s to yield 4.34%. The bonds were rated A by S&P and triple-B-plus by Fitch except for the 2026 to 2030 and 2035 maturities which are rated A-minus by S&P and the 2040 maturity which is rated triple-B-plus by S&P.

According to the Municipal Securities Rulemaking Board's EMMA website, the TSFC's Series 2015A 5s of 2040 were last traded on March 18 at a low yield of 4.14%.

California: Different, Yet the Same

This week, California's Golden State Tobacco Securitization Corp. will be coming to market with its $1.7 billion tobacco bond deal.

The bonds are enhanced by a pledge from the state to seek an annual appropriation for debt service and operating expenses should settlement payments fall short. Proceeds will be used to repay existing tobacco bonds that do not benefit from a pledge from the state and so are more vulnerable to a shortfall in settlement payments.

"My sense is that the 'state backed' tobacco bonds trade more like state debt (particularly state appropriated), than like 'pure' tobacco bonds," Craft said. "The investors in these bonds are exposed to MSA payments only if the state doesn't meet its appropriation obligations to bondholders."

The asset-backed bonds, scheduled to be priced by Citi on Wednesday after a one-day retail order period, are rated A1 by Moody's Investors Service and A by both S&P and Fitch.

The Golden State Tobacco Securitization Corp. originally sold tobacco settlement bonds in 2003 to provide one-time resources for the state general fund under two separate, parity indentures, according to Fitch. The master indenture for series 2003B, to which 43.43% of the state's future tobacco settlement revenues under the master settlement agreement are pledged, was enhanced with the state appropriation backup. The other bonds originally issued under a separate 2003A master indenture do not carry the state appropriation enhancement.

The official statement for the $1.7 billion for the CGSTC offering includes a research report prepared by James Diffley, a senior director at IHS Global Inc., that forecasts a continued decline in U.S. cigarette consumption through 2045.

"Our forecast indicates that total consumption in 2045 will be 104.0 billion cigarettes (or 104.6 billion including roll-your-own tobacco equivalents), a 61% decline from the 2014 level," the report said. "From 2015 through 2045 the average annual rate of decline is projected to be approximately 3.0%."

The report includes key factors affecting cigarette consumption such as electronic cigarettes, medical cessation benefits, price elasticity of demand, disposable income and smoking bans, to name a few.

The report also stated that in April 2013, IHS Global presented a similar study — a forecast of U.S. cigarette consumption (2012-2045) for the Tobacco Settlement Financing Corporation. That report projected consumption in 2045 of 105.7 billion cigarettes (including roll-your-own equivalents), reflecting an average decline rate of 3.0%.

"The difference, 1.1 billion, is primarily due to weaker than expected consumption in 2013," according to the report.

Louisiana TSFC Gives Preliminary Bond OK

The Louisiana Tobacco Settlement Financing Corp. is moving ahead to securitize the remaining 40% of the state's share from the Master Settlement Agreement with tobacco companies.

The deal, in which $875 million of bonds would be issued to raise funds for the state's higher education scholarship program, still must be approved by the Legislature and other state agencies.

Louisiana securitized 60% of its tobacco settlement revenue in 2001 with the sale of $1.2 billion in bonds. The agency will retain the same finance team that worked on a $660 million tobacco bond refunding in 2013. The professionals on the 2013 deal were Public Resources Advisory Group Inc. as financial advisor, Citi as senior underwriter, and Foley & Judell LLP and Hawkins Delafield & Wood LLP as co-bond counsel.

The new securitization is expected to go before the State Bond Commission April 16, and the Joint Legislative Committee on the Budget May 20. A bill authorizing the deal is expected to be filed and assessed in the legislative process. If lawmakers approve the issuance, the bonds likely would be sold in June.

Rating Agencies Perspectives

In May 2014, Moody' Investors Service published a report on the impact of declining cigarette shipments on U.S. tobacco settlement bonds. Moody's based the projections of declining shipments (4.9% in 2013) and performed a break-even analysis that estimates the annual rate of decline in cigarette shipments that would lead to bond defaults under its base-case cash flow assumptions. Moody's expects that 65%-85% of the aggregate outstanding balance of all tobacco settlements bonds that Moody's rates, will default.

Earlier this month, Standard & Poor's released a rating direct presale report on the tobacco settlement financing corp. Series 2015. S&P conducted a cigarette volume decline test, which is intended to assess the transactions ability to withstand steeper than historical average annual declines in U.S. cigarette consumption. S&P used the cash flow assumption that cigarette shipments will decline 5.25% in the transactions first year two years and 4.75% thereafter.

"Based on our calculations, the results of our `standard' stress tests indicate that all rated classes in this transaction were able to withstand the rest, with a sizeable cushion to absorb additional

potential disruptions or reductions of the MSA payments," the report stated.

Market Performance, Trading

Tobacco bond performance has been characterized in general by stability in between bouts of volatility combined at times with illiquid trading conditions.

"Liquidity has been an issue lately for tobacco bonds," an analyst at Markit said. "The usual factors pressuring tobacco are decreased consumption and credit risk. The latest pressure is now the uncertainty as to when the Federal Reserve will increase rates."

Looking at two separate issuers, the Buckeye Tobacco Settlement Financing Authority, Ohio, and the Golden State Tobacco Securitization Corp., Calif., the patterns of trading activity are similar.

The Buckeye Series 2007 A-2 asset-backed 6 1/2s of 2047 starting off 2015 trading yielding 7.54% on Jan. 2 and yielding 7.38% on March 16. The bonds traded as high as 7.535% on Jan. 5 and as low as 7.14% on Jan. 30, according to Markit.

The Golden State Series 2007 A-1 asset-backed 5 3/4s of 2047 started off the year trading at a yield of 7.11% and ending on March 16 at 6.96%. The bonds traded as high as 7.11% on Jan. 2 and as low as 6.61% on Jan. 30, according to Markit.

THE BOND BUYER

BY CHIP BARNETT and AARON WEITZMAN

MAR 24, 2015 12:41pm ET

Paul Burton, Shelly Sigo and Allison Bisbey contributed to this report.

McDermott: SEC No-Action Letter Permits Non-ERISA Retirement Plans to Issue Participant Fee Disclosures Without Violating Securities Laws.

In a no-action letter dated February 18, 2015, the U.S. Securities and Exchange Commission (SEC) extended relief from the application of Rule 482 of the Securities Act of 1933 to certain retirement plans that are exempt from the Employee Retirement Income Security Act of 1974, as amended (ERISA) (e.g., certain deferral only 403(b) plans, governmental 457(b) plans, church plans).

When the U.S. Department of Labor (DOL) issued final regulations in 2010 pertaining to participant-level fee disclosures for tax-qualified retirement plans that provide for participant-directed investments, it was identified that the DOL-required disclosures might be inconsistent with certain disclosure requirements under SEC Rule 482. Rule 482 provides parameters around information provided by an investment company that could be classified as advertisements (e.g., investment performance data). Because of the potential conflict between the DOL regulations and Rule 482 (pertaining to such items as timing of updated investment information as well as various narrative disclosures), the SEC issued a no-action letter in October 2011 stating "[the SEC] agrees to treat information provided by a Plan Administrator to Plan Participants…that is required by and complies with the disclosure requirements set forth in the DOL Rules as if it were a communication that satisfies the requirements of Rule 482…" This alleviated the tension created when an ERISA plan attempted to comply with both set of rules and concluded that it could simply follow the DOL final

regulations instead without violating Rule 482.

Although the DOL disclosure regulations apply only to ERISA plans, many plan sponsors offering retirement plans not subject to ERISA find that participants benefit from the same investment disclosure information. However, those same plan sponsors found that they were not exempt from the application of Rule 482, because the October 2011 no-action letter does not extend to non-ERISA plans. Consequently, the SEC has now issued a comparable no-action letter to equally cover participant-level fee disclosure statements issued to participants in non-ERISA plans (including, but not limited to, non-ERISA 403(b) plans, governmental and non-governmental 457(b) plans, governmental 401(a) plans, 415(m) plans, church 401(a) plans, governmental or tax-exempt 457(f) plans, and governmental or tax-exempt 409A plans).

In order to avail itself of the protection of the SEC no-action letter, a non-ERISA plan must comply with the following:

- Each investment vendor must enter into a written agreement with the plan sponsor that the vendor will provide the DOL required investment information on each investment option it offers under the particular non-ERISA plan, as well as the respective fee and expense information, to the extent it is available.
- The written agreement must state the date on or before which the investment vendor will provide the information to the non-ERISA plan participants.
- The investment vendor must agree to update the investment information at least annually, update the performance information at least quarterly (disclosed on an internet website address listed pursuant to the DOL requirements) and identify a designated contact person as a source of additional information to address participant requests for information specified in the DOL disclosure regulations.
- The investment information must be provided to new participants before their first investment and to all other participants at least annually.
- The investment information cannot include any other information that is not otherwise required to comply with the DOL disclosure regulations.
- Assuming the above conditions are satisfied, the SEC will treat the DOL disclosure as not violating Rule 482.

Sponsors of non-ERISA plans might want to consider providing fee disclosures to participants now that the SEC has extended relief from Rule 482. Since the relief for ERISA and non-ERISA plans is now aligned, many sponsors of non-ERISA plans may be able to utilize standard fee disclosure services provided by recordkeepers without violating SEC rules.

Last Updated: March 23 2015
Article by Mary K. Samsa, Todd A. Solomon and Brian J. Tiemann
McDermott Will & Emery

McGuireWoods: IRS Extends Safe Harbor for Completion of PTC-Qualifying Facilities to Jan. 1, 2017.

Yesterday, March 11, 2015, the Internal Revenue Service issued Notice 2015-25, which extends by one year certain tests taxpayers can use to establish that a qualifying renewable energy facility is eligible for the production tax credit (PTC) or, alternatively, the investment tax credit (ITC).

Notice 2015-15 updates prior IRS guidance in response to a change made by the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, 128 Stat. 4010 (2014 Extenders Bill). The date by which construction must have begun for a qualifying renewable energy facility to be eligible for the PTC or ITC was extended from "before January 1, 2014," to "before January 1, 2015." Under prior guidance, a taxpayer could establish the beginning of construction by either starting physical work of a significant nature (Physical Work Test) or paying or incurring 5 percent or more of the total cost of the facility (Safe Harbor). Under either method, the taxpayer was required to make continuous progress toward completion once construction began. Prior guidance further provided that if a facility was placed in service before January 1, 2016, the facility would be considered to satisfy the Continuous Construction Test (for purposes of satisfying the Physical Work Test) or the Continuous Efforts Test (for purposes of satisfying the Safe Harbor).

Under Notice 2015-25, taxpayers now have until January 1, 2017, to complete construction of pre-2015 facilities. The IRS extension of the Continuous Construction and Continuous Efforts tests does not apply to Section 1603 Grants, which have independent requirements to complete construction by a certain date and, in many instances, dates that have already passed.

The PTC provides certain renewable-energy-electricity-producing projects (including those involving wind, geothermal sources, biomass and municipal solid waste, such as biomethane) with a tax credit of approximately $0.023/kWh for energy generated and sold to a third party. The tax credit can be claimed for the 10-year period following commercial operation of the project and often is used in tax equity transactions to offset some of the capital costs of constructing qualifying renewable energy facilities. Alternatively, taxpayers can elect to take the ITC in lieu of the PTC for certain qualifying facilities. The ITC provides a one-time tax credit equal to 30 percent of the tax basis of the qualifying facility.

One-Year Extension of the PTC Drives IRS Extension of the Safe Harbor

The notice provides a one-year extension of the current Continuous Construction Test and the Continuous Efforts Test provided in IRS Notice 2013-60. The PTC previously expired on January 1, 2014, but was extended late last year. Under the 2014 Extenders Bill, a taxpayer would be eligible to claim the PTC, or the ITC in lieu of the PTC, if construction began on the qualifying renewable energy facility before January 1, 2015. As now revised, the Continuous Construction and Continuous Efforts tests are consistent with this one-year extension.

Prior IRS Guidance for Satisfying "Begin Construction" Requirement

As noted above, a taxpayer can satisfy the "begin construction" requirement of Code Section 45(d) if it meets either the Physical Work Test or the Expenditure Safe Harbor before January 1, 2015. In both cases, the taxpayer must make continuous progress toward completion once construction has begun. In an effort to provide clarity and certainty to the Continuous Construction and Continuous Efforts tests, the IRS issued Notice 2013-60. The earlier, 2013 notice provided a useful safe harbor by deeming the continuous construction or efforts requirement to be satisfied if the facility was placed in service before January 1, 2016. Notice 2015-25 extends this date to January 1, 2017.

At the time the IRS provided the initial safe harbor for satisfying the continuous construction or efforts requirement, the PTC was set to expire on December 31, 2013. This gave taxpayers two years after the scheduled PTC expiration date to place facilities into service and still satisfy the Continuous Construction or Continuous Effort Test without having to show that they were making continuous progress toward completion once construction began. As explained below, the extended date of January 1, 2017, is important to current projects.

2014 PTC Extension Created Construction Pressure and Questions

The passage of the 2014 Extenders Bill placed construction pressure on 2014 projects since they could rely on the safe harbor for satisfying the continuous construction or efforts requirement only if their projects were actually completed before the end of 2015. Tax practitioners also began fielding questions from developers concerned that projects satisfying the begin-construction requirement in 2014 would likely spill into 2016, given construction schedules, financing considerations and other commercial matters. Many developers had valid concerns about how to meet the Continuous Construction or Continuous Efforts tests without a safe harbor, and how to satisfy the conservative nature of tax equity investors or project lenders.

Safe Harbor Extension Relieves Construction Pressure for 2014 PTC Projects

Fortunately, the IRS has now issued guidance allowing facilities that are completed before January 1, 2017, to satisfy the Continuous Construction and Continuous Efforts tests if construction of the facility began before January 1, 2015. This extension of the safe harbor comes at a valuable time, when 2014 projects still have sufficient opportunities to secure construction contracts, financing and tax equity investments. Additionally, the safe harbor extension creates IRS precedent to extend the safe harbor in lockstep with any future extensions of the PTC. Clearly, the IRS intends to allow a two-year window after the expiration of the PTC for taxpayers to complete construction of a renewable energy facility without having to show continuous progress toward completion once construction of a qualifying facility has begun.

Last Updated: March 23 2015

Article by E. Brett Breitschwerdt, Douglas W. Charnas, Douglas E. Lamb, Durham C. McCormick Jr. and Robert G. McElroy

McGuireWoods 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.

McDermott: IRS Issues Additional Guidance on Beginning of Construction Rules for Renewable Projects.

The Internal Revenue Service (IRS) issued Notice 2015-25 (Notice) on March 11, 2015, to provide further guidance on meeting the beginning of construction requirements for wind and other qualified facilities (biomass, geothermal, landfill gas, trash, hydropower, and marine and hydrokinetic facilities). The Notice extends the date by which a facility can meet the beginning of construction deadline to correspond with the extension of Code Section 45 passed by the U.S. Congress at the end of 2014.

Background

The Tax Increase Prevention Act of 2014 (Act) extended through December 31, 2014, the deadline by which construction of a qualified facility must begin for purposes of qualifying for the production tax credit under Code Section 45 (PTC) or the investment tax credit under Code Section 48 (ITC). Previously, a taxpayer could only meet the deadline by placing the facility in service prior to January 1, 2014. Following the extension of the ITC and PTC, a taxpayer may be eligible for the ITC or PTC if

construction of the facility began before January 1, 2015.

The Notice updates the guidance provided in prior notices (Notices 2013-29, 2013-60 and 2014-46, together referred to herein as the Prior Guidance) consistent with the statutory extension under the Act. The Notice notes that the IRS will not issue private letter rulings to taxpayers regarding the application of the Notice or the application of the beginning of construction requirement under Code Sections 45(d) and 48(a)(5).

Notice 2013-29

Under Notice 2013-29, a taxpayer may establish that construction has begun on a qualified facility by demonstrating that "physical work of a significant nature" has begun (Physical Work Test) or by satisfying a 5 percent safe harbor (Safe Harbor). Notice 2013-29 lists several examples of work that meet the Physical Work Test, including, with respect to a wind energy facility, the beginning of the excavation for the foundation, the setting of anchor bolts into the ground or the pouring of the concrete pad of the foundation. Work completed onsite or offsite may be taken into account. The IRS also imposed a requirement that a "continuous program of construction," as defined in the Prior Guidance (Continuous Construction Test), be maintained after performance of physical work in 2013.

The Safe Harbor set forth in Notice 2013-29 provides that the construction of a qualified facility is considered to have begun before January 1, 2014, if a taxpayer paid or incurred (within the meaning of Treas. Reg. Section 1.461-1(a)(1) and (2)) 5 percent or more of the total cost of the facility before such date. Thereafter, the taxpayer must make continuous efforts to advance toward completion of the facility (Continuous Efforts Test) to be deemed to have begun construction.

For more information on these tests and their requirements, see McDermott's On the Subject regarding Notice 2013-29.

Notice 2013-60

In September 2013, the IRS issued Notice 2013-60, clarifying questions left outstanding by Notice 2013-29. See McDermott's previous On the Subject for more information. First, Notice 2013-60 provided that a facility will be considered to satisfy the Continuous Construction Test and the Continuous Efforts Test if it is placed in service before January 1, 2016. Second, Notice 2013-60 permitted a taxpayer to claim the PTC or ITC even if the taxpayer was not the owner of the facility on the date construction began.

Notice 2014-46

Notice 2014-46 clarifies that the Physical Work Test focuses on the nature of the work performed rather than the amount or cost of such work. Notice 2014-46 also provides guidance regarding transfers of a facility by the taxpayer that begins construction of a facility prior to placing the facility in service. This Notice modifies the Safe Harbor rule set forth in earlier guidance by providing that, if a taxpayer incurred at least 3 percent of the total cost of such a facility before January 1, 2014, the Safe Harbor may be satisfied with respect to some (although not all) of the individual facilities that are part of this larger project. See McDermott's summary in its On the Subject regarding Notice 2014-46.

Notice 2015-25

The Notice extends the relevant dates under the Prior Guidance so that the beginning of construction guidance mirrors the 2014 statutory extension of the PTC and ITC under the Act. Prior

to the statutory extension of the PTC and ITC, Code Sections 45(d) and 48(a)(5) required that construction of a qualified facility begin before January 1, 2014, for the facility to be eligible for the PTC or ITC. Based on the language of those sections as in effect before the Act, the Prior Guidance provided guidance to determine whether construction has begun on a qualified facility prior to January 1, 2014. Because the Act extended the date by which construction of a qualified facility must begin to January 1, 2015, the Notice replaces all references to "January 1, 2014" in the Prior Guidance to "January 1, 2015" as such references relate to the date by which construction must begin on a facility.

As noted previously, Notice 2013-60 provided that a facility will be considered to satisfy the Continuous Construction Test and the Continuous Efforts Test if it is placed in service before January 1, 2016. Consistent with the one-year extension of the beginning of construction date under the Act, the Notice extends the placed in service date provided in Notice 2013-60 to January 1, 2017. Thus, if a taxpayer begins construction of a facility prior to January 1, 2015, and places the facility in service before January 1, 2017, the facility will be considered to satisfy the Continuous Construction Test (with respect to the Physical Work Test) or the Continuous Efforts Test (with respect to the Safe Harbor), regardless of the amount of physical work performed or the amount of costs paid or incurred with respect to the facility after December 31, 2014, and before January 1, 2017.

Conclusion

The Notice provides much-needed clarity for taxpayers that began construction of a facility prior to January 1, 2015, pursuant to last year's statutory extension of the ITC and PTC.

Last Updated: March 23 2015

Article by Gale E. Chan, Madeline M. Chiampou Tully, Heather Cooper, Martha Groves Pugh and Philip Tingle

McDermott Will & Emery

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.

[SIFMA Webinar Opportunity: Earn Ethics CLE Credits from Your Desk - April 23.]

Join SIFMA for an Ethics Webinar and earn two ethics credit hours from your desk.

Panel Topic: Ethics for Financial Services Lawyers

- Internal Investigations
- Beauty Contests
- Whistleblower Anti-Retaliation
- Employee Rights and Representation
- Recent Ethics Case Law

Register.

IRS EO Update: e-News for Charities & Nonprofits - March 25, 2015

1. Register for IRS webinar: Unrelated Business Income Tax and Tax-Exempt Organizations

Wednesday, April 8

2-3 p.m. ET

Presentation topics include:

- Unrelated Business Income Tax
- Three parts test
- Common types of UBI activities
- Exceptions and exclusions
- Principal form used to report
- IRS resources

Register for this presentation.

2. Public comment invited for 2015-2016 Priority Guidance Plan

The Department of Treasury and the IRS invite public comment on recommendations for items that should be included on the 2015-2016 Priority Guidance Plan.

Review Notice 2015-27.

3. Recent revocations

For latest list, go to Revocations of 501(c)(3) Determinations.

4. Don't include Social Security numbers on publicly disclosed forms

Because the IRS is required to disclose exemption applications and information returns, tax-exempt organizations should not include personal information, such as Social Security numbers, on these forms. Brochures and other extraneous materials also are not required and should not be sent.

5. Register for EO workshops

Register for our upcoming workshops for small and medium-sized 501(c)(3) organizations. Remember to check this page periodically for new workshops being planned in a town near you.

DOT Announces Pilot Program Permitting Local Hiring Preferences: Holland & Knight

HIGHLIGHTS:

- The U.S. Department of Transportation (DOT) announced a pilot program that would permit state and local recipients of federal highway and federal transit funds to issue solicitations with "local hire" preferences.

- In its notice, DOT states “the DOT believes that local and other geographic-based hiring preferences are essential to promoting Ladders of Opportunity for the workers in these communities.” DOT also intends to permit the use of veteran hiring preferences and hiring preferences for economically disadvantaged (i.e., low-income) workers.
- There have been – and will likely continue to be – several significant legal issues to local hiring preference programs. DOT states that it will use the pilot program “to determine whether state and local preferences may be used consistent with the [DOJ’s] 2013 legal opinion.”

The U.S. Department of Transportation (DOT) announced a pilot program that would permit state and local recipients of federal highway and federal transit funds to issue solicitations with “local hire” preferences. DOT also proposes to amend its regulations to permit the use of such hiring preferences “whenever not otherwise prohibited by Federal statute.” According to the notice, the pilot program appears to apply – effective immediately – to new bid announcements. Comments on the proposed changes to DOT’s regulations are due April 6, 2015.

DOT Seeks to Promote Local “Ladders of Opportunity”

Many state and local governments have local hiring provisions that otherwise apply to their procurements, however, federal law has long been held to preclude the use of such preferences when using federal highway or transit funds. As set forth in the notice, DOT is in favor of these preferences and states “the DOT believes that local and other geographic-based hiring preferences are essential to promoting Ladders of Opportunity for the workers in these communities.” FR 12092. To this end, DOT also intends to permit the use of veteran hiring preferences and hiring preferences for economically disadvantaged (i.e., low-income) workers. However, as discussed below, there have been – and will likely continue to be – several significant legal issues to local hiring preference programs.

A federal statutory provision (23 USC 112), requires full and open competition in the bidding of federally funded transportation contracts, and has been interpreted to prohibit local hiring preferences in projects receiving federal funding. This statutory directive has been carried over into DOT’s regulations that are now found in the federal “Common Rule” applicable to federal assistance agreements (2 CFR 200.319(b)) (prior to last year this provision was set forth in DOT’s regulations at 49 CFR 18.36(c)(2)(2014)).

This long-standing statutory and regulatory scheme was interrupted, at least in part, by a narrow provision in the FY2015 Consolidated Appropriations Act (2015 CAA) which precludes the Federal Transit Administration (FTA) from using any fiscal year 2015 funds “to implement, administer or enforce” the provisions of 49 CFR 18.36(c)(2). __ P.L. ___ §418. According to DOT, the result of this “no funds” language is, “at least for FTA-funded project (sic) in FY 2015, Congress has diminished the legal effectiveness of this provision,” (i.e., the regulatory provision barring local hiring preferences).

23 USC §112 requires recipients of federal aid highway grant funds to award federally funded construction contracts by “competitive bidding.” The statute goes on to specify that awards are to be made on the basis of the “lowest responsive bid submitted by a bidder meeting established criteria of responsibility.” It also provides that a recipient may only deviate from competitive methods if it can demonstrate the other method is “more cost effective or that an emergency exists.” 112(b)(1).

DOT Using Its Pilot Program to Test DOJ’s 2013 Opinion

For many years DOT has interpreted this provision as creating an outright ban on local hiring preferences. In 2013, DOT’s Office of Legal Counsel received a lengthy opinion from the Department

of Justice (DOJ) in 2013, which concludes that

Section 112 authorizes FHWA to exercise discretion to approve federally funded highway construction contracts – notwithstanding state or local requirements that have more than an incidental impact on the pool of eligible bidders and are unrelated to the necessary work – so long as such requirements, in FHWA's judgment, advance the purposes of this statute and thus do not unduly limit competition.

Against this backdrop DOT has unveiled the pilot program and states that it will use the pilot "to determine whether state and local preferences may be used consistent with the 2013 legal opinion." FR 12093. DOT invokes certain "experimental authorities" to justify its use of a pilot and states that it will "monitor and evaluate whether the contract requirements approved for use under the pilot program have an undue restriction on competition." FR 12093.

FHWA and FTA Pilot Programs Vary Regarding Prior Approval

Because the "experimental" authorities DOT invokes are slightly different for FHWA and for FTA, the pilot programs vary slightly.

For FHWA-funded projects, state and local recipients must receive prior approval by FHWA to impose local hire preferences. DOT directs state and local recipients (and subrecipients) to "follow the normal process that includes submitting work plans to the appropriate FHWA division office." Notice, p. 6-7. DOT further suggests some minimum points that such work plans should address, including describing:

- the project
- any contracting requirement that may be found inconsistent with the general requirement for full and open competition
- how the relevant contracting requirement would increase the efficiency and effectiveness of the project
- how it would "protect the integrity of the competitive bidding process"

The FTA provisions are largely the same and suggest recipients and subrecipients address virtually identical criteria. However, DOT has not imposed a prior approval requirement. In declining to do so, DOT points to the "no funds" language in Section 418 of the FY2015 CAA as prohibiting DOT from taking any action to approve such preference provisions in advance. However, DOT is still requiring recipients and subrecipients to provide reports on the implementation of these policies so DOT can evaluate them.

Debate and Litigation of Federal Statutory Bidding Requirements Will Continue

The debate over the extent of federal statutory competitive bidding requirements is far from new. As noted in the DOJ's 2013 Opinion, the scope and applicability of those requirements – and the extent to which state and local bidding and evaluation criteria are permissible – has been the subject of debate and litigation for decades. This includes several cases in the fairly recent past about the use of project labor agreements. Putting aside whether DOT's stated goals are meritorious from a policy standpoint, it seems likely that the body of case law in this area is about to grow again.

Last Updated: March 24 2015

Article by Robert K. Tompkins and Michael L. Wiener
Holland & Knight

Robert K. "Bob" Tompkins is a Partner in our Washington DC office and Keith M. Wiener is a Partner in our Atlanta office.

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.

Pennsylvania Issues Mandatory RFQ for State Bond Counsel.

The Pennsylvania Governor's Office of General Counsel ("OGC") is updating its general pool of qualified Law Firms to serve as Bond Counsel. From time to time, to the Commonwealth of Pennsylvania Office of the Budget and other agencies and authorities subject to the General Counsel's authority, including but not limited to the Pennsylvania Economic Development Financing Authority; Pennsylvania Energy Development Authority; Pennsylvania Housing Finance Agency; Pennsylvania Infrastructure Investment Authority; Pennsylvania Industrial Development Authority; Pennsylvania Higher Educational Facilities Authority; State Public School Building Authority; and the State System of Higher Education have need for bond counsel services.

A Request for Qualifications ("RFQ") has been issued pursuant to Section 518 of the Commonwealth Procurement Code, 62 Pa.C.S. §518, in accordance with Executive Order 2015-2 dated January 20, 2015, to specify a uniform format for Statements of Qualifications to be submitted by Law Firms in order to be qualified in the new Bond Counsel Pool. **The Bond Counsel Pool that is being established pursuant to this procurement replaces, in its entirety, the prior pools of qualified Bond Counsel that were established beginning in 2007.**

The Commonwealth will consider the Statements of Qualifications submitted in response to this RFQ and will establish a general Bond Counsel Pool of Law Firms meeting the Minimum Qualifications contained herein. Subject to the exceptions and conditions set forth in Executive Order 2015-2, when a specific financing transaction is identified, the Commonwealth issuer ("Agency") will issue a request for proposals ("RFP") with the specific requirements (the "Specific Qualifications") relating to the transaction and the timeframe for responses to the Bond Counsel Pool. Only Law Firms qualified in the Bond Counsel Pool may respond to the RFP. The Agency will select the bond counsel firm determined to be the best qualified based on the evaluation factors set forth in the RFP. The final amount of fair and reasonable compensation shall be determined through negotiation.

ALL Law Firms wishing to participate in any capacity as Bond Counsel to the Commonwealth of Pennsylvania must submit their qualifications pursuant to this RFQ. OGC desires a diverse pool of bond counsel firms for the purpose of best assisting its Commonwealth issuers in meeting their financing goals. Firms of all kinds and sizes, including but not limited to small, diverse and women-owned firms, are encouraged to apply for admission to the Pool. Accordingly, this RFQ application process does not have a deadline. However, a Law Firm must be qualified in the Bond Counsel Pool in order to submit a proposal for a specific financing transaction announced by the Commonwealth.

The following firms are current members of OGC's Bond Counsel Pool:

Archer Greiner, PC
Ballard Spahr, LLP
Barley Snyder
Buchanan Ingersoll & Rooney, PC

Clark Hill, PC
Cohen & Grigsby, PC
Cozen O'Connor
Dilworth Paxson, LLP
Drinder Biddle & Reath, LLP
Duane Morris, LLP
Eckert Seamans Cherin & Mellott, LLC
Fox Rothschild, LLP
Greenberg Traurig, LLP
Hartman Underhill & Brubaker, LLC
King Spry Herman Freund & Faul, LLC
Kutak Rock, LLP
McNees Wallace & Nurick, LLC
Mette, Evans & Woodside
Obermayer Rebmann Maxwell & Hippel, LLP
Rhoads & Sinon, LLP
Saul Ewing, LLP
Squire Patton Boggs, LLP
Stevens & Lee
Stradley Ronon Stevens & Young, LLP
Zarwin Baum DeVito Kaplan Schaer Toddy, PC

Pennsylvania Sets Precedent with P3 Deal for Bridges.

Pennsylvania set out to fix a major statewide problem: structurally deficient bridges.

Its solution could set a precedent.

The Rapid Bridge Replacement Project, Pennsylvania's first public-private partnership, is also the first P3 in the U.S. to bundle multiple bridges into a single procurement

Pennsylvania intends to replace 558 bridges over three years. Last month the commonwealth raised $800 million through an oversubscribed sale of private activity bonds led by JPMorgan and Wells Fargo Securities.

The sale, which closed March 18, attracted more than 40 investors. Standard & Poor's rated the bonds BBB.

"What we're doing is addressing a serious problem in a calculated way," said Bryan Kendro, the P3 director at the Pennsylvania Department of Transportation.

"I think if I could pick an initial P3 for a state, this one would be straight out of central casting," said John Schmidt, a partner at Mayer Brown LLP in Chicago. "It does something very important, is less expensive, had strong competition and you had a winning team, all with an $800 million private activity bond."

Plenary Walsh Keystone Partners, a consortium of construction, engineering and financing companies, won the bid last October. The team consists of Plenary Group, Walsh Group, Granite Construction Inc. and HDR Engineering Inc. Walsh and HDR maintain Pennsylvania offices. The team also includes 11 Pennsylvania-based subcontractors.

“I believe Plenary Walsh will do everything they said they’ll do,” said Schmidt, who advised Chicago in its $1.8 billion privatization of the Chicago Skyway toll bridge.

Ross Moskowitz, a partner at New York’s Stroock & Stroock & Lavan LLP, sees multiple benefits with the deal.

“You’d have to hold their feet to the fire, but my guess that it would cost significantly less than the standard PennDOT projects,” said Moskowitz, a former executive vice president with the New York City Economic Development Corp. and former executive director of the New York City Industrial Development Agency. “Whatever the delta is, the generated savings can go into other projects. That’s the beauty of it.

“Take bridges – you have similar classes of bridges for what’s needed,” Moskowitz said. “You probably have a similarity of types of bridges with the same character, structural design and deficiencies. You could do a mass production, putting them all together as one P3 contracting, allowing respondents to bid with greater efficiencies.”

Plenary Walsh expects to begin the work in May. According to Kendro, the company anticipates completing 77 bridges in the first year – up from its original projection of 58 — and targets completion of the overall project by the end of 2017.

The bid process triggered a healthy competition, Kendro said.

“We were able to rely on Plenary Walsh to execute a plan of finance,” he said. “We were just the beneficiaries of being in the market at the right time, and we were able to realize an additional $25 million in interest savings. These were very attractive bonds.”

Pennsylvania’s project could also spark a flurry of P3 activity in the Northeast, which has lagged other regions.

“I think Pennsylvania’s one of the leading Northeast P3 states right now. It’s putting some other local states to shame,” Squire Patton Boggs LLP attorney Roddy Devlin said in a recent Bond Buyer video. “It’s a very interesting project. Common approach in Europe and Canada, less common in the U.S., but if that model takes hold, it has the potential to open up the floodgates for adding lots of smaller projects into a single P3.”

The commonwealth is also seeking qualifications from companies interested in competing for a P3 that would fund, build, and operate up to 37 facilities to fuel public transit buses with compressed natural gas produced in the state. The Public-Private Transportation Partnership Office expects to issue a request for proposals later this spring.

Moody’s Investors Service said last fall the U.S. has the potential to become the world’s largest P3 market, given the sheer size of its infrastructure.

“Late to develop its P3 availability-payment market, the U.S. is able to benefit from lessons learned in the U.K. and Canada, and to some extent Mexico,” Moody’s said in a commentary.

Pennsylvania’s bridge project is one of several transportation-related P3 transactions in active procurement or expected to some to market in 2015. Others include Interstate 70 in Colorado, the Indianapolis Consolidated Justice Complex in Indiana, and managed lanes, bridge replacement and toll concession deals in Texas.

U.S. P3 activity in recent years has clustered around California, Florida, Texas and Virginia.

Then-Gov. Tom Corbett signed a Pennsylvania P3 law in 2012. One year later, lawmakers passed a transportation bill that called for a $7.4 billion investment over five years. The Act 89 bill restructured the state's gas tax and increased a variety of fees, but armed the commonwealth with new revenue to fix its decaying infrastructure amid declining federal aid.

In crafting the P3 deal, Pennsylvania had to fend off in-state skeptics who recalled former Gov. Ed Rendell's failed efforts in 2007 and 2008 to privatize the Pennsylvania Turnpike. A plan to lease Turnpike operations over 75 years to Spain's Abertis Infraestructuras and Citi Infrastructure Investors died in the legislature.

"We have a long history of P3s that never made it to the finish line," said Kendro. Most recently, at the local level, efforts to sell Philadelphia's Gas Works utility stalled in City Council.

"If you ask the contracting community, they were skeptical about our ability to get something different done," Kendro said.

"The biggest skeptics we were seeing were the P3 people at the national level, the contractors, investors and design firms that may have bid on the Turnpike," he said. "From the start, we tried to build credibility and prove that this is not a one-off proposal."

According to Moskowitz, transparency early in the process is essential.

"You've got to communicate early and often with all the stakeholders. That doesn't mean everyone has to be in agreement, but the worst thing for any P3 project is for there to be mistrust within a community," he said.

"Before and during meetings with the government, you have to meet with the community repeatedly in order to avoid any accusation of bait and switch. In any PPP, you have some guiding principles and one of them is to have an aligned vision on what is the ultimate goal, and here the ultimate goal is the rehabilitation of these bridges."

The project straddled the tenures of governors Corbett, a Republican, and Tom Wolf, a Democrat who unseated Corbett last November.

"I can't praise both administrations enough," said Kendro. "Gov. Corbett and [former DOT Secretary] Barry Schoch were very supportive, then the new administration came in after the signing and helped with the financial close. We didn't miss a beat."

Pennsylvania thus calmed a P3 market that quickly gets skittish about political risk, said Mayer Brown's Schmidt, a former associate attorney general in the U.S. Department of Justice and former chief of staff for Chicago Mayor Richard M. Daley.

"This was a very well done deal that transcended a shift in gubernatorial administrations from one party to another," said Schmidt.

In New York, Gov. Andrew Cuomo's executive budget proposal to extend design-build authority could stall in the legislature. Such authorization expired last December. Design-build enables a contractor to submit a singular bid for both the design and construction of projects. Proponents cite cost and time savings, and innovation incentives.

"It's going to be a challenge," said Maria Doulis, director of New York City studies for the Citizens Budget Commission watchdog organization. "It's a little discouraging because if it's so tough to enact design-build, how will New York be able to catch up in this P3 environment?"

THE BOND BUYER

BY PAUL BURTON

MAR 27, 2015 11:13am ET

The Bond Buyer's Midwest Municipal Market Symposium.

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The Bond Buyer's Midwest Municipal Market Symposium, June 30 at the InterContinental Chicago Magnificent Mile, will feature presentations explaining market changes and what other evolutions could be ahead—as Congress re-evaluates the market's historic tax preferences and investors and regulators work to improve its efficiency.

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SIFMA Submits Comments to SEC on Placement Agent Activities of Municipal Advisors.

In a letter to the SEC, the Securities Industry and Financial Markets Association (SIFMA) told Chair Mary Jo White that it "believes that investors should not lose important protections by permitting municipal advisors to act as placement agents without registration as broker-dealers… [and] that the Commission should not provide for an exemption from the Investment Advisers Act for registered municipal advisors, as such an exemption would leave municipal issuers without the significant protections provided for under the Investment Advisers Act, as to which there is no adequate substitute in the municipal advisor regime."

The letter was in response to one submitted to the SEC by the National Association of Municipal Advisors (NAMA) in December which requested that the SEC exempt registered municipal advisors from being required to register as broker-dealers or as investment advisers in connection with

specified municipal advisor activities.

The SIFMA letter can be seen here.

Obama's Transportation Plan Would Broaden Tolling.

DALLAS — President Obama's revised six-year, $487 billion transportation proposal, delivered to Congress on Monday, would allow states to levy variable tolls on existing roads to alleviate traffic congestion, in addition to removing the long-standing ban on tolling existing interstate highways.

The Grow America Act 2.0, an expanded and extended revision of a similarly named four-year measure by the president in 2014, includes $317 billion for road projects, an increase of 29% from current funding, and $116 billion for mass transit, an increase of 76%. The transportation measure would be supported with $240 billion of fuel tax revenues and $238 billion from a new mandatory 14% transition tax on corporate foreign earnings.

The six-year proposal goes to Congress two months before the lapse of the current $10.8 billion extension of the Highway Trust Fund on May 31.

The new transportation proposal would remove the current federal prohibition of tolls on existing interstate highways if the new revenue is dedicated to road improvements anywhere on a state's system, not just the tolled segment. Revenues generated by road tolls could be used to upgrade mass transit systems within the highway's transportation corridor.

States and other public agencies could also levy variable-priced tolls on existing roads, bridges, and tunnels for congestion management, and could convert high-occupancy vehicle lanes to tolled express lanes.

Transportation Secretary Anthony Foxx said the six-year plan is needed to provide states with long-term funding assurance.

"Our proposal provides a level of funding and also funding certainty that our partners need and deserve," he said. "This is an opportunity to break away from 10 years of flat funding, not to mention these past six years in which Congress has funded transportation by passing 32 short-term measures."

Foxx warned that transportation infrastructure will continue to deteriorate without increased funding.

"I'm not going to sugar-coat it," he said at a transportation forum Monday sponsored by Politico.

"Our road systems are really falling apart. The truth is that after years of under-investment our transportation infrastructure is starting to show cracks."

Foxx conceded that it would be difficult to pass a multiyear transportation bill funded through corporate tax reform before the May deadline, but said the effort is worthwhile.

"We have a bill and it is paid for," he said. "We've got to get out of this box of rooting against ourselves as a country. The answer to the problem is a political one."

Foxx encouraged state and local officials to contract their congressional delegation in support of the

president's transportation bill.

"During these next two months, though, all of us who work in Washington need to be relentless in trying to get to 'yes' on a bill that is truly transformative and that brings the country together," he said.

The administration's proposal supports public-private transportation investments by creating an undersecretary position for innovative finance within DOT and raising the cap for federally allocated transportation-dedicated private activity bonds to $19 billion from the current $15 billion, Foxx said.

The six-year bill would provide $77.16 billion of total federal transportation spending in fiscal 2016, rising to $82.3 billion by fiscal 2023. Current spending is about $55 billion a year.

Revenues from federal gasoline and diesel taxes are expected to total $239.3 billion over the period.

The proposal includes a new $6 billion competitive grant program for innovative highway and transit projects and doubles the current funding for the Transportation Investment Generating Economic Recovery discretionary grant program to $7.5 billion.

A new intermodal competitive grants program would provide $18 billion over six years for rail, highway, and port freight movement projects. The measure would also provide $28.6 billion for high performance rail and passenger rail.

THE BOND BUYER

BY JIM WATTS

MAR 30, 2015 2:51pm ET

IRS Guidance Will Enable Some Zones to Qualify for Tax Credit: Tax Analysts

The IRS explained that businesses in a particular area that currently don't qualify for the empowerment zone employment credit for 2014 will, with the implementation of new IRS guidance, qualify for the credit as long as the entity that nominated the area as an empowerment zone provides a new termination date of December 31, 2014.

Continue Reading (subscription required).

Tax Analysts
March 31, 2015

SIFMA: SEC 15c2-12 Estimates Full of Gross Inaccuracies.

WASHINGTON – The Securities and Exchange Commission's revised estimates of the burden of complying with its main disclosure rule are still full of "gross inaccuracies," the Securities Industry and Financial Markets Association told the commission.

SIFMA managing director, associate general counsel and co-head of municipal securities Leslie

Norwood made the dealer group's position clear in a five-page letter sent to the SEC on March 27. The letter was a response to an updated set of SEC estimates about how much time it takes market participants to comply with the commission's Rule 15c2-12.

The rule requires dealers, before they underwrite munis, to review issuers' official statements and reasonably determine that the issuer has contracted to disclose annual financial and operating information, as well as material event notices, on the Municipal Securities Rulemaking Board's EMMA website.

In November, the SEC sought comment on its estimated burdens for complying with the rule and received widespread industry criticism. Market participants said the commission drastically underestimated the time and effort required to comply with the rule. The commission asked for the comments as required by the Paperwork Reduction Act of 1995, which states that federal agencies must publish a notice describing, among other things, the information it collects, the current estimate of the number of respondents providing the information, the annual burden imposed on each respondent, and the total burden for all respondents.

In its original request for comment, the SEC estimated that 20,000 issuers, 250 dealers, and the MSRB spend more than 115,000 hours per year complying with 15c2-12. The commission has since raised that estimate to 621,758 hours. The SEC now estimates that an issuer requires two hours to prepare and submit material event notices to EMMA, up from 45 minutes in the first estimate.

"These estimates continue to seriously and materially underestimate the time burden of the rule on broker dealers," Norwood said of the commission's latest numbers, which peg the dealer compliance burden as 10 hours per year per firm to determine that an issuer has entered into a continuing disclosure agreement. In a competitive offering, she wrote, SIFMA estimates firms spend on average 6 man-hours on each offering they bid.

"First, the deemed-final preliminary official statement, or offering document, must be reviewed for completeness against publicly available financials and industry news," Norwood wrote. "The offering document also needs to be reviewed to make sure that the security for the bonds is adequately and correctly described and that there is no outstanding litigation that would tend to impair the bonds' validity or the ability of the issuer or obligor to make the interest and principal payments."

Norwood said the SEC may be sending a troubling "mixed message" to the industry by running an enforcement program that is targeted to hammering home the point that more review of issuer disclosures is needed while simultaneously underestimating the work needed to do those reviews.

SIFMA suggested that automated collection techniques could help reduce the burden. Since all muni rating agencies now report their ratings live to EMMA, issuers should no longer have to file rating changes as material events notices, Norwood wrote. Bond lawyers meeting at a National Association of Bond Lawyers conference earlier this year had discussed that possibility, but were split on whether the SEC would take that step.

THE BOND BUYER

BY KYLE GLAZIER

MAR 30, 2015 2:21pm ET

TAX - MICHIGAN

City of Sterling Heights v. Chrysler Group, L.L.C.

Court of Appeals of Michigan - March 19, 2015 - N.W.2d - 2015 WL 1258090

On June 15, 2012, Chrysler filed two petitions for air pollution control tax exemption certificates with the Michigan Department of Treasury.

In December 2012, the Tax Commission held a hearing on Chrysler's petitions. At the hearing, the City of Sterling Heights contended that Chrysler's painting building did not qualify for exemptions because it served the primary purpose of painting vehicles rather than removing air pollution. Chrysler responded that it could seek exemptions for those portions of the building that did serve the primary purpose of air pollution control. The Commission declined to refer the petitions to the Michigan Department of Environmental Quality (MDEQ), and it granted the air pollution control certificates in the full amounts.

Sterling Heights appealed to the circuit court. The parties reiterated the arguments that they raised before the Commission. The circuit court reversed and remanded. It reasoned that, because the Commission was required to submit the petition to the MDEQ but had failed to do so, its decision was not supported by competent, material, and substantial evidence. The circuit court required the Commission to refer the petitions to the MDEQ "for a technical evaluation." Chrysler appealed.

The Court of Appeals affirmed, holding that:

- Chrysler could seek an exemption certificate for parts of a structure, as long as the primary purpose of that part of the structure was pollution control;
- Chrysler was not entitled to rely on the MDEQ's list of preapproved facilities, as the list did not contain the specific equipment or parts of structures for which Chrysler sought exemption.

Kingdome Debt to be Retired 15 Years After Implosion.

On the 15th anniversary of the implosion of the Kingdome, a King County official said enough lodging-tax revenue has been collected to pay off debt of the former home of the Mariners and Seahawks.

Fifteen years after the Kingdome was imploded, King County taxpayers have finally stopped paying for the stadium that was home to the Mariners and Seahawks.

King County budget director Dwight Dively said Thursday that enough lodging-tax revenue has been collected to pay off what's left of the $67.6 million in municipal bonds issued to repair the Kingdome's tile roof back in 1994. The bonds can't technically be paid in full until year's end, so the $18.7 million still owed in principal plus interest will be placed in an escrow account until that time.

"It's been a good couple of years in the hotel industry,'' Dively said of the lodging tax on hotels and motels used to pay off the debt. "It isn't just the money that's come in this year. The last two or three years have been significantly stronger than expected.

"That's not surprising, given the economy and how attractive this area is.''

The Kingdome was imploded March 26, 2000 — 15 years ago Thursday — about 24 years after it

opened.

The hotel/motel tax is 15.6 percent in Seattle, with 2 percent earmarked for Kingdome roof repairs, and is expected to generate $24.8 million for the county this year. Dively said the 2 percent amount no longer needed for the Kingdome will instead go to the 4Culture program, which helps arts, heritage and preservation efforts within the county.

King County taxpayers have financed the stadium via municipal bonds since 1972, when construction began on a stadium that opened in 1976. The original $40 million in bonds used for construction costs weren't paid off until 2011.

Water seepage caused four 26-pound ceiling tiles to fall into the seating area July 19, 1994, a half-hour before fans were allowed into the stadium to see the Mariners play the Baltimore Orioles. The Mariners were forced to play their final 20 games that year on the road before the baseball players' strike ended the season.

The Seahawks had to play both home exhibition games and their first three regular-season contests at the University of Washington's Husky Stadium that year as repairs were completed. Two construction workers died during repairs before the Kingdome reopened in early November, but the falling tiles helped prompt calls to replace the Kingdome with new sports venues that eventually materialized nearby with Safeco Field and CenturyLink Field.

The Seattle Times

Geoff Baker

Originally published March 26, 2015 at 3:34 pm Updated March 26, 2015 at 6:15 pm

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A Pension for Trouble.

Sometimes knowing what not to invest in is better than knowing what to buy. No longer hiding in plain sight are the public unfunded state, city and teachers pension liabilities. The numbers are staggering. Some of our elected officials have chosen to load their unfunded liabilities onto the backs of municipal bond investors. Don't fall for it.

Here are some specifics: According to Bloomberg, there have been $340 million worth of pension bonds sold so far in 2015. But wait—billions more are on the way. Those currently on the radar screen include Kentucky Teachers Retirement for $3.3 billion; Pennsylvania with $9 billion; Kansas with $1.5 billion; and New Haven, CT with $125 million.

From the Detroit bankruptcy, Pension Obligation COP bond owners recovered a measly 13 cents on the dollar. That's all, just 13 cents. The pension plans (composed of voters) fared far better.

The rationale proposed by these under funded entities is to sell taxable municipal bonds, then inject the proceeds into their respective funds. They're betting the farm that they can earn more investing in the markets than it costs them to pay you, the pension bondholder. Sounds like a good idea. Until, you remember that the equity markets have hit all-time highs. How much higher do these savants think it will go before it retreats?

A decade ago New Jersey tried the same thing and Illinois followed. The market went against them.

Their pension payments fell behind. Now they're in even worse shape than if they had never issued the pension bonds. These pension bond issues are generally going against professional wisdom and advice. The Government Finance Officers Association recommends against it. BlackRock, a manager overseeing $116 billion in state and local debt, does too.

What do the rating agencies have to say about Pension Obligation Bonds? A lot. Moody's is now weighing in on those unfunded liabilities in their overall bond ratings. For that I am glad. However, beware that retail investors will be the last to learn about any downgrades due to unfunded pensions.

Do not invest in any taxable pension obligation bonds. Corporate bonds will prove a better source of taxable income.

One that I like is DirecTV. They may be blessed by the regulators to be acquired by AT&T. If the acquisition happens the two companies combined will have a formidable market share of the video and television business. It also appears there will be business synergies. Buy DirecTV 3.80% due March 15, 2022 CUSIP: 25459HBF1.

The issue size is $1.493 billion so execution is not a problem. If you pay 104, that's 3.16% yield to maturity on this non-callable bond. Even though the bond has a change of control provision investors will welcome the acquisition because the rating agencies have it on an upgrade watch.

Most investors are familiar with REITs. Digital Realty is a specialized REIT in the technology space. Its facilities house tech industry enterprise data centers that Digital Realty customizes and leases to their clients. Buy Digital Realty bonds, 3.625% due October 1, 2022, CUSIP: 25389JAK2. If you pay 100.75, you'll earn 3.51% to maturity with a well-deserved BBB investment grade rating.

Leave those Pension Obligation Bonds to those who don't do their homework. The risk isn't worth it.

Forbes

Marilyn Cohen, Contributor

3/26/2015

State Pension Problems Create Hidden Muni Risks.

Traditionally, investors seeking retirement income have put a significant portion of their assets into municipal bonds.

After all, the risks are supposedly low, and the income is free from federal income tax. That's an important consideration for those in a high tax bracket even after retirement.

But today I'd like to issue a stern warning for all upcoming retirees…

In the current low-interest-rate environment, the risk-return tradeoff for muni bonds is downright frightening.

America's Growing Gap

Across the country, state pension fund deficits have yawned since the 2008 financial crash. And the

problem has only appeared to lessen recently because of the Fed-fueled stock market rise. When the Fed normalizes interest rates, it's likely that the stock market will normalize, too, which will further increase state pension fund deficits.

If a recession occurs at the same time, it's unlikely that state revenue will be able to cover pension fund holes… As a result, numerous state and municipal bankruptcies could occur.

If you want to see the kinds of losses muni investors could face if things go wrong, look no further than Detroit's recent bankruptcy.

Even the most senior general obligation bondholders received just $0.74 on the dollar, while more junior bondholders received as little as one-third of their money. Municipal pension recipients, meanwhile, were almost fully protected.

It also doesn't help that valuable assets – in this case, the $8-billion Detroit municipal art collection – proved impossible to liquidate for the benefit of bondholders. That failure reversed the deal bondholders thought they had, where senior debtholders were supposed to rank ahead of almost everybody except the IRS.

Editor's Note: Muni bonds sure look hazardous – but where are investors supposed to turn? Well, did you know there's a brand-new, private currency sweeping America right now? One simple investment could net $56,700 in the next 9 to 12 months. But you must act fast to maximize your gains…
So where are the biggest pitfalls right now?

According to a Bloomberg report, 2013's worst state pension-funding gap was in Illinois, where state pensions are 39% funded. Kentucky (44% funded) and Connecticut (49% funded) weren't far behind. New Jersey (64% funded) ranked 17th worst. But more recent 2014 data, calculated on a new accounting basis with less "smoothing" of investment returns, suggests that New Jersey pensions were only 28% funded.

The problem is widespread, with only six of 50 states more than 90% funded. Naturally, investors should avoid the states with the biggest gaps – especially when bonds from the country's worst-funded state only yield a little over 2% for a 10-year maturity, according to Municipalbonds.com. That yield (which barely covers inflation) carries considerable price risk should interest rates rise. And in no way does it compensate investors for the Illinois default risk.

Plus, investors once had an additional advantage when buying their own state's municipal bonds – interest is free from both state and federal income tax in that instance – but today's ultra-low interest rates have mostly destroyed that benefit.

Consider Illinois' 5% income tax rate, for example. An Illinois resident only receives an additional 0.1% (2% x 5%) yield on an Illinois state bond compared to an out-of-state buyer.

Meanwhile, there's another factor investors often overlook: If the state gets into financial trouble, taxes on residents will undoubtedly be raised, much as they were in 2011 when the state income tax rate rose from 3% to 5%.

Few, if Any, Investments Worth the Time

Finally, investing in truly safe municipal bonds doesn't seem worth the effort, either. The Wells Fargo Advantage Wisconsin Tax-Free Fund (SWFRX), for example, invests in the obligations of that fully funded state, but offers a measly 1.4% yield from doing so. While the fund managed a

satisfactory 6.9% return in 2014, that gain was the result of a general decline in interest rates; at current levels, the fund is extremely vulnerable to a general rise in rates.

Oddly enough, one area where you may do better is in high-yield municipal bonds. These assets focus on revenue bonds related to somewhat-risky municipal-backed investments. Naturally, some of these investments will fail. A recent famous case involved a waste incinerator constructed by Harrisburg, Pennsylvania that suffered a two-fold cost overrun. It caused the city to default on $280-million worth of debt.

Still, the risk from rates rising is somewhat less on these bonds, because their yields are already far above the Treasury bond yield. Plus, the tax exemption is naturally worth more when you're receiving more interest.

One potential investment is the T. Rowe Price Tax-Free High Yield (PRFHX) bond fund, a $3.4-billion fund that yields a solid 4%. It has also outperformed the Lipper High-Yield Municipal Bond index over the last 10 years. The fund invests in a very broad range of obscure municipal bonds, and the biggest holding is just 1.3% of assets. The risk, therefore, is diversified. Though a deep recession would doubtless affect it badly.

In general, though, given the risks involved and the modest size of their tax benefit at current yields, municipal bonds aren't an especially good deal right now.

Good investing,

Martin Hutchinson

Published Wed, Mar 25, 2015 | Martin Hutchinson, World Banking Analyst

wallstreetdaily.com

Chicago Schools Selling First Bonds Since 2013 as Finances Teeter.

(Bloomberg) — For all the financial challenges confronting Chicago, its schools are in even more precarious shape as the Board of Education sells debt for the first time since 2013.

The nation's third-largest system is grappling with pension and budget deficits that spurred the closing of 50 schools almost two years ago. This month, Moody's Investors Service and Fitch Ratings cut its credit to one level above junk, potentially triggering a $228 million payment to end interest-rate swaps. The Moody's move left the district grade one step weaker than the city.

The struggles of the system and its 400,000 students have become a rallying point for opponents to Mayor Rahm Emanuel. As Chicago heads for an unprecedented mayoral runoff, Emanuel is dealing with voter backlash after the school board he appointed carried out the closings. The system projects a $1.1 billion shortfall next fiscal year because climbing retirement costs are consuming a growing share of resources.

"It's very difficult to see how they get out of this pickle," said Paul Mansour, the Hartford, Connecticut-based head of municipal research at Conning, which oversees about $11 billion in municipal debt. "We've been trimming our position."

Cooler Schools

The district sold about $178 million of floating-rate debt Tuesday, and plans to price an additional $372 million of securities March 31, according to data compiled by Bloomberg. Next week's issue will include about $77 million of fixed-rate bonds for refinancing as well as debt to reimburse the system for capital work, according to officials and Bloomberg data. The projects include installing air conditioning and upgrading classrooms, said Ginger Ostro, chief financial officer for the system.

"As those projects occur, we pay for them using a line of credit, which is less expensive for us," Ostro said. "When that's fully used, then we would issue the bonds that we're issuing now to replace that line of credit."

The district hasn't sold debt since issuing floating-rate securities in May 2013, according to Bill McCaffrey, a spokesman. It joins governments nationwide refunding with municipal yields hovering above five-decade lows.

Bond Support

Moody's grades the board's debt Baa3, while Fitch gives it an equivalent BBB-. S&P assesses it at A-, three steps higher. All three have a negative outlook.

Kroll Bond Rating Agency marks the borrowings BBB+, three levels above junk, with a stable outlook, noting that the bonds have protection as state aid is the main source of repayment.

Yet the looming crisis is evident in bond documents, which say that operating revenue may tally $4.8 billion in fiscal 2016, short of expenditures of $5.9 billion.

"We have exhausted all short-term solutions to our budget crisis," Barbara Byrd-Bennett, chief executive officer of the system, said at a Feb. 25 board meeting. Given the outlook for fiscal 2016, "it is impossible for us to cut our way to a balanced budget."

The travails have become a central issue in the leadup to the April 7 runoff pitting Emanuel, 55, against Jesus "Chuy" Garcia, a 58-year-old Cook County commissioner. While the election is nonpartisan, both are Democrats.

Emanuel's Lead

Emanuel held a 51 percent to 37 percent lead in a poll of 712 registered voters that was taken March 6-11 and published in the Chicago Tribune. The survey had an error margin of 3.7 percentage points.

The winner will take over as the city of 2.7 million approaches a fiscal cliff. Chicago has $20 billion in unfunded pension liabilities, with a $600 million payment due next year.

Chicago's mayor effectively runs the school system, appointing the seven-member board. Garcia has said he supports shifting to an elected board, a move voters approved in a nonbinding referendum Feb. 24.

In a TV commercial, Garcia stands in front of a shuttered school and blames Emanuel for the district's financial strain. Garcia has called the decision to close the schools a disaster, while not promising to reopen any of them. He's backed by the Chicago Teachers Union and its president, Karen Lewis, who's publicly clashed with the mayor, most notably during a 2012 teachers' strike.

Annual Savings

Emanuel, who has said the closed schools were underperforming and underused, repeatedly highlights his extension of the school day, enactment of full-day kindergarten and free community college for public-school students with a grade-point average of at least 3.0. Closings have saved an estimated $40 million a year, according to bond documents.

Since 2011, the district has reduced non-classroom spending by more than $740 million, eliminated hundreds of administrative positions and renegotiated contracts, according to officials.

In December 2012, it sold 21-year bonds to yield 3.57 percent, about 1.4 percentage points above benchmark munis, Bloomberg data show.

"We would anticipate that our credit spreads have widened slightly given the changes in our ratings, but again, that's something that we're evaluating day to day," said Walter Stock, the system's debt manager.

The district hasn't done enough to ease its fiscal woes, said Richard Ciccarone, Chicago-based chief executive officer of Merritt Research Services LLC, which analyzes municipal finance.

"The cost of procrastination is coming home to roost," Ciccarone said. "They're going to have to pay the price for that."

Mar 23, 2015 5:00 PM PDT

Elizabeth Campbell

To contact the reporter on this story: Elizabeth Campbell in Chicago at ecampbell14@bloomberg.net

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S&P's Public Finance Podcast (Willacy County's Jail Revenue Bond and Chicago Public Schools).

In this week's Extra Credit, Standard & Poor's Senior Director Kate Choban discusses our recent rating action on Willacy County LGC's jail revenue bond and Director John Kenward explains what's behind Chicago Public School's rating and our thoughts on swap termination payments.

Listen to the Podcast.

Mar 26, 2015

Emergency Manager's Report Leaves Door Open to Possible Debt Payment Delays for Atlantic City.

NEW YORK (Standard & Poor's) March 25, 2015–Standard & Poor's Ratings Services today said it is reviewing its rating on Atlantic City, N.J.'s general obligation (GO) bonds outstanding based on the

Emergency Manager's 60-day report released March 23, 2015. The report does not directly reference bankruptcy. However, it does identify possible deferrals in debt service payments, which could occur as early as the current fiscal year. Therefore, our analysis will focus primarily on the debt restructuring and refinancing that the Emergency Manager identifies as potential options to address the city's fiscal situation.

Should we view these options as having a detrimental impact on bondholders, we could lower the GO rating to as low as the 'CC' category, barring an actual default or distressed exchange by the city, which in our view would warrant a 'D'. Conversely, if these actions are consistent with the terms of the bonds outstanding, our analysis will focus further on both the short- and long-term impacts of the Emergency Manager's plan, consistent with our local GO criteria.

The 'BB' GO rating remains on CreditWatch with negative implications, where it had been placed Jan. 27, 2015. We expect to review our CreditWatch placement within the next 30 days based on our analysis of additional information presented in light of the report's findings. For more information on the GO rating, please see the report published Jan. 27, 2015, on RatingsDirect.

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Chicago Board of Education Faces Possible Swap Termination Payment but GO Debt Rating is Unaffected for Now.

CHICAGO (Standard & Poor's) March 23, 2015–Standard & Poor's Ratings Services is closely monitoring the reaction of the Chicago Board of Education (CBOE; A-/Negative) to possible swap termination payments in excess of $200 million following the downgrade of its general obligation (GO) debt to below 'BBB' by another rating agency. While we view the possible trigger payments as pressuring the district's budget, we do not view these payments as likely to cause a liquidity crisis at present. For now, there is no change in our long-term and underlying ratings on CBOE's debt. We believe that CBOE has several avenues to address the potential cash payments associated with swap terminations. First, we understand the board is actively negotiating with the swap counterparties to amend the swaps to avoid having to make the termination payments. However, Standard & Poor's cannot be certain that the board will be able to avoid termination payments through its negotiations. If CBOE is unsuccessful in its negotiations and is forced to immediately make the termination payments, we believe that the board would be able to handle the payments given that it currently holds $174 million in cash in its debt service stabilization fund (as of March 10, 2015), which can be used to cover the swap termination payments, and has access to cash in other funds. The board's general operating fund held $70.8 million of unrestricted cash as of June 30, 2014, and is currently at a high liquidity point in the fiscal year following the receipt of property taxes in February from the county's first tax bills of 2015. The board also has access to $500 million in bank lines of credit, which management reports would be available to help pay swap termination payments. Over the remaining three months of the current fiscal year and next fiscal year, the possible loss of so much of cash and operating reserves to cover swap termination payments would put even greater pressure on the board as it structures its fiscal 2016 budget in the face of a budget gap of $1 billion. Given

operating reserves that we consider strong as of fiscal year-end June 30, 2014 (10.1% of expenditures), but are projected by management to drop in fiscal 2015 due to a general fund shortfall of up to $916 million, accommodating the termination payment would mean that the board will have to cut costs even more or identify additional revenue sources, to maintain at least adequate reserves, which is a course of action we view as challenging. As reflected in our negative outlook, maintenance of the rating at the current level is conditioned upon the board's ability to retain at least adequate unrestricted reserves. CBOE hedged most of its variable-rate debt with eight floating-to-fixed interest-rate swaps. According to management, as of March 19, 2015, the value of the board's swaps for which termination payments may be due because of the lowered ratings was negative $228 million. The swaps were structured without any collateral requirements on the part of the board, but they could be terminated by the counterparties if two of rating agencies currently rating the board's GO debt lower their ratings to below Standard & Poor's equivalent of 'BBB'. We lowered our ratings on CBOE's GO debt two notches to 'A-', with a negative outlook, on March 18, 2015, because of the board's current and projected fiscal imbalances. For more information, see our report published March 18, 2015, on RatingsDirect.

Under Standard & Poor's policies, only a Rating Committee can determine a Credit Rating Action (including a Credit Rating change, affirmation or withdrawal, Rating Outlook change, or CreditWatch action). This commentary and its subject matter have not been the subject of Rating Committee action and should not be interpreted as a change to, or affirmation of, a Credit Rating or Rating Outlook.

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Municipal Issuer Brief: Regulatory Environment & Municipals.

Read the Brief.

Municipal Market Analytics | Mar. 23

Teachers' Pensions and the Overgrazed Commons.

Amid bitter political battles over the rising costs of teacher' pensions, policy-makers typically overlook an important cost driver: the salary raises offered to late-career teachers.

Here's how it works: When a teacher retires, the highest few years (or, in the case of California, the highest single year) of salary determine the teacher's pension payout. Because of the highest-salary feature, the cumulative value of the pension payout is highly sensitive to even modest changes to late-career salaries. Give a raise in the final year of teaching, and the teacher gets a raise for life.

While most public-pension plans have rules in place to prevent the "spiking" of salaries just before retirement, it is still standard practice for school districts to award the largest dollar-amount raises to the most-senior teachers. Take San Diego Unified, where leaders awarded a 5 percent raise for

2014-15. For a veteran teacher set to retire at the end of the year and earning $93,900, this raise brought in a $4,700 boost. (For a junior teacher earning $40,000, the raise paid only $2,000.) Because a higher final salary means larger pension payments, the retiring teacher will see lifetime pension earnings jump by $101,000 as a result of the raise.

New analysis by Georgetown University's Edunomics Lab shows just how responsive pension obligations are to a teacher's final salary. A near-retirement teacher in California earns an average of $91,000, which triggers a starting pension of about $70,000. Every dollar increase of that teacher's salary during his or her last year triggers over 13 times as much in cumulative pension payments. The situation is the similar in other states: In New Jersey, every salary dollar awarded in the final average salary (based on the last four years) creates $9.96 in pension obligations; in Illinois (based on the last three years), the multiplier figure is $15.51.

Why aren't school-district leaders controlling pension debt by better managing final salaries? Because districts don't own the pension bill. States do. If the school district had to pay the pension costs for their employees directly, leaders might think twice about awarding big raises to teachers just before retirement. But the pension fund is a shared fund across all districts in the state.

And so districts behave as we'd expect, by maximizing their individual interests at the expense of the whole. In economics terms, this is called the "tragedy of the commons." Consider a group of ranchers grazing their cattle on open land. Each rancher, looking at his own costs and benefits, has an incentive to overgraze the land, even though collectively the group of ranchers is better off if no one overgrazes.

Similarly, each school district concludes that it can leverage more earnings for its staff by boosting the pay of senior teachers (at the expense of junior teachers) and "overgrazing" the state pension fund. The pension arrangement distorts spending choices, since younger teachers get no such subsidy. In the end, the pension debt takes a toll on all districts when state coffers have few funds left over for schooling.

This is not a critique of the defined-benefit pension plans that teachers typically enjoy. Social Security is a defined-benefit plan, but it bases the pension annuity on 35 years of earnings, so there are no incentives for this type of gaming.

What's the remedy for teachers' pensions? States could start by requiring school districts to pay their proportionate full share of the pension bill. Where districts' salary policies create more pension debt, those districts would pay that incremental portion directly to the pension fund. District leaders then would have to consider the full pension costs of raises as they negotiate them.

Where pension costs continue to be unsustainable, districts and labor organizations might start considering tradeoffs in salary and pension-calculation rules, including the number of years factored into the benefit calculation.

If nothing is done, we may be headed, as in the cattle-ranching example, toward a landscape of barren, overgrazed pension funds. That's a frightening prospect for taxpayers, school districts and educators alike.

GOVERNING.COM

BY MICHAEL PODGURSKY, MARGUERITE ROZA | MARCH 26, 2015

View New Population Estimates for Each County.

New Census Bureau data shows which counties are gaining and losing residents.

Much of the nation's fastest-growing counties are concentrated in the Sun Belt, with parts of Florida and Texas experiencing notable population gains since 2013. Rural counties in western North Dakota also continued to add residents at a rapid pace as a result of growth in the energy sector.

Of larger counties with at least a half million residents, the top three fastest-growing jurisdictions between 2013 and 2014 are all found in Texas: Fort Bend County (+4.7%), Montgomery County (+3.8%) and Denton County (+3.3%). Wayne County, Mich., and Cuyahoga County, Ohio, recorded the steepest estimated population decreases, but the losses represented declines of less than 1 percent.

The following map shows population growth over a 12-month period ending last July, with counties registering the highest percentage changes shown in green.

Open an interactive map to view data for each county.

GOVERNING.COM

BY MIKE MACIAG | MARCH 26, 2015

Tax Unfairness.

This month marked the 5th edition release of the Institute on Taxation & Economic Policy's (ITEP) Who Pays? A Distributional Analysis of the Tax Systems in All Fifty States. The report looks at states' reliance on sales tax for revenue, whether states have personal income taxes and the number of tax brackets states have. The following table shows ITEP's most and least regressive state tax systems. Among the states labeled as most regressive, Washington, Florida, Texas, South Dakota and Tennessee lack a broad-based income tax. Conversely, the seven states listed as having the least regressive systems have some combination of no or low sales taxes, progressive income tax structures and refundable earned income tax credits (a tax credit for the poor).

ITEP's Most and Least Regressive State & Local Tax Systems

Most	Least
Washington	Delaware
Florida	District of Columbia
Texas	California
South Dakota	Oregon
Illinois	Montana
Pennsylvania	Vermont
Tennessee	Minnesota
Arizona	
Kansas	
Indiana	

An analysis released Mar. 24 by the Federal Funds Information for States warns that fairness is but one feature of a good tax system. Others are adequacy, simplicity, transparency and ease of administration. “Sometimes the policies that satisfy one feature run contrary to another, making it important that a system be evaluated in its entirety rather than in a piecemeal fashion,” FFIS says. “This limits the usefulness of ITEP’s analysis, since only one of the five attributes is evaluated.” For example, Washington puts more of its revenues toward programs that support low-income families.

Atlantic City on the Brink of Financial Disaster.

Financially beleaguered Atlantic City is at risk of defaulting on millions in debt, a new credit analysis warned Thursday.

The city faces a $40 million loan repayment at the end of March and needs access to the credit market to refinance that loan. Its credit rating is at junk status, which will make it difficult for the city to find reasonable refinancing. “With only four business days between now and March 31,” the Moody’s Investors Service analysis said, “it will be difficult to refinance the loan in the capital markets.”

The Moody’s analysis comes just two days after Atlantic City’s emergency manager Kevin Lavin released his plan to address the city’s looming financial crisis. The city faces a $101 million budget gap in 2015 alone, a figure that amounts to 40 percent of Atlantic City’s entire budget last year. Lavin’s plan requires swift action by the state legislature, which would have to pass two bills proposed late last year to redirect nearly $48 million in special funds and taxes to the city’s coffers. It also calls for a deferral in paying $42 million in state health benefit and pension payments this year.

If the city survives the March 31 deadline, Moody’s predicts the state legislature will have about three months until it hits another wall with nearly $19 million in debt due on three separate dates in August.

Adding to the uncertainty are questions about the ability of struggling casinos to pay their property tax payments to Atlantic City. “Should a casino become delinquent on its property tax payments as Revel and Trump Taj Mahal did in 2014, the [emergency manager’s] short-term solutions will not be enough to prevent a 2015 debt service default,” Moody’s said.

Atlantic City has struggled for years as the near-collapse of the gambling industry there eroded its tax base. But this January saw a significantly dramatic drop in the city’s fortunes. Gov. Chris Christie appointed an emergency management team with ties to Detroit’s bankruptcy and asked the team to consider debt restructuring through bankruptcy. The move resulted in “super downgrades,” rare declines of multiple notches, by Moody’s and Standard & Poor’s to the city’s credit rating.

Following the emergency manager’s report this week, S&P warned it could downgrade the city’s credit rating again. (Although it is low, S&P’s credit rating for Atlantic City is still higher than the Moody’s rating.) Both rating agencies said they are worried about the city’s liquidity struggles and whether that would impair its ability to fully pay back its bondholders. S&P said it could drop the city’s rating as low as CC, which would match the Moody’s rating. If it defaulted on debt, it could drop to a D rating, S&P said. A rating of D is extremely rare for a U.S. city and typically given to cities in bankruptcy.

GOVERNING.COM

BY LIZ FARMER | MARCH 26, 2015

Bloomberg Brief Municipal Market Expert Series.

Taylor Riggs, an editor at Bloomberg Brief Municipal Market, talks with Bill Gurtin, chief investment officer at Gurtin Fixed Income.

Watch the Video.

March 26, 2015

Chicago's Unmentionable Pension Solution Haunts Mayoral Election.

(Bloomberg) — Chicago could avert financial doom with a new casino or an expanded sales tax. Or it could relieve the pressure from $20 billion in pension debt by slapping a levy on commuters.

As the city's credit rating slides toward junk status, the most direct remedy to dodge the threat of insolvency — raising property taxes — is barely mentioned by the two men vying to run Chicago in the next four years.

In the race for mayor, to be decided in an April 7 run-off, Mayor Rahm Emanuel and his challenger, Jesus "Chuy" Garcia, are treating the option as political poison even though it may be inevitable.

"My plan specifically avoids increasing property taxes," Emanuel, 55, said in a March 16 debate, promoting a broader sales tax and the casino.

Garcia, too, supports expanding the sales levy, and suggested in a debate Thursday night that the city consider a luxury tax on some purchases by higher wage earners. He also says Chicago first needs performance audits to assess its financial situation.

"Difficult decisions, hard decisions are going to have to be made," Garcia said in the latest debate.

Both candidates have stopped short of issuing irrevocable declarations against boosting property taxes. Yet their political discomfort is a tribute to the enduring public furor over such levies, about four decades after California sparked a nationwide revolt against the largest source of local-government income.

Recession Whammy

The sensitivity resonates in cities like Chicago, where the double-whammy of the recession and foreclosures cut home values by an average 24 percent from their peak in 2003, according to a study by DePaul University.

While proposing a property-tax boost may be abhorrent before the election, after the vote is a different matter. Even as Emanuel, mayor since 2011, and Garcia, a 58-year-old Cook County commissioner, try to distance themselves from it, an increase has taken on a sense of inevitability.

"I believe we can truly say that it will happen, but it is all in how much," Chicago Alderman Carrie

Austin, an Emanuel supporter and chairman of the City Council's budget committee, said this month.

"That's a bullet that we will have to bite because we have to right our ship," Austin said.

Credit Deterioration

Investors who have watched the city's credit standing deteriorate say there's no choice if Chicago is to corral the cost of pension liabilities — the annual payment will swell to $1.1 billion, from $480 million this year. Moody's Investors Service cut its $8.3 billion of general obligations to Baa2 last month, two steps above junk, citing the retirement expenses. Chicago can't reduce workers' retirement benefits without state legislative approval.

"Limitations on benefit reforms will likely leave large tax increases as the only viable solution, a challenge given the city's historical reluctance to tap its property tax base," Matt Fabian, a partner at Concord, Massachusetts-based research firm Municipal Market Analytics, said in a March 16 report.

Chicago isn't master of its financial destiny. State legislators would have to approve a tax on the 600,000 commuters who work in the city, or any effort to impose an income tax.

Emanuel, former chief of staff for President Barack Obama, floated a $250 million property-tax boost last year to pay for pension obligations. He dropped the plan in the face of City Council opposition, and is taking a different route this time. He's proposing to build a casino, dedicating the revenue to retirement debt, and extend the sales tax to services. Again, he can't do either without state approval, and even with that consent, the casino wouldn't be built in time to contribute to next year's pension payment.

Direct Control

A property-tax increase, though, is within the city's direct control. The levy generated $824 million last year, equivalent to about 9 percent of this year's spending plan, according to Chicago's annual financial analysis.

The population of the nation's third-most-populous city fell 7 percent in the last decade to 2.7 million, according to the Census Bureau. The drop increases pressure on the tax base to pay for retirement commitments, some made decades ago.

"The problem is you're paying the bills of the city of 30 years ago with today's population," said Norton Francis of the Tax Policy Center in Washington. "That's a huge challenge for cities."

Tax Burden

In Chicago, property taxes have risen even as housing values dropped. The effective tax rate jumped 32 percent from tax year 2003 to 2012, according to the Civic Federation, a nonprofit research group specializing in government finance.

Although the national recession ended in 2009, housing values in parts of the South Side have yet to recover, according to the Institute for Housing Studies at DePaul University. The area is home to many mostly black precincts, where Emanuel's support has dropped relative to the 2011 election.

Opposition to property taxes is part of the campaign dialogue. Emanuel criticized Garcia for a vote he cast in favor of a higher levy — in 1986.

Credit analysts and rating companies want Chicago to enact sustainable solutions, not patchwork fixes, to its financial woes, said Paul Mansour, head of municipal research at Conning, which oversees about $11 billion in municipal debt, including Chicago holdings.

"As much as property-tax increases are abhorred by residents, we in the municipal community prefer them because they're easier to predict," said Mansour, who's based in Hartford, Connecticut.

"It's hard to imagine a situation where increases in the property taxes are not some part of the equation," he said.

by Tim Jones

March 26, 2015

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Record Charter-School Defaults Underscored by Albany Closings.

(Bloomberg) — Charter schools are selling a record amount of municipal debt. For investors, the challenge is that defaults by the publicly funded, privately run institutions have also never been higher.

Underscoring the risk to bondholders such as Nuveen Asset Management, two New York schools are set to shut at the end of this school year after their charters were revoked this month for academic shortcomings. The closings represent a default under terms of the $15 million bond deal that financed the land acquisition and construction of Brighter Choice's middle schools for boys and girls, which opened in 2010 under the same roof.

While charter schools are gaining popularity across the U.S. as an alternative to local systems, their default rate reached an all-time high last year of 5 percent of outstanding issues, according to a biannual study by the New York-based Local Initiatives Support Corp. That's up from 3.8 percent in 2012.

"Charter schools not only wrestle with financial operations and student demand, but also with maintaining their charter, which is highly dependent on their educational outcomes," said Matt Fabian, a partner at Concord, Massachusetts-based research firm Municipal Market Analytics.

Record Haul

The schools began tapping the $3.5 trillion municipal market in 1998 and have issued about $10.4 billion of bonds in 800 transactions, according to Local Initiatives Support Corp., a community-development organization. Last year's tally of about $2 billion was the most yet, according to Municipal Market Analytics.

While accounting for less than 1 percent of sales, the schools are gaining stature in the tax-exempt market as enrollment climbs. The institutions enrolled 4.6 percent of U.S. public school students in 2013, up from 2.1 percent a decade ago, according to the National Center for Education Statistics.

For investors who can stomach the risk, the securities offer a way to pad returns.

Brighter Choice obligations sold for the middle schools and maturing in July 2042 priced three years ago to yield 7.5 percent, data compiled by Bloomberg show. That was about 4 percentage points above benchmark munis.

Fitch Ratings cut the debt March 20 to C, 11 steps below investment grade. The tax-exempt bonds were sold through a Phoenix industrial development authority.

Securities sold for Brighter Choice's elementary schools and that mature in April 2020 traded last month at about par, to yield 4.75 percent, or about 4.2 percentage points above benchmark debt, Bloomberg data show. Fitch grades the bonds B+, seven steps above the middle-school debt.

Bond Compliance

The State University of New York Charter Schools Institute's board of directors, which oversees authorization, voted not to renew the middle schools' charters this month, even as the organization reported compliance with bond covenants, according to Mahati Tonk, the institute's director of charter-school information. Brighter Choice's two elementary schools had their charters renewed last week.

In the 2013-2014 year 53.8 percent of the middle school's 8th-grade boys scored at or above state-mandated proficiency levels for science, short of the 75 percent benchmark set by the SUNY authority. The boys' school ranked in the 23rd percentile statewide in math.

Falling Short

"They knew that they were falling far from the academic expectations and were in jeopardy of losing their renewal," said Susie Miller Barker, executive director at the SUNY institute in Albany.

The finances were on more solid footing. As of the end of December, Brighter Choice reported 76.42 days of cash on hand, almost quadruple the required amount, bond filings show. The debt-service coverage ratio of about 1.3 exceeded the required 1.10 figure, according to the filings.

Calls to the Brighter Choice schools were referred to Lynea Woody, vice president of improvement at the Albany Charter School Network, which runs them. The organization runs Brighter Choice. Woody said she didn't have an immediate comment.

Bondholders will try to sell the schoolhouse to recoup their investment, said John Miller, who oversees $100 billion of munis as co-head of fixed income at Nuveen in Chicago. The company has invested in more than 250 schools, Miller said.

"Recovery rates are all over the place," he said. "In some cases we've been in the 60 to 70 percent range for the rare foreclosure."

Nuveen is the biggest holder of the Brighter Choice middle-school debt, data compiled by Bloomberg show.

Students' Fate

The majority of the 400 students attending the middle schools will look to switch to the Albany district, which doesn't have room, said Ron Lesko, a district spokesman.

"We have our own enrollment growth that's been fairly significant in recent years," Lesko said. "We're already at max capacity."

To accommodate the influx, the district may buy the Brighter Choice building, keep the students there and hire staff, Lesko said.

"We want to come to some sort of reasonable financial arrangement," Lesko said. "But if that's not possible and we can't, we have another building in mind."

The alternative site is available for a reason: It housed another failed charter school that closed in 2010, Lesko said.

The building had about $20 million in obligations attached to it and the district bought it for $2.5 million in 2012.

by Kate Smith

March 24, 2015

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Bloomberg Brief Municipal Market Weekly Video.

Taylor Riggs, an editor at Bloomberg Brief, talks with Joe Mysak about this week's municipal market news.

Watch the Video.

March 26, 2015

Junk Cities Across U.S. Earn Ratings Revival by Fixing Blunders.

(Bloomberg) — The $3.5 trillion municipal market's fallen angels are rising again.

U.S. localities that failed to pay investors or got swept up in costly development projects have seen their prospects brighten after sinking to junk. While names such as Harrison, Menasha and Vadnais Heights may not resonate with most Americans, they gained infamy among bond investors after stumbling into fiscal peril.

They're among communities getting a boost from almost six years of economic growth: Moody's Investors Service's upgrades outpaced downgrades last quarter for the first time since 2008.

"It's not for us to keep these places in the penalty box," said Alfred Medioli, a Moody's analyst in New York. "They don't have major economic issues. There's new management in place, so presumably they wouldn't be making the same mistake of underwriting projects that they couldn't

pay for.”

In the past seven months, Moody’s raised Harrison, which had struggled with debt tied to the New Jersey home of Major League Soccer’s Red Bulls, to Baa3, one step above junk; and elevated Menasha, Wisconsin, and Vadnais Heights, Minnesota, to Baa2, one level higher. The upgrades are rebuilding trust between investors and the localities, which got burned by backstopping debt for commercial or sports-related development projects.

Menasha’s Mishap

Menasha, 100 miles (161 kilometers) north of Milwaukee, got a three-step increase from Moody’s in January. The community of about 17,600 hasn’t had a grade that high since 2009, when it fell to junk for failing to appropriate funds to pay debt backing a distressed steam plant. Investors ended up getting 75 percent of what they were promised.

“It wasn’t a dollar-for-dollar payback, and I know that’s one of the things that Moody’s didn’t like and the reason they didn’t want to go back to investment grade,” said Peggy Steeno, the treasurer.

Steeno took the post in 2013 and said she highlighted to Moody’s how the locality has moved past its struggles. The sale of the plant last year stabilized its finances, Moody’s said.

“Appropriating is critical,” she said. “I would never issue bonds without making sure the appropriation was there and the proper steps were in place.”

Downgrade Debacle

About 280 miles west, in the Minneapolis suburb of Vadnais Heights, officials in 2012 refused to appropriate funds for a youth sports complex that didn’t meet projections and left the city on the hook for debt. Its rating plunged to junk after it formerly carried the third-best investment grade.

Last year, holders of senior-lien lease bonds backing the sports center recovered 45 percent of what they were owed after the surrounding county bought the facility, Moody’s said in a report. Without the complex burdening its finances, the community earned a two-level upgrade from Moody’s in October.

“We will certainly consider past experience when evaluating future projects,” Kevin Watson, the city administrator, said in an e-mail.

The credit rebound may encourage other localities to consider walking away from lease or appropriation debt, said Tom McLoughlin, head of muni fixed-income in New York at UBS Wealth Management Americas, which oversees about $85 billion in munis.

‘Penalty Box’

“Their time in the penalty box appears to be shorter,” McLoughlin said. “It increases our concern about local-government general-fund obligations and whether they deserve a big place in individual investor portfolios.”

Standard & Poor’s also sees signs of strength from once-downtrodden municipalities, known as fallen angels when they lose their investment-grade ranks.

This month, S&P revised the outlook to positive on Central Falls, the formerly bankrupt Rhode Island city rated two steps below investment grade. In February, it put a positive outlook on

Moberly, Missouri, which in 2011 opted not to make payments on $39 million of bonds that a local authority sold to lure an artificial-sweetener plant project that collapsed.

Moberly "has other appropriation debt that they've budgeted on time," said John Sauter, an S&P analyst in Chicago. "The real mover that's different now is that they've gotten to the point where they've adopted a new debt policy."

Moberly Moves

Moberly in December created an economic-development commission that would use an independent third-party to vet companies, according to S&P, which says it's holding off on an upgrade because the policies haven't been tested.

There are exceptions to the revival, as some municipalities grapple with more than just failed projects. About 50 localities are rated below investment grade, or 0.5 percent of those rated by Moody's, Medioli said.

Atlantic City, New Jersey, for one, became a fallen angel in July. The gambling center is confronting a downward economic spiral as casinos expand in neighboring states.

Moody's said in a report Thursday that Atlantic City may default on its bonds. Its emergency manager released a report this week that proposed debt deferrals as one solution.

Moody's also cut Wayne County, Michigan, home of Detroit, three steps to speculative grade last month after its county executive warned of a "financial Armageddon" in 2016 unless it reduces a projected $70 million deficit.

The lesson for localities is that choosing to not pay for debt tied to development may prove a better option than appropriating and straining their finances, said Howard Cure, director of municipal credit research in New York for Evercore Wealth Management LLC, which oversees $5.7 billion.

That means investors shouldn't expect lasting punishment for governments reneging on obligations.

"If they can explain why they didn't pay for a particular series of debt, but continue to pay for their other series, the rating agencies are willing to eventually forgive and forget what they did," Cure said.

by Brian Chappatta

March 25, 2015

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Munis Defying History of March Losses With Best Rally Since 2008.

(Bloomberg) — The $3.5 trillion municipal market is on pace for its best March performance since 2008, defying a history of weakness in the month as higher tax rates stoke demand.

Munis have gained about 0.3 percent in March, after posting losses in the month in eight of the past 10 years, partly as investors sold to pay tax bills, Bank of America Merrill Lynch data show.

With the top federal tax rate climbing to 39.6 percent as of last year, the highest since 2000, investors have less incentive to sell before the April 15 tax-filing deadline. Underscoring the heightened demand, muni mutual funds have lured $1.3 billion in March, the most for the month since 2012, Lipper US Fund Flows data show.

“Given the higher federal marginal tax rate, there’s more of a compelling argument to hold muni positions,” said Jeffrey Lipton, head of muni research at Oppenheimer & Co. in New York.

City and state debt has earned about 1.1 percent this year, after a 9.8 percent gain in 2014, the best annual performance since 2011.

Munis still aren’t keeping up with Treasuries, which have returned 1.3 percent this year.

Surging supply is contributing to the underperformance, said Dan Heckman, a fixed-income strategist who helps oversee $126 billion at U.S. Bank Wealth Management in Kansas City.

Issuers are taking advantage of interest rates close to generational lows to refinance, pushing 2015 sales to about $92 billion, compared with $54.1 billion in the same period last year, data compiled by Bloomberg show.

If history is any guide, April may bring more gains. Local-government bonds rose in April in nine of the past 10 years.

“When investors are looking at alternatives, there are very few in the fixed-income market that have as many positive aspects as the municipal market,” Heckman said.

BLOOMBERG

by Meenal Vamburkar

March 27, 2015

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Final ACA Reporting Forms on Minimum Essential Coverage and Employee Coverage and Enrollment Now Available.

Form 1094-B, Form 1095-B and Instructions

Form 1094-C, Form 1095-C and Instructions

[Franklin Templeton Files Opening Brief in Appeal of Stockton, CA, Bankruptcy Exit Plan.]

(Reuters) – The holdout creditor in Stockton, California's bankruptcy case filed its opening brief in an appeal of the city's reorganization plan on Monday, claiming "no bondholder has ever received so little in the history of municipal bankruptcy."

The creditor, two funds managed by Franklin Templeton Investments, said Stockton's plan to exit Chapter 9 bankruptcy was discriminatory and punitive.

Franklin said it would receive less than 1 percent of its $30.5 million unsecured claim in the case, now before the U.S. Bankruptcy Appellate Panel of the Ninth Circuit.

The brief claimed that by confirming a plan providing such a small distribution, compared with recoveries of 52 percent to 100 percent for other unsecured claims, U.S. Bankruptcy Judge Christopher Klein erred in backing Stockton's exit plan.

"The court's errors of law, and the erroneous findings of fact on which those conclusions were premised, require reversal and remand with a direction for the city to fashion equitable plan treatment for Franklin," the brief said.

Suffering a steep decline in revenue, Stockton filed for bankruptcy protection from its creditors in 2012. The Northern California city of about 300,000 residents got the green light from Klein to exit Chapter 9 last fall over objections by Franklin's legal team.

The Franklin team argued that Stockton would leave its two funds with little while leaving the city's pension fund, the California Public Employees' Retirement System, untouched.

Stockton's case had been closely watched in the $3.6 trillion U.S. municipal debt market, with a focus on its pension dispute. The issue is of growing concern for state and local governments, especially whether pensions can be cut during bankruptcy.

Klein said Stockton had the authority to cut pensions but the city declined to do so. It instead eliminated health care for more than 1,000 of its retired employees to help cut spending.

The city also reworked labor agreements, won concessions from various creditors and won voter approval for a sales-tax increase to help bolster its finances, moves that helped it win Klein's support for its reorganization plan.

The plan took effect last month.

The case is In re City of Stockton, California, in U.S. Bankruptcy Appellate Panel of the Ninth Circuit, Case No. EC-14-1550

For Franklin: James Johnston, Jones Day

For Stockton: Marc Levinson, Orrick, Herrington & Sutcliffe

By REUTERS

MARCH 23, 2015, 6:07 P.M. E.D.T.

(Reporting by Robin Respaut and Jim Christie; Editing by Bernard Orr and Dan Grebler)

Atlantic City Turnaround Team Bets on Cuts Not Bankruptcy.

NEW YORK — A turnaround team tasked with reviving Atlantic City says New Jersey's struggling gambling hub must consider cost cuts, layoffs and longer bond maturities, but bankruptcy is not in the cards – yet.

"Bankruptcy is not something that we are contemplating," said emergency manager Kevin Lavin on a conference call on Tuesday. "We think that this process can be done without that necessity."

Atlantic City's tax base has been gutted, to just $7.35 billion in 2015 from $20.5 billion in 2010, as its casinos suffered from competition in neighboring states.

Lavin's report, which comes about 60 days after his appointment by Governor Chris Christie, describes a city in acute distress.

"It's actually a lot more severe than we thought when we first started," Lavin said.

Many had feared his team, which has ties to the professionals that oversaw Detroit's municipal bankruptcy, would prioritize bondholder losses and bankruptcy.

Instead, Lavin's report proposes a mediator to negotiate with stakeholders, including labor unions and casinos.

Lavin's first priority is closing the city's projected budget deficit of $101 million. Without significant change, the cumulative deficit will be $393 million over five years, the report said.

Stakeholders would have to help staunch the bleeding, he said.

The city may have to cut expenses by $10 million, a combination of operational cuts and a 20 percent to 30 percent reduction of its 1,150 or so full-time employees. Six of the city's labor contracts have expired and are already in negotiations.

Retirees, including lifeguards, could see pension plan changes or benefit delays.

Even taking adjustments into account – including delaying city contributions into pension funds, operational cuts and the infusion of $77 million of state aid – the city's cash flow would still dip below zero twice by August, the report showed.

"Absent the continuation of significant state assistance … the city simply cannot stand on its own," it said.

Matt Fabian, a managing director of Municipal Market Advisors, said the state was responsible for the city's dependency on casinos.

"The state created Atlantic City," he said. "The state should have some culpability."

New Jersey Senate President Steve Sweeney, a Democrat who is spearheading legislation to help Atlantic City, said the Christie administration has held summits and issued reports, but "taken no real action."

Mayor Don Guardian said he had been working with Lavin's team, which will consider long-term solutions in a second phase of work.

By REUTERS

MARCH 24, 2015, 6:40 P.M. E.D.T.

(Reporting by Hilary Russ and Megan Davies; Editing by David Gregorio and Andre Grenon)

Perfection Doesn't Last: Muni Bond Returns to Be More Muted.

NEW YORK — Conditions were nearly perfect for municipal bonds last year, leading to sizable returns. Perfection never lasts, though, and managers of municipal-bond funds are forecasting more modest returns in upcoming years.

The backdrop for municipal bonds last year was as pleasant as the first warm, spring breeze: Interest rates were falling, the economy was strengthening, demand was high for bonds that pay tax-free income and supply was relatively low. Add it up, and the Barclays Municipal Bond index returned 9.1 percent in 2014. Just don't expect a repeat.

"Definitely manage those expectations," says Diederik Olijslager, who co-manages the $3.9 billion USAA Tax Exempt Intermediate-Term fund, among other municipal-bond offerings. "It's fixed-income investing, it shouldn't be 10 percent returns a year."

Gains are still likely in coming years, but managers say they're likely to be closer to 2 percent or 3 percent, depending on the type of bond. Another cloud in the forecast: Managers also expect volatility to pick up following a very calm 2014.

Investors have already had a sneak peek: The Barclays Municipal Bond index fell in February, its first monthly loss since 2013, snapping what had been its longest winning streak in more than two decades. Among the factors affecting the municipal-bond market:

— YIELDS ARE LOW.

Municipal bonds are producing less income than a year ago because their yields key off Treasury rates, and the yield on the 10-year Treasury note is below 2 percent. It was around 2.70 percent a year ago and close to 4 percent five years ago.

Rates are so low, the worry is that they will rise and knock down the price of existing bonds. And the improved job market means most economists expect the Federal Reserve to raise short-term rates later this year.

Conventional wisdom says that investors worried about rising rates should focus on short-term bonds. That's because long-term bonds lock in yields for longer periods of time, which makes their prices more sensitive to rate changes.

But even after the Fed hikes rates, long-term rates could continue to stay low given how weak inflation is. That's one reason Josh Gonze, a portfolio manager at Thornburg Investment Management, is staying neutral on interest rates and refraining from leaning on just short-term bonds. Thornburg manages $10 billion in municipal bonds.

Gonze says he's not willing to bet on where long-term rates will go relative to short-term rates: "I know that I don't know, and I know that no one else knows either."

— SUPPLY IS RISING.

States, cities and other local governments are issuing bonds at a faster pace this year, and when the supply of anything increases, that can push prices lower. Just look at what's happening to oil, where a buildup in supplies has caused its price to more than halve since last summer.

Local governments issued $62.2 billion in bonds through the end of February, a big jump from the $36 billion they issued at the same point last year. Governments are taking advantage of cheap borrowing costs to replace higher-cost debt and pay for new projects.

Continue reading the main storyContinue reading the main storyContinue reading the main story
"They're borrowing money at basically nothing," says Gonze. "If I were a city, county or state, I would go ahead and borrow as much as I could."

— DEMAND REMAINS STRONG.

Supplies are rising, but so is demand, which means buyers are snapping up all those additional municipal bonds.

Individual investors make up the bulk of the market for municipal bonds and they're pouring in billions of dollars each month. They're attracted to the prospect of tax-free income, particularly given higher federal income-tax rates. Income from muni bonds is free from federal taxes and can also be exempt from state and local taxes in some cases.

Municipal-bond mutual funds and exchange-traded funds drew a net $32 billion in investment in 2014. In the first two months of 2015 alone, they've attracted another $8.6 billion. That demand is helping to offset the impact of higher supplies.

— THE ECONOMY IS IMPROVING.

The strengthening job market is helping the finances of state and local governments. A larger workforce means higher collections of income taxes, sales taxes and other revenue. That raises confidence in municipalities' ability to repay their debts.

Managers have concerns about finances in some high-profile areas of the market, including Illinois and Puerto Rico, as well as bonds from government that are reliant on oil-related revenue. But managers say financial strength is generally improving across the country.

— WORRIES ARE RISING ABOUT EASE OF TRADING.

When times are good, it's easy for fund managers to find buyers for their municipal bonds. The concern is what will happen when times are tough.

Historically, Wall Street banks and other broker-dealers have stepped in to buy bonds during stressed markets. In financial-ese, the banks provided liquidity, helping the market to remain free-flowing. But new regulations mean banks are less willing to hold bonds on their balance sheets.

That has several fund managers bulking up their holdings of cash and the highest-quality municipal bonds to help protect them in case liquidity dries up during a sell-off.

By THE ASSOCIATED PRESS

MARCH 26, 2015, 3:06 P.M. E.D.T.

Bankrupt San Bernardino Reveals Details of Deal With Calpers.

LOS ANGELES — The bankrupt California city of San Bernardino revealed on Thursday details of its deal with the state's public pension system Calpers, in which the retirement fund will be paid in full under the city's bankruptcy exit plan.

San Bernardino announced last year it intended to pay the powerful California Public Employees' Retirement System in full under its bankruptcy plan, while cutting its bondholder debt. But it had not before revealed details of the deal with Calpers, America's largest public pension fund with assets of $300 billion.

San Bernardino, a city of 205,000 located 65 miles east of Los Angeles, declared bankruptcy in August 2012 with a $45 million deficit. It is one of a handful of municipal bankruptcies, along with Detroit, Michigan and Stockton, California, that has been closely watched by the $3.6 trillion U.S. municipal bond market.

Bondholders, public employees and state and local governments want to understand how financially distressed cities handle their debts to Wall Street, compared with other creditors such as large pension funds during Chapter 9 protection.

San Bernardino was recently ordered by the federal bankruptcy judge overseeing the case to make public the Calpers deal. The city published details before a court hearing in the case on Thursday.

The Calpers deal has angered other creditors, including holders of $50 million in pension obligation bonds, who face cuts to their debt. They are suing the city over the Calpers deal.

After it declared bankruptcy in 2012, San Bernardino suspended its employer payments to Calpers for one year. It accrued roughly $16 million in arrears, plus millions more in penalties, fines and interest.

Under the deal with Calpers, the city agreed to pay it in full under its bankruptcy plan, which it must issue by May 31, and to "ratify" its relationship with Calpers.

To repay the arrears, the city paid $1.5 million to Calpers in May 2014, and agreed to pay roughly $600,000 a month for two years between July 2014 and June 2016.

The city also agreed to pay five annual payments of $400,000 to settle fines, penalties and interest.

Luxembourg-based EEPK, holders of the pension bonds, and Ambac Assurance Corp, which insures a portion of them, sued San Bernardino in January, claiming the bonds are part of a single pension obligation, so that any payment to Calpers requires equivalent payment to the bondholders.

Initial arguments on that lawsuit will be heard on May 11.

By REUTERS

MARCH 26, 2015, 6:29 P.M. E.D.T.

(Reporting by Tim Reid)

- SIFMA to SEC: No Exemptions for Non-Dealer MAs.
- MSRB Seeks Approval to Enhance Post-Trade Data Available on EMMA.
- Key Regulator Shows No Sign on Budging on Muni Bank Rule.
- Why Some Public Pensions Could Soon Look Much Worse.
- Moody's: Modest Credit Impact for GASB Pension Changes, but Contribution Weaknesses Now Highlighted.
- SLGS Sales Halt May Pose Challenges for Small Issues.
- Chicago's Gamble on Disclosure.
- *Cottrell v. Atlanta Development Authority* – Supreme Court of Georgia holds that City development authority was not required to actually construct, nor to own, new stadium project in order for it to issue revenue bonds to fund the project or for tax proceeds paid to the authority to be considered as part of the "revenue" to pay for the bonds.
- *Greene County Development Authority v. State* – Supreme Court of Georgia holds that record supported finding that county development authority's proposal to issue revenue bonds to finance construction of charter school was not sound, feasible, and reasonable and, thus, validation of bonds was not warranted.
- And finally, appearances to the contrary, *Caicedo v. Caicedo* is not a divorce case, but rather the bizarre tale of Officer Caicedo running over a young boy *also named Caicedo.* What the hell are the odds of that? Then we have the the Maine property owner who waged war against approval of his neighbor's Mother of All Benign Uses – a Frisbee golf course. This guy suffering from some kind of early-onset allergy to hippies?

UTILITIES - CALIFORNIA

City of San Buenaventura v. United Water Conservation District

Court of Appeal, Second District, Division 6, California - March 17, 2015 - Cal.Rptr.3d - 2015 WL 1212205

City filed writ of mandate, administrative mandate, reverse validation action, and for declaratory relief against water conservation district and its board of directors, which managed county groundwater resources, seeking to overturn district's decision to increase city's rate to pump water from district's territory to sell to residential customers. City's lawsuits were consolidated and district filed cross-complaint, seeking declaratory relief upholding its rate determinations. The Superior Court issued writ of mandate in favor of city requiring district to issue refund to city and denied city declaratory relief. District appealed and city cross-appealed.

The Court of Appeal held that:

- Rate charged by district was not property-related;
- Even if rate was property-related, rate did not conflict with constitutional provisions governing property-related fees imposed by local governments;
- Fees charged by district conferred specific benefit on city as payor; and
- Fees charged by district did not exceed district's reasonable costs.

Fee charged by water conservation district to city to pump groundwater from district territory to sell

to city's residential customers was not property-related, such that constitutional provision prohibiting property-related fees and charges imposed by local government agencies from exceeding proportional costs of service attributable to parcel of land from which water was pumped did not apply. Fees served regulatory purpose of conserving water resources, and pump fee was better characterized as a charge on activity of pumping, rather than charge imposed by reason of property ownership.

Even if water conservation district's groundwater extraction charges were property-related fees subject to constitutional provision prohibiting such fees from exceeding proportional costs of service attributable to parcel of land from which water was pumped, rate city was charged to pump groundwater to sell to its residential consumers did not conflict with provision. Even though city was charged three times more than pumpers who extracted water from district for agricultural purposes, statute governing rate charged to city did not discriminate between persons or parcels, but rather it discriminated between types of use, that city's desired use for water it pumped was subject to higher fee than agricultural use was policy decision made by legislature, not district, and constitutional provision governed only property-related fees imposed by local government agencies.

Fees charged by water conservation district to city to pump groundwater to sell to city's residential consumers conferred specific benefit on city as payor, as required for fees to fall under payor-specific benefits exception to constitutional presumption that any levy, charge, or exaction imposed by local government was a tax subject to majority voter approval. City, as a pumper of groundwater, received benefit of extracting groundwater from managed basin.

Fees charged by water conservation district to city to pump groundwater to sell to city's residential consumers, which conferred benefit on city as payor, did not exceed district's reasonable costs, as required for fees to fall under payor-specific benefits exception to constitutional presumption that any levy, charge, or exaction imposed by local government was a tax subject to majority voter approval. By imposing fees based on volume of water extracted, district largely charged individual pumpers in proportion to benefit they received from district's conservation activities, and district's costs associated with acquisition, treatment, transport, and delivery of state and surface water were related to district's groundwater management goals.

OPEN MEETINGS LAW - CONNECTICUT

Planning and Zoning Com'n of Town of Monroe v. Freedom of Information Com'n

Supreme Court of Connecticut - March 24, 2015 - A.3d - 2015 WL 1186306

After town zoning commission convened executive session to discuss enforcement procedures, permit holder filed a complaint with the Freedom of Information Commission (FOIC) claiming that the session violated the state's Freedom of Information Act. The Commission determined that the zoning commission had violated the Act's open meetings requirement. Zoning commission appealed. The Superior Court reversed. Commission and permit holder appealed and case was transferred.

The Supreme Court of Connecticut held that:

- Zoning commission was not justified in convening an executive session under pending claims or pending litigation exception to Act's open meetings requirement, and
- Prior Superior Court case regarding zoning commission's denial of permit extension was "finally adjudicated" within meaning of the pending litigation exception.

Town zoning commission was not justified in convening an executive session, under pending claims or pending litigation exception to Freedom of Information Act open meetings requirement, to discuss its zoning enforcement options with respect to permit holder's original permit. At the time, there was no pending litigation regarding the permit to which the zoning commission was a party, and there was no pending or prospective litigation regarding permit holder's alleged permit violations.

Prior Superior Court case regarding town zoning commission's denial of permit extension was "finally adjudicated" before the commission's executive session, within meaning of statutory exception to Freedom of Information Act open meetings requirement for meetings to discuss strategy and negotiations with respect to pending litigation that has not been finally adjudicated, and thus zoning commission was not justified under the exception in conducting executive session to discuss how to respond to the prior court decision. Executive session occurred approximately eight months after court's decision, and 20-day period during which the zoning commission had the right to appeal the court's decision already had expired.

EMINENT DOMAIN - FLORIDA

Ryan v. City of Boynton Beach

District Court of Appeal of Florida, Fourth District - February 4, 2015 - So.3d - 40 Fla. L. Weekly D345

Several years after entry of consent judgment in city's condemnation action against property owner, property owner moved to withdraw proceeds for property from court registry, and city filed its own motion to withdraw the proceeds to satisfy code enforcement liens. The Circuit Court denied city's motion. City appealed. The District Court of Appeal reversed and remanded. On remand, the Circuit Court denied property owner's motion for trial level and appellate attorney fees, and he appealed.

The District Court of Appeal held that:

- Property owner's entitlement to appellate fees became the law of the case, and thus, on remand, the District Court was precluded from revisiting the issue, and could not properly deny property owner's motion for appellate fees on the basis his appeal over how to obtain such funds was not directly related to the underlying condemnation proceedings;
- Property owner was entitled to appellate attorney fees pursuant to statute that governed appeals in an eminent domain action; and
- Property owner was entitled to trial level attorney fees incurred in connection with his motions for disbursement of $99,000 held in the court's registry, and his challenge to city's resort to eminent domain proceedings to enforce its code enforcement lien.

BONDS - GEORGIA

Cottrell v. Atlanta Development Authority

Supreme Court of Georgia - March 16, 2015 - S.E.2d - 2015 WL 1135669

State filed a petition for bond validation to authorize issuance of new stadium project bonds. Following a bond hearing, the Superior Court, Fulton County, validated the bonds. Taxpayers appealed.

The Supreme Court of Georgia held that:

- Statute permitting tax districts to impose hotel/motel tax did not violate uniformity clause of Georgia Constitution;
- Stadium funding agreement was authorized by intergovernmental contracts clause of Georgia Constitution; and
- City development authority was not required to own the new stadium project in order for it to issue revenue bonds to fund the project.

Amended statute subsection, allowing for an extended period in which to collect a hotel/motel tax as long as a certain percentage of the proceeds collected during the extended period were expended to fund a successor sports stadium, did not violate uniformity clause of Georgia Constitution, where the statute applied uniformly on all taxing authorities which came within the scope of its provisions, and the classification made by the statute was not arbitrary or unreasonable.

City development authority was not required to own new stadium project in order for it to issue revenue bonds to fund the project or for tax proceeds paid to the authority to be considered as part of the "revenue" to pay for the bonds. Pursuant to state revenue bond law, "revenue" consisted of "all revenues, income, and earnings arising out of or in connection with the operation or ownership of the undertaking," and the hotel/motel tax proceeds were being collected in connection with state development authority's operation or ownership of the new stadium project.

City development authority was not required to actually construct new stadium project in order to properly issue revenue bonds for the purpose of financing the project. Pursuant to developmental authorities law, the authority had the power to issue revenue bonds and to use the proceeds thereof for the purpose of paying all or part of the cost of any project, not only those projects "constructed" or "developed" by the authority issuing the bonds.

BOND VALIDATION - GEORGIA

Greene County Development Authority v. State

Supreme Court of Georgia - March 16, 2015 - S.E.2d - 2015 WL 1135409

State filed petition to validate revenue bonds to be issued to finance construction of facility for use as charter school in county. County residents intervened to object to validation. The trial court denied validation. County, County Development Authority, and charter school operator appealed.

The Supreme Court of Georgia held that record supported finding that bond proposal was not sound, feasible, and reasonable.

Record supported finding that county development authority's proposal to issue revenue bonds to finance construction of charter school was not sound, feasible, and reasonable and, thus, validation of bonds was not warranted. Evidence of economic benefit of proposal was not overwhelming, and trial court appeared to have concerns about several aspects of proposal, noting that board of education had limited involvement, that county was obligated to fund repayment of the indebtedness, and that, as soon as debt was retired, charter school operator—a private, nonprofit corporation—would be entitled to purchase the facility for only $1.

INVERSE CONDEMNATION - GEORGIA

DeKalb County v. Heath

Court of Appeals of Georgia - March 16, 2015 - S.E.2d - 2015 WL 1134044

Property owner brought inverse condemnation claim against county. Following a bench trial, the trial court found in favor of property owner, awarding him $28,830 in damages. County appealed.

The Court of Appeals held that:

- Res judicata did not bar property owner's present inverse condemnation claim against county for failing to maintain repairs to its storm water drainage system, and
- The trial court did not err by allowing property owner a double recovery.

Property owner's present inverse condemnation action involved a fresh nuisance for which a fresh action would lie, and thus, res judicata did not bar his claim against county for failing to maintain repairs to its storm water drainage system, even though he had prevailed in a prior inverse condemnation case with regard to county's failure to maintain the same drainage system. The two lawsuits were not identical, although based on some of the same facts, the first lawsuit concerned the diminished value of property owner's property due to flooding and erosion, while the second lawsuit dealt with ongoing and increasing damage, including a deteriorating retaining wall which had not failed at the time the first lawsuit was filed.

With regard to property owner's current inverse condemnation action against county for failing to maintain repairs to its storm water drainage system, the trial court did not err by allowing property owner a double recovery, even though he had been awarded damages in a prior action against the county for the depreciation in the value of his property. In the current action, property owner was awarded the costs of repairing a failing retaining wall that the county had constructed, and which constituted a fresh nuisance.

ZONING - ILLINOIS

Scott v. City of Chicago

Appellate Court of Illinois, First District, Fifth Division - March 13, 2015 - N.E.3d - 2015 IL App (1st) 140570

Residents, owners of residential property, brought an action against City of Chicago to challenge the city council's decision to rezone property on 53rd Street from retail zoning to a planned development pursuant to the Chicago Zoning Ordinance.

The Municipal Code requires plaintiffs to provide pre-suit notice of their intent to file a declaratory judgment action seeking to have the new zoning classification declared invalid. That notice must be provided to owners of all properties located within 250 feet in each direction of the location for which the variation or special use is requested.

Here, the plaintiffs mailed approximately 125 pre-filing notices, but did not attempt to send notice to at least 26 other property owners whose land was within 250 feet of the rezoned property.

The trial court granted Lake Park's motion to dismiss for failure to give pre-suit notice and the appeals court affirmed, finding that strict compliance with the pre-suit notice provision is required and that this was not an instance when substantial compliance was adequate.

TIF - INDIANA

Redevelopment Com'n of Town of Munster v. Indiana State Bd. of Accounts

Court of Appeals of Indiana - March 16, 2015 - N.E.3d - 2015 WL 1186102

The Munster Redevelopment Commission appealed the Circuit Court's order entering summary judgment in favor of the Indiana State Board of Accounts in which the trial court determined that Indiana Code section 36–7–14–28 does not permit the Commission to use tax incremental financing funds to pay for the ongoing maintenance of redeveloped properties.

The Court of Appeals affirmed, as Indiana Code section 36–7–14–39(b)(2) provides that TIF funds "may be used by the redevelopment district only to do one or more of the following," then lists the allowable uses. Notably absent from the list of permissible uses is general and ongoing maintenance of redeveloped properties. Instead, the language of the statute indicates that TIF funds are to be spent on the construction and installation of improvements, rather than continuing maintenance.

ZONING - MAINE

Fitanides v. City of Saco

Supreme Judicial Court of Maine - March 17, 2015 - A.3d - 2015 ME 32

Abutting property owner sought judicial review of zoning board of appeals' (ZBA) decision that denied his appeals of planning board decisions approving permits related to the construction of a disc-golf course. The Superior Court affirmed the decisions of the ZBA, and abutting property owner appealed.

The Supreme Judicial Court of Maine held that:

- City planning board's issuance of a conditional use permit for the construction of a disc-golf course with a condition that allowed the city planner to approve minor changes to the project plans was not in violation of city zoning ordinance;
- Constitutional concerns regarding the delegation of legislative authority were not implicated by city planning board's issuance of a conditional use permit for the construction of a disc-golf course with a condition that allowed the city planner to approve minor changes to the project plans;
- The requirements of mobile home parks overlay zone ordinance did not apply to proposed site for disc-golf course;
- Zoning board of appeals did not violate adjacent property owner's due process rights by considering a copy of an e-mail sent by applicant requesting a waiver of certain application requirements for a footbridge conditional use permit; and
- City planner's inappropriate actions in sending an e-mail to the ZBA did not constitute a violation of adjacent property owner's due process rights.

PENSIONS - MICHIGAN

Board of Trustees of City of Pontiac Police and Fire Retiree Prefunded Group Health & Ins. Trust v. City of Pontiac

Court of Appeals of Michigan - March 17, 2015 - N.W.2d - 2015 WL 1214687

Board of Trustees of the City of Pontiac Police and Fire Retiree Prefunded Group Health and Insurance Plan filed complaint to require the city to pay its required annual contribution to the trust for the fiscal year ending June 30, 2012. The trust was established in 1996 as a tax exempt voluntary employees' beneficiary association (VEBA), 26 USC 501(c)(9), to hold the contributions of police and firefighter employees and those of the city pursuant to collective bargaining agreements (CBAs) between the city and the various unions of the city's police officers and firefighters.

At issue was the efficacy of Executive Order 225 issued on August 1, 2012, pursuant to § 19(1)(k) of 2011 PA 4, MCL 141.1519(1)(k), by the city's emergency manager (EM), which purported to amend the trust to remove the City's annual obligation to contribute to the trust agreement "as determined by the Trustees through actuarial evaluations."

The trial court accepted the City's argument that the City's EM properly modified the City's obligation to contribute to the trust for the fiscal year ending June 30, 2012, by modifying the existing CBAs between the city and police and firefighter unions.

The Court of Appeals held that the EM had the authority under the terms of the trust agreement to retroactively eliminate the city's actuarial required contribution to the trust for the fiscal year July 1, 2011 through June 30, 2012.

But the question remained whether Executive Order 225 did, in fact, eliminate the City's actuarial required contribution to the trust for the fiscal year July 1, 2011 through June 30, 2012.

The Court of Appeals concluded that it did not.

"The plain language of Executive Order 225 provides that the trust was 'amended to remove Article III obligations of the City *to continue to make* contributions to the Trust.' (Emphasis added.) The term 'continue' means to 'go on or keep on without interruption, as in some course or action.' Plainly, the term
'continue' relates to present and future action. Further, Executive Order 225 provided it 'shall have immediate effect.' Because Executive Order 225 was adopted August 1, 2012, given immediate effect and applied to the present of present or future obligations under art III, § 1, by its own terms, it did not apply to the to the city's already accrued actuarial required contribution to the trust for the already ended fiscal year July 1, 2011 through June 30, 2012."

ZONING - MINNESOTA

RDNT, LLC v. City of Bloomington

Supreme Court of Minnesota - March 18, 2015 - N.W.2d - 2015 WL 1215573

Nursing home submitted application to city for a conditional use permit, seeking to expand its existing assisted living services by adding a third building to its campus, which the city denied. Nursing home appealed. The District Court granted summary judgment to nursing home. City appealed. The Court of Appeals reversed. Nursing home appealed.

The Supreme Court of Minnesota held that:

- City acted within its discretion in denying the application, and
- City's determination that proposed mitigation conditions were insufficient was not unreasonable, arbitrary, or capricious.

IMMUNITY - NEW JERSEY

Caicedo v. Caicedo

Superior Court of New Jersey, Appellate Division - March 17, 2015 - A.3d - 2015 WL 1179830

Bicyclist brought action under state Tort Claims Act (TCA) against police officer, city, and city police department to recover for injuries sustained when he was struck by police cruiser operated by officer while on duty. The Superior Court, Law Division, Essex County, awarded damages to bicyclist. Defendants appealed.

The Superior Court, Appellate Division held that:

- Officer was not acting in "execution or enforcement of any law" at time of accident and, thus, was not entitled to good-faith immunity;
- Jury verdict apportioning negligence at 80 percent to officer and 20 percent to bicyclist was not against weight of the evidence; and
- Jury's damages award to bicyclist in amount of $2,400,000 was not excessive.

BANKRUPTCY - PUERTO RICO

Franklin California Tax-Free Trust v. Puerto Rico

United States District Court, D. Puerto Rico - February 6, 2015 - F.Supp.3d - 2015 WL 522183

Holders of bonds issued by Puerto Rico Electric Power Authority (PREPA) brought action against Puerto Rico, PREPA, and certain Puerto Rican officials, seeking declaration that Puerto Rico Public Corporation Debt Enforcement and Recovery Act, which provided procedure for PREPA to restructure its debt, was unconstitutional. Defendants moved to dismiss for lack of subject matter jurisdiction and for failure to state claim, and bondholders cross-moved for summary judgment.

The District Court held that:

- Declaratory relief sought by bondholders was conclusive in character;
- Declaratory relief sought by bondholders did not depend on facts that had not been sufficiently developed;
- Impact of Act upon bondholders was sufficiently direct and immediate as to render issue appropriate for judicial review;
- Allegation that Act unconstitutionally authorized suspension of federal court proceeding was not fit for judicial decision;
- Act's elimination of bondholders' security rights was not traceable to action by PREPA;
- Act was expressly preempted by Federal Bankruptcy Code;
- Act substantially impaired a contractual relationship; and
- Bondholders alleged that Act's impairments on contractual relationship between PREPA and bondholders were not reasonable and necessary to serve important government purpose.

REFERENDUM - ILLINOIS

Zurek v. Village of Franklin Park

Appellate Court of Illinois, First District, Fifth Division - March 13, 2015 - Not Reported in N.E.3d - 2015 IL App (1st) 141286-U

Village Board of Trustees for the Village of Franklin Park, Illinois passed a resolution placing a referendum question on the primary election ballot for the primary general election to establish a 1% non-home rule municipal retailers' occupation tax and a non-home rule municipal service occupation tax to be used for the repair and reconstruction of public streets.

Taxpayer challenged the referendum question as submitted to the voters, alleging that it did not substantially comply with the mandated statutory language, rendering the election void.

The Village Trustees submit the following referendum question to the voters of the Village:

"Shall the corporate authorities of the Village of Franklin Park, Illinois be authorized to levy a Non–Home Rule Municipal Retailers' Occupation Tax and a Non–Home Rule Municipal Service Occupation Tax (commonly referred to as a 'sales tax'), each at a rate of 1%, pursuant to 65 ILCS 5/8–11–1.3 and 65 ILCS 5/8–11–1.4, for expenditures on the repair and reconstruction of public streets?"

Plaintiff claimed that because the proceeds of the "sales tax" may be used for municipal operations, David Orr, the Cook County Clerk, was statutorily required to submit the question of whether to impose the proposed taxes in "substantially the following form," pursuant to section 8–11–1.1(b) of the Code (65 ILCS 5/8–11–1.1(b) (West 2012)):

"Shall the corporate authorities of the municipality be authorized to levy a tax at a rate of (rate)% for expenditures on municipal operations, expenditures on public infrastructure, or property tax relief?"

The court agreed with the village that, because the proposed taxes at issue were to be used for expenditures on public infrastructure, specifically the "repair and reconstruction of public streets," and not municipal operations, they were not required to substantially follow the mandated statutory form.

"The plain language of the statute only requires the corporate authorities of the municipality to submit the referendum question in the mandated statutory form "if the proceeds of the tax may be used for municipal operations." Here, the proceeds of the tax are being used for expenditures on public infrastructure, specifically the repair and reconstruction of public streets. Accordingly, we conclude that the referendum question was not required to substantially comply with the form mandated by section 8–11–1.1(b)."

Market Cools to High-Yield Munis.

Investor demand for municipal high-yield securities has been muted for the past month as preoccupation with rising interest rates and the stigma surrounding speculative credits outweigh the lure of wider-than-average spreads, according to two market analysts.

They say the ongoing uncertainty over interest rates, bulging supply in the investment-grade sector, and the negative performance of credits such as tobacco and Puerto Rico, are distracting investors from the municipal high-yield market.

The spread between the S&P Municipal Investment Grade and S&P High Yield indices has widened to 407 basis points as of March 19, an indication of value in the municipal high yield sector, said Stephen P. Winterstein, managing director of research and chief municipal strategist of municipal fixed income at Wilmington Trust Investment Advisors Inc., in a March 17 report.

The spread, he said in a March 19 interview, is “fairly compelling” compared with the past three-years, during which spreads tightened to 217 basis points in February 2013 and were as wide as 421 basis points in August 2014.

The spread is more attractive than other fixed-income alternatives, but that doesn’t seem to be enough to attract many investors who are waiting on the sidelines, according to Jim Colby, senior municipal strategist at Van Eck Global.

As if the expectation for higher interest rates had not already provoked uncertainty and volatility in the fixed income markets in general, the suggestion of yet another delay from the Federal Open Market Committee last week is exacerbating the torpor in the municipal high-yield market, Colby said in an interview on March 19.

“That played into investors taking a step backward and waiting to see if rates do indeed rise and then return to the high-yield world,” he said.

The removal of the word “patient” from the FOMC’s language at a meeting on March 18 caught the market off guard, Colby added.

“The market was preparing itself for a different outcome” other than Fed chairman Janet Yellen indicating a possible June time frame for an initial increase, Colby said. “The market was more prepared that the Fed was going to raise rates in April,” he added.

Yellen said given the continued improvement in economic conditions, the Fed doesn’t want to rule out the possibility that an increase in the target range could come at subsequent meetings to the April FOMC meeting.

“Today’s modification of our guidance should not be interpreted to mean that we have decided on the timing of that increase,” Yellen said. “In other words, just because we removed the word ‘patient’ from the statement doesn’t mean we’re going to be impatient.”

The latest in a long line of delays has curtailed trading activity and demand for municipal high-yield over the last four to five weeks, Colby said — except for some limited trading volume among professional money managers.

“We really haven’t seen any activity or any interest in the high-yield space since a mid-February time frame” when the market traded off slightly and new issue supply in the investment-grade space increased amid ongoing uncertainty about rates, he said.

Colby said neutral flows into Van Eck’s own Market Vectors exchange-traded fund products in particular are a barometer of recent non-activity in the municipal high-yield sector.

“Market-makers are biding their time waiting for indications of interest on the investor side,” Colby said.

There has been no new net cash to put to work, he said, adding that flows into the ETFs have “flat-lined” so far in 2015 – which is consistent with last year.

Colby noted that the Barclays Municipal High Yield Index is up just 1.53% and the Van Eck High Yield Index is up 2% year to date as of March 19 – but said much of that growth accrued back in January, when the market presented a strong tone after the fourth quarter.

Any growth has been minimal since then, as "the market is struggling to find indexes that are showing much more than just a minor positive profile in terms of returns," Colby said.

In addition, the uncertainty over the timing of a planned Puerto Rico Infrastructure Finance Authority sale could further slow the municipal high-yield market, Colby noted.

The deal, which has been postponed more than once, could reportedly come as large as $2.95 billion.

"Without that $3 billion deal floating into high-yield, the rest of the supply in the high-yield marketplace will likely get more attention and prices are likely to rise because there isn't an immediate substitute on the horizon," Colby said.

Still, in the meantime, the municipal high-yield sector is "very favorable," he added. The value is derived from the technical factors – including the after-tax comparison to other fixed income asset classes, as well as to corporate high-yield securities, according to Colby.

"The ratio comparison of municipal high yield to corporate high yield at 106.97% 9 [as of Feb. 27, 2015] suggests that municipal high yield – not even adjusted for taxes – is nominally higher," he said.

That was up from 96.28% as of Jan. 30, and is compared with an average of 83.12% dating back to March 31, 2005, according to data from Van Eck and FactSet, an independent financial and analytical data firm cited in Colby's report.

The ratio peaked at 136.05% as of June 30, 2014, the data showed.

Winterstein warned that the spread widening comes with a caveat.

The S&P municipal high-yield index is comprised of 26% of Puerto Rico bonds and 15% of tobacco paper — two of the market's riskiest sectors, he pointed out.

"Investors should have little to no Puerto Rico or tobacco exposure," given their track records, he said.

Puerto Rico Gov. Alejandro Garcia Padilla has come under fire for his proposed tax overhaul, which includes a shift from a 7% sales tax to a 16% value added tax to help the commonwealth pay debt service.

While tobacco bonds provided some of the highest returns in the municipal market in 2014 and yields soared during a sell-off in the fourth quarter after Bill Gross' departure from PIMCO, as structured finance instruments, they are also sensitive to high-yield corporate funds, traders have said.

"With domestic consumption rates in a secular decline," Winterstein said of tobacco. "We don't think the long-term economics support the sector."

A new $1.7 billion tobacco deal from California's Golden State Tobacco Securitization Corp. is planned for pricing by Citigroup Global Markets on March 24. The bonds are rated A1 by Moody's

Investors Service, AA by Standard & Poor’s, and A by Fitch Ratings.

THE BOND BUYER

BY CHRISTINE ALBANO

MAR 23, 2015 1:50pm ET

IRS 2015 Resident Population Figures.

IRS Notice 2015-23, 2015-12 IRB 769 contains the 2015 resident population figures for use in determining the state housing credit ceiling under section 42(h) and the private activity bond volume cap under section 146.

The notice also details the private activity bond volume limit under section 142(k).

Read the Notice.

Foley: IRS Issues Notice 2015-25 Extending Safe Harbor for Continuous Construction in Order to Take Advantage of Renewable Energy Tax Credits.

Yesterday, the IRS issued Notice 2015-25, which updates the guidance in Notices 2013-29, 2013-60, and 2014-46. These Notices provide that a taxpayer can show that it has “begun construction” of its qualified renewable energy facility by December 31, 2014 for purposes of taking advantage of the section 45 renewable electricity production tax credit (PTC) or the section 48 investment tax credit (ITC) in lieu of the PTC by either: (1) beginning physical construction of a significant nature and maintaining a continuous program of construction (the Physical Work and Continuous Construction Tests), or (2) incurring at least 5% of the total cost of the eligible facility and maintaining continuous efforts to advance towards the completion of the project (the 5% Safe Harbor and Continuous Efforts Test). Notice 2015-25 extends a safe harbor provided in Notice 2013-60 in which a taxpayer that places its renewable energy facility in service before January 1, 2016 will be deemed to satisfy the Continuous Construction and Continuous Efforts Tests under the Physical Work Test and the 5% Safe Harbor. The new notice extends this date. The extension is in response to the recent 1-year extension of the beginning of construction deadline to December 31, 2014. (See our prior blog post on that extension here.)

Takeaway: The new notice addresses uncertainty regarding how (or whether) the IRS would interpret the change to the beginning of construction deadline described above. By extending the safe harbor, taxpayers have an opportunity to avoid a subjective determination as to whether the taxpayer maintained continuous construction activities, provided that the project is placed in service by December 31, 2016. With these recent changes, so long as a taxpayer (1) “begins construction” on its renewable energy facility prior to **January 1, 2015**, and (2) the taxpayer (or eligible transferee) places that facility in service prior to **January 1, 2017**, the facility will be deemed to satisfy the Continuous Construction Test (for purposes of the Physical Work Test) or the Continuous Efforts Test (for purposes of the 5% Safe Harbor), regardless of the actual amount of physical work performed or costs paid or incurred within the January 1, 2015 through December 31, 2016 timeframe. However, to the extent the taxpayer does not place the facility in service by January 1,

2017, the taxpayer will still be required to show that based on the facts and circumstances it made continuous progress toward completion of the facility once construction began (or at least 5% of the total costs have been paid or incurred). (For more information on satisfying this requirement see our prior blog post here.)

Last Updated: March 17 2015
Article by John A. Eliason
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.

Reminder: Webinar on Municipal Advisor Professional Qualifications.

Webinar on Amendments to MSRB Rule G-3 on Professional Qualification Standards for Municipal Advisors

Date: April 2, 2015

Time: 3:00 p.m.- 4:00 p.m. ET

Description: The MSRB will host a webinar to review amended MSRB Rule G-3, which will create baseline standards of professional qualification for municipal advisors. The amendments to the MSRB's existing Rule G-3 on professional qualifications take effect on April 27, 2015.

Register.

SIFMA to SEC: No Exemptions for Non-Dealer MAs.

WASHINGTON – Non-dealer municipal advisors should not be allowed to act as placement agents for municipal bonds, the Securities Industry and Financial Markets Association told Securities and Exchange Commission chair Mary Jo White in a recent letter.

Leslie Norwood, SIFMA managing director, associate general counsel, and co-head of municipal securities, penned the letter directly challenging the position of the National Association of Municipal Advisors. NAMA president Terri Heaton wrote White a letter late last year asking the SEC to consider granting non-dealer MAs a waiver from broker-dealer registration when they serve as middlemen between institutional investors and municipal issuer clients, comparing the idea to the MA registration exemptions available to dealers.

The Municipal Securities Rulemaking Board warned in 2011 that MAs that introduce potential investors to issuers or negotiate with potential investors in exchange for transaction-based compensation may be subject to federal securities laws and MSRB rules that apply to dealers.

Bond Dealers of America chief executive officer Mike Nicholas, who had earlier urged the SEC to crack down on MAs acting as unregistered broker-dealers, challenged the NAMA position almost immediately. The more recent SIFMA letter, dated March 12, acknowledges NAMA's argument that MAs are now regulated by an SEC rule that requires them to put the interests of their clients ahead

of their own, but said that MA regulation and dealer regulation are not directly comparable.

"NAMA's request proceeds from a mistaken premise that the two schemes of regulation have similar purposes or effects, and reflects a flawed view of the function that broker-dealer registration and regulation serves in our system of regulation," Norwood wrote. "While broker-dealers have extensive duties under commission and self-regulatory organization rules and common law to their issuer clients, the overarching purpose of broker-dealer regulation is to protect investors."

Conversely, MA regulation is focused on issuer protection, Norwood continued. Acting as a broker between issuers and investors involves inherent conflicts of interest that dealer regulations are structured to address with rules governing communications, fair pricing, disclosure, suitability, personnel qualifications, and more. Those investor protections do not exist in the MA regulatory regime, Norwood pointed out.

"Where municipal advisors engage in activities that constitute acting as a broker, the investors with whom they deal should be entitled to the same protections they receive when dealing with a registered broker—protections not provided by municipal advisor regulation," Norwood wrote.

Norwood further argued that granting NAMA's request could potentially allow non-dealers to skirt MSRB Rule G-23, which prohibits an MA from switching roles and acting as a placement agent. SIFMA also opposes a second NAMA request that MAs be exempt from investment adviser registration, pointing out that the MA rule was not crafted with an eye to investment advisory services.

The MSRB is still working on completing its MA regulations, and its draft rule governing the core duties of MAs is not finalized.

THE BOND BUYER

BY KYLE GLAZIER

MAR 20, 2015 1:00pm ET

MSRB Seeks Approval to Enhance Post-Trade Data Available on EMMA.

The Municipal Securities Rulemaking Board (MSRB) today requested approval from the Securities and Exchange Commission (SEC) of a proposal to expand the post-trade data displayed on its Electronic Municipal Market Access (EMMA®) website. Amendments to the MSRB's Real-Time Transaction Reporting System (RTRS) would require municipal securities dealers to indicate trades executed on an alternative trading system and trades involving non-transaction based compensation arrangements, among other changes.

View the rule filing.

Biloxi Blues Deepen as Fines Loom Over Ballpark Built With Bonds.

(Bloomberg) — Biloxi sold $21 million of bonds to pay for a baseball stadium, lured the Shuckers to town and auditioned singers for the national anthem. It's now racing to avoid losses because the

team has nowhere to play.

The Mississippi city, with a population of 45,000, may decide March 24 whether to spend an extra $1 million to complete work on the ballpark before Aug. 31, when it's set to be finished. If the stadium isn't ready when the season starts on April 9, Biloxi may have to pay $10,000 in fines for every game that can't be played there. It also stands to forgo thousands more in tax revenue anticipated from visiting fans.

"We were worried the taxpayers would be on the hook if this stadium didn't make money the way the city said it would," said Roberta Avila, the executive director of the Steps Coalition, a Biloxi community group that opposed public funding for the stadium. "There was no guarantee."

The costs underscore the risks to cities that borrow to build stadiums, seeking to boost their economies. More than $9 billion of municipal bonds have been issued to finance arenas for professional sports teams, data compiled by Bloomberg show. Hartford, Connecticut, sold about $62 million of bonds last month to make a home for the New Britain Rock Cats, the baseball team that will become the Hartford Yard Goats when they move.

Some Mishaps

Such minor-league stadiums don't always deliver the expected benefits. Newark, New Jersey, is paying $1 million a year on bonds for a facility that's been without a team since the Newark Bears folded because of dwindling attendance.

To finance the stadium, Biloxi sold general-obligation bonds and used $15 million of its share of what BP Plc paid after an oil spill damaged the Gulf Coast in 2010. General-obligation debt is funded by the city budget, instead of earmarked fees or other specific revenue.

Construction was delayed as the team waited for approval from Minor League Baseball to move from Huntsville, Alabama. The city may be required to pay fines to the Shuckers if the venue's not open after the season begins. Early-season games are set to be played in Huntsville and at the fields of its opponents.

The team may be willing to play in an incomplete stadium if the city can certify that it's safe, said Tim Bennett, the Shuckers's vice president. The team is offering to help pay some of the cost to get the stadium open before August.

"We're in negotiations to get in more quickly than planned," said Bennett. "It doesn't look very good for us to be collecting fines of $10,000 per game when the city is building us a $36 million stadium."

Residents Leery

The potential costs have made some residents leery of the agreement Biloxi officials struck.

"I'm very happy to see my dream come true, but I have concerns with how the deal was structured," said Barry Lyons, a Biloxi resident and former New York Mets catcher who pushed for two decades to get a team and stadium in his home town. "I'm concerned the city will be on the hook for the costs if it doesn't work out as a catalyst for development and family entertainment."

Stadium bond deals have also drawn national scrutiny. In his budget this year, President Barack Obama proposed barring the use of tax-exempt debt to finance sports arenas for team owners. Some studies by sports economists have found that the venues do little to boost tax collections and divert funds from other public services.

Other Priorities

Biloxi should address infrastructure and housing issues in areas still recovering from Hurricane Katrina, which hit the Gulf Coast almost a decade ago, said James Crowell, president of the National Association for the Advancement of Colored People there.

"It's going to be a stress on our already strained city budget to complete this thing," he said. "Since Katrina, a lot money hasn't been used to revitalize our residential areas as it should have been. A lot of people haven't been able to move back."

Local officials said the team and stadium will bring new jobs by bolstering tourism near the casinos where it's being built. The new stadium may generate $34 million of spending a year by visitors at restaurants, casinos and stores, according to an August 2013 economic analysis by Chicago-based Johnson Consulting.

"We have hundreds of hotel rooms right by the stadium, which is near our casino district," said David Nichols, Biloxi's city manager. "Now we just need to find a way to complete the stadium so we can get it open."

by Darrell Preston

March 22, 2015

To contact the reporter on this story: Darrell Preston in Dallas at dpreston@bloomberg.net

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TIF - ARIZONA

City of Apache Junction v. Doolittle

Court of Appeals of Arizona, Division 1 - March 17, 2015 - P.3d - 2015 WL 1223491

In May 1999, the Arizona Legislature repealed the statute that enabled municipalities to use tax increment financing ("TIF") to finance redevelopment projects. The Cities of Apache Junction and Casa Grande filed suit against of the Pinal County Treasurer, alleging that she was required to distribute TIF revenues to the Cities because, before the effective date of the repeal, the Cities adopted redevelopment plans that allowed them to use TIF.

The Court of Appeals held that the County Treasurer was not required to make TIF revenue distributions, affirming the superior court's judgment in her favor. The Court held that the repealing act did not preserve the Cities' right to TIF distributions arising from taxes levied after December 31, 1998, and it affirmatively abrogated the County Treasurer's obligation to make TIF distributions after that date.

TAX - COLORADO

Cantina Grill, JV v. City & County of Denver County Board of Equalization

Supreme Court of Colorado - March 16, 2015 - P.3d - 2015 CO 15

Concessionaires at city-owned airport sought review of decision by board of equalization valuing their possessory interests for property tax purposes. The District Court concluded that the possessory interests were taxable, and affirmed the valuations. Concessionaires appealed, and the Court of Appeals affirmed. Concessionaires petitioned for writ of certiorari.

The Supreme Court of Colorado held that:

- Concessionaires' possessory interests were sufficiently exclusive to qualify as taxable real property interests;
- Concessionaires' possessory interests provided a revenue-generating capability that was sufficiently independent of city for the interests to qualify as taxable real property;
- City assessor could use the minimum monthly guarantee provided for in the concession agreements to determine the "reasonably estimated future annual rents" on which valuation of the interests was to be based;
- No portion of the future rent represented payments for the right to conduct business, so as to be excludable from the valuation; and
- No portion of the future rent represented reimbursements to city for the costs of operating and maintaining the airport, so as to be excludable from the valuation.

The possessory interests held by airport concessionaires in their respective concession spaces at city-owned airport were sufficiently exclusive to qualify as taxable real property interests, even though concessionaires' agreements with city allowed city to grant other concessionaires the right to operate similar businesses at the airport. Each concessionaire had the right to exclude others from using their particular concession space to operate a concession business, and operation of competing concession businesses at nearby locations had no bearing on the exclusivity of concessionaires' rights.

The possessory interests held by airport concessionaires in their respective concession spaces at city-owned airport provided a revenue-generating capability that was sufficiently independent of city for the interests to qualify as taxable real property, even though concessionaires' agreements with city contained extensive operating restrictions. Concessionaires' revenue came from the traveling public, city did not control the amount of concessionaires' profit, concessionaires were responsible for supplies, equipment, and improvements to and maintenance of their concession spaces, and operating restrictions did not deprive concessionaires of control and supervision of their operations.

In valuing, for tax purposes, the possessory interests held by airport concessionaires in their respective concession spaces at city-owned airport, city assessor could use the minimum monthly guarantee provided for in the concession agreements to determine the "reasonably estimated future annual rents" on which such valuation was to be based, even if most concessionaires paid a percentage of their monthly gross revenues instead of the minimum guarantee. Use of the guarantee was reasonable, given that concessionaires were obligated to pay at least that amount, and assessor inquired into the market rate for the concession spaces but determined that the only comparable market was the airport.

No portion of the future rent to be paid by concessionaires at city-owned airport represented payments for the right to conduct business, so as to be excludable from the tax valuation of concessionaires' possessory interests in their concession spaces. Concession agreements stated that the compensation due under the agreements was for the "rights and privileges" granted by city, which consisted of the "right to occupy, improve, and use" the concession spaces, and valuation of

the interests was based on minimum monthly guaranteed rent payments, rather than a percentage of gross revenues, and was representative of market rent.

No portion of the future rent to be paid by concessionaires at city-owned airport represented reimbursements to city for the costs of operating and maintaining the airport, so as to be excludable from the tax valuation of concessionaires' possessory interests in their concession spaces. Concession agreements stated that the compensation due under the agreements was for the "rights and privileges" granted by city, which consisted of the "right to occupy, improve, and use" the concession spaces, and any use by city of payments from concessionaires to operate, maintain, and repair airport did not transform such payments into reimbursements of those costs.

Army Moving Ahead with Community-Military Partnerships under New Rules.

Language in the fiscal 2015 defense authorization bill is spurring the Army to fully embrace a unique partnership authority allowing installations to enter into intergovernmental support agreements with local communities to provide municipal services. Traditionally, military bases have been cloistered communities separate from nearby municipalities and providing redundant services for soldiers.

Read More.

March 19, 2015

S&P's Public Finance Podcast - (State Pensions And Sweet Briar College).

In this week's Extra Credit, Standard & Poor's Managing Director Robin Prunty and Senior Director John Sugden discuss our outlook on state pensions, and Director Sussan Corson explains what's behind our rating on Sweet Briar College.

Listen to the Podcast.

Mar 19, 2015

Atlanta City Council Wants Oversight of Infrastructure Bond Projects.

The Atlanta City Council voted unanimously Monday to create an oversight committee for the $250 million infrastructure bond program that city voters will decide on Tuesday.

If the two-part referendum passes, the 13-member committee would hold public meetings at least once per quarter to review the status of projects being financed by the bonds, potentially suggest changes to the project list and report its findings and recommendations periodically to the city council.

The $250 million bond referendum, an initiative spearheaded by Mayor Kasim Reed, is broken down into two separate bond requests. Voters will be asked to approve $187.9 million in bond financing for transportation improvements and a second $64.1 million bond for construction, renovation,

maintenance and equipping of buildings, recreation centers and other city-owned facilities.

The bond package also is divided between $179.3 million in citywide projects and $70.7 million in local improvements.

The oversight committee will include four members appointed by members of the city council, Atlanta's public works commissioner, two engineering faculty members from local universities, a member of the Atlanta Planning Advisory Board, a member of the State Transportation Board, a member of MARTA's Board of Directors, a member of the local chapter of the Georgia Society of Professional Engineers and two utility representatives.

The ordinance forming the committee gives it five years to do its work. After that, it would have to be reauthorized by the city council.

The council also voted Monday to spend up to $500,000 on independent audits of the bond projects to be conducted throughout the life of the program.

Dave Williams
Staff Writer-
Atlanta Business Chronicle

Municipal Issuer Brief: Pension Obligation Bonds on the Rise?

Read the Brief.

Municipal Market Analytics | Mar. 17

Why Some Public Pensions Could Soon Look Much Worse.

A Governing analysis shows how a new accounting rule dramatically changes some plans' pension liabilities and will likely force many states to finally face their obligations.

Standing in a crowded hallway outside a committee room in the Kentucky State Capitol, House Speaker Greg Stumbo is surrounded by thankful teachers and skeptical reporters. It is mid-February and the committee has just approved his proposal to borrow $3.3 billion to shore up the state's teacher retirement system. Stumbo has argued that current, historically low interest rates are a window of opportunity to solidify funding for the troubled system. But, notes one reporter, borrowing $3.3 billion would be a challenge since it would be the largest bond offering in Kentucky's history.

Yes, Stumbo counters, but the state already owes the money. "You shouldn't be scared of that fact," he says. The key questions are: Is the market favorable? Is the plan sound? Will it bring stability to the fund? "The answer to all three of those," he says emphatically, "is yes."

For now, Kentucky won't be borrowing the $3.3 billion. The state Senate voted in March to study the funding issue further. Meanwhile the problem is clear. Last year, the Kentucky Teachers' Retirement System (KTRS) saw its unfunded pension liability swell by nearly $9 billion. Suddenly, the system appeared to have less than half the assets it needed to pay its retirees. Kentucky's funding status

stood at 46 percent — a drop of 6 percentage points from 2013. It was the biggest single-year drop reported by the plan since the tech stock bubble burst in 2001.

This time, however, the culprit wasn't a slide in the stock market — it was accounting. Thanks to new pension accounting rules put forth by the Governmental Accounting Standards Board (GASB), Kentucky, along with a handful of other plans, has been forced to lower its discount rate — that is, the rate of return on its investments that it uses to determine the value of its total pension liabilities. The higher the expected rate of return, the lower the amount of funding a government needs to pay into its pension plan. The opposite is true when the rate of return is lowered. For Kentucky, which had to bring its rate down by more than two points to 5.23 percent, the effect was to increase the total liability. With the lower rate for investment performance, the plan will need more money to pay its pension obligations.

In a Governing analysis of 80 pension plans that had comparable data available, about one-third adjusted their discount rate downward but just nine plans in four states lowered it by more than a half-percentage point. The results for most of those plans were dramatic changes in their total pension liabilities while their assets on hand either improved somewhat or stayed the same.

Overall, the total liability of the plans reviewed increased an average of only 9 percent, a hike generally attributed to retirees living longer. But some plans saw more dramatic changes. In New Jersey, pension liabilities for the state employee retirement plan increased 55 percent. While the aggregate average plan saw a boost in its funded ratio of 4 percentage points, New Jersey's funded status fell by nearly one-fifth to 28 percent.

The discount rate rule, known as GASB 67, is just part of the story. Another piece of the new rule, GASB 68, will hit financial statements starting later this year. Under that new rule, governments that are members of a pension plan — say, localities that pool their money with a state plan — are required to report their share of that plan's unfunded liability on their governmentwide balance sheet for the 2015 fiscal year, something most of those governments have never before had to do. Now most will be adding millions of dollars in liabilities, forcing lawmakers to acknowledge the role pension payments play in their government's overall financial picture.

Volatility and uncertainty are likely as governments grapple with the fiscal adjustment to this latest round of GASB accounting rules. But in the long run, the new accounting standards will call attention to the need for governments to contribute regularly to pensions and to acknowledge the role that funding plays in mitigating ballooning liabilities. The rules may also force a decision for some governments who will either be pushed into meeting their funding obligations or finding other strategies to keep plans solvent.

In some ways, the change to pension accounting couldn't have come at a more convenient time. The new assumptions also require plans to report current market-value assets instead of asset values that "smooth in" — and tend to hide — investment gains and losses over time. As late as 2013, actuaries were still smoothing in the asset losses from 2008 and 2009. Many plans were reporting a lower actuarial value of their assets than was actually in the fund. Now, the market assets reported reflect the big gains in the stock market over the prior year. Plans in the Governing sample had an average annual increase in assets of an impressive 14.6 percent. All but eight plans recorded increases. The average funded status of plans jumped from 70 percent in 2013 to more than 74 percent in 2014.

Still, the discount rate treatment remains a key dividing force in the pension accounting rule, GASB

67. This rule requires plan actuaries to assess whether the pension fund will run out of money by considering factors such as past contribution patterns and expected future contributions from state and local governments, as well as expected contributions from employees, investment performance, and projected overall pension payouts. If there is a depletion date, the actuary must use a market rate of return (these days around 3 or 4 percent) to calculate the value of what the plan still owes after the fund runs out of money. The result is a blended discount rate that skews lower for plans that are low on assets.

Plans like KTRS that have not had reliable government contributions must use a more conservative measurement. Because of the rule, Kentucky's total payouts to KTRS retirees went from a projected $28.8 billion in 2013 to its current projection of $39.7 billion. Although the Kentucky bond proposal was not a direct result of the accounting changes, the rule adds a strain to a system that is already under pressure, says KTRS Executive Secretary Gary Harbin. "It puts that out there that if the cash flow is not there, it gets to a point where it starts impacting investments," he says. "We feel we're at that point."

Most plans, however, say they won't have a depletion date. Therefore, their actuaries can use the long-term expected rate of return (typically between 7 and 8 percent for most pension plans) to calculate the total pension liability. The Teachers' Retirement System of Louisiana, a plan similar in size to KTRS, has a solid stream of government contributions and reported a much smaller total liability increase than its Kentucky counterpart.

Kentucky's teacher retirement plan isn't the only pension plan in trouble in the state. The Kentucky Employees Retirement System (KERS) has been in a free-fall for years. Its funded status is 25 percent, the lowest ratio of any system reviewed. But unlike the teachers plan, KERS avoided using a lower discount rate, which would have sunk its funded status even further. That's because in 2013, the Kentucky Legislature created a funding plan and has set aside its full contribution to the system for 2015 and 2016, something it has not done in more than a decade. Funding plans in other states have potentially saved other shaky pension systems from raising their total pension liability. In 2014, California enacted legislation that required increased contributions to teacher pensions in an effort to shore up funding for that system.

Of course, the funding plan has to be followed. New Jersey enacted pension reform in 2011 that called for the state to ramp up payments into its pension funds over the course of seven years. But New Jersey has failed to follow through on those payments. A New Jersey Superior Court judge ruled in February that Gov. Chris Christie violated state law when he twice declined to make the full payment into the state's pension system. Now, Christie is pushing controversial pension legislation that cuts the benefits current employees can earn in the future. The new accounting rules lend an air of urgency to Christie's plan as the funded status for two state plans plummeted this year. It is now 28 percent for New Jersey's state employees fund and 34 percent for the state's teachers plan. "This new reporting system," Christopher Santarelli, spokesman for the state department of the treasury, said, "only underscores the urgent need for additional, aggressive reform of a pension and health benefits system that if fully funded would eat up 20 percent of New Jersey's budget."

This same fate could meet other plans that don't keep up their pension funding. "Keep in mind, it is a 'trust but verify' condition," says GASB Chairman David Vaudt. "There will be fluctuations in liabilities if governments don't meet their funding commitments."

The impact of GASB's proposed accounting practices is not far off. GASB 68, the rule that requires governments to report their share of a pension plan's unfunded liability on their governmentwide balance sheet, calls for the new math to appear in a government's 2015 Comprehensive Annual Financial Report.

The prospect of adding millions in debt on the balance sheet isn't exactly inviting, but it's something larger governments are braced for. But smaller governments and municipalities, particularly school districts that may see outsized liabilities on their financial sheets, could be blindsided. For most local governments, managing their pension responsibilities has simply meant paying the bill that the pension plan sends them. "The responsibility of paying benefits has for so long been not transparent, nobody feels like they have the responsibility," says Sheila Weinberg, the founder and CEO of Truth in Accounting, a national nonprofit that advocates fiscal transparency. "There has been some education, but I think it still will be a shock to the smaller governments."

The new liability is a volatile one. It could swing up or down from year to year depending on the pension plan's market performance or if governments take a break in funding. Still, many agree that requiring governments to report their own liabilities is a common-sense move. Adjustment to it will take years. But ultimately, governments will have a truer picture of their fiscal health, and that will force many to take ownership of the issue.

Whether the tide goes toward figuring out a way to steadily fund pensions, as some in Kentucky would like, or negotiating benefit reductions and a change in plan structure, as is proposed in New Jersey, remains to be seen.

"This liability has already existed," says Ted Williamson, a partner in RubinBrown's Public Sector Services Group. "It's just that up until now, this hasn't been reflected. This change makes it top-o--mind for lawmakers. They need to think about a long-term strategy for their pension plans."

View financial data for the 80 state and local retirement systems reviewed.

GOVERNING.COM

BY LIZ FARMER, MIKE MACIAG | MARCH 17, 2015

The Growing Evidence that P3s are Delivering Value.

Faced with constrained resources, government officials continue to turn to public-private partnerships (P3s) for various reasons, including maximizing capital resources, transferring risk, accelerating project delivery, achieving cost savings and enhancing accountability. This is particularly true for capital-intensive, highly complex infrastructure projects.

But what evidence exists from projects that have been completed or are under construction to show whether P3s are delivering public value? An examination of some of the larger P3 infrastructure projects across the country offers reasons for optimism.

The P3 market has developed dramatically over the past 25 years. In the 1990s, Indianapolis pioneered a host of P3 transactions. Using a philosophy of managed competition — in which public, private and nonprofit organizations competed to provide government-funded projects of the highest

quality for the best price — over $400 million of value was created for the city's taxpayers. Notably, a P3 involving the city's wastewater treatment system saved $189 million over 10 years.

The 2000s offer a more complex set of P3 data points as, too often, transactions involving the leasing of existing public assets moved from the goal of best taxpayer value to one of near-term monetization of future revenues. In reflecting the optimism of the times, the private sector often overpaid for the long-term leases that governments put to bid. On toll roads alone, estimated equity write-downs — private partners' losses — are in excess of $2 billion, with approximately $800 million of that represented by the Indiana Toll Road bankruptcy alone.

These losses and bankruptcies confuse the public, although an area for further research would be to explore whether such investor losses were in a sense public gains, given that governments collected upfront payments and reinvested the proceeds. At this point, however, these kinds of controversial privatization transactions are few and far between.

Most recently, over the last three years, eight U.S. P3 projects involving new construction have been completed and have opened for use. While each of these P3s offers different lessons, the outcomes achieved on three of them — a toll road project in Florida, a container terminal expansion at the Port of Baltimore and a new courthouse development in Long Beach, Calif. — demonstrate that significant public value can be created through the responsible fusion of private- and public-sector resources.

In Florida, the Interstate-595 P3 provided capacity improvements 15 years sooner than a conventional plan would have offered. The innovative expansion of the Port of Baltimore's Seagirt Marine Terminal was completed two years ahead of schedule via a P3 model, and as a result in 2014 the port was able to handle a record 484,410 containers, a 10 percent increase from 2013. And in California, the Administrative Office of the Courts used a P3 to deliver a new 535,000-square-foot courthouse in Long Beach ahead of schedule and under budget. The new courthouse received a 2014 Urban Land Institute Global Award for Excellence.

These projects offer tangible evidence of the value creation potential of P3s. But do they illustrate a decisive trend? Only time will tell, of course, but it's worth looking at early indicators for some of the 14 projects listed in the table below that were bid as P3s and are or soon will be in the construction phase.

Scheduled Completion	Projects
2015	LBJ Express (Texas), Presidio Parkway (California), Carlsbad Desalination Project (California)
2016	Denver FasTracks, East End Crossing (Indiana/Kentucky), US36 Express Lanes-Phase 2 (Colorado)
2017	Elizabeth River Crossings (Virginia), North Tarrant Express-Segment 3A (Texas)
2018	Goethals Bridge (New Jersey/New York), Indianapolis Justice Center, I-77 Express Lanes (North Carolina), Pennsylvania Rapid Bridge Replacement (Pennsylvania), Portsmouth Bypass (Ohio)
2021	I-4 Ultimate (Florida)

While it is difficult to make general conclusions across all of these projects, early evidence is positive, at least as far as Wall Street is concerned. Take for example, the $2.7 billion LBJ Express variable toll managed lanes project in the Dallas/Fort Worth area. According to a Fitch Ratings analysis issued last month, construction "has proceeded on schedule and on budget, and operations are on target to begin during 2015."

Similar results have been noted on the $925 million Carlsbad Desalination Project in California, the largest planned desalination plant in the Western Hemisphere. In December, Fitch affirmed the project's underlying bond ratings, citing "timely construction progress of the project with provisional acceptance expected to be achieved several months ahead of guaranteed completion date in 2015."

So overall, the evidence — both looking backward and looking forward — from the current crop of U.S. P3 projects is largely positive. As the industry continues to evolve, P3 advocates would be wise to focus less on ideological arguments and more on the growing body of evidence that P3s are largely delivering genuine public value.

GOVERNING.COM

BY STEPHEN GOLDSMITH, ANDREW DEYE | MARCH 18, 2015

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The Missing Information That Municipal-Bond Investors Need.

Prior to the Great Recession, interest rates on municipal bonds were generally lower than Treasury rates. This relationship has reversed since 2008, imposing substantial extra costs on state and local government borrowers. Further, the municipal-bond market witnessed major interest-rate spikes in the aftermath of Wall Street analyst Meredith Whitney's dire (and errant) 2010 warning of widespread bond defaults and the Detroit bankruptcy.

High borrowing costs and volatility are the result of ignorance about the risk of municipal securities. A drumbeat of negative news headlines deters investors from buying municipal bonds, limiting liquidity and raising yields above levels necessary to compensate for the very limited risk of lending to most U.S. cities and counties.

By replacing fear and ignorance with data and insight, we can lower municipal borrowing costs and reduce the market's vulnerability to negative headlines. Much of the data needed for this task is buried in audited financial statements published each year by about 18,000 of the nation's local governments.

Unfortunately, municipal investors are less apt to perform financial statement analysis than their counterparts who invest in corporate securities, where discussion of such measurements as P/E ratios and EBITDA is common. Municipal-bond-market participants are largely ignorant of which government financial ratios presage bankruptcy or default and what levels signify danger.

There are many reasons why the municipal market lacks sophistication in this area, but a big part of

the problem has been a lack of free (or even low-cost) financial-statement data. In this regard, some strides are being made. First, the 2009 launch by the Municipal Securities Rulemaking Board (MSRB) of its Electronic Municipal Market Access (EMMA) system gave investors a one-stop shop for municipal financial disclosure. But as the Securities and Exchange Commission (SEC) observed recently, a large number of municipal-bond issuers have been posting their statements late or not at all. The commission's Municipal Continuing Disclosure Cooperation Initiative has greatly increased the number of statements on EMMA. Finally, late this year the Census Bureau is expected to begin posting federal single-audit submissions online. These packages include the same basic financial statements typically found in municipal market disclosure.

But the simple publication of thousands of voluminous PDFs does not provide the degree of transparency needed to raise the level of municipal-bond-market financial literacy. The vast majority of investors and analysts lack the patience and/or technical skills needed to extract the valuable needles of insight from this haystack of disclosure.

Investors in corporate securities do not face these difficulties. For the last 20 years, company financial reports have been available in textual form on the SEC's Electronic Data Gathering, Analysis and Retrieval system. As a result, corporate financial-statement data is freely available in convenient forms around the Internet: Yahoo Finance, MarketWatch, Morningstar and your broker's website are just a few of the places you can find this data.

So while corporate investors can readily compare the financial statistics of a safe company like Apple to an insolvent one like Radio Shack, municipal investors cannot easily perform the same exercise for Dallas and Detroit.

It wasn't always this way. Between 1909 and 1931, the Census Bureau published an annual volume entitled "Financial Statistics of Cities Having a Population of Over 30,000." The final edition — available at the St. Louis Federal Reserve's website — covered 311 American cities and included hundreds of revenue, expenditure, asset and liability data points for each municipality. Unfortunately, ever since 1931, Census financial data on local governments has become less comprehensive, less timely and less comprehensible to the lay user.

In the years after 1931, we lost the understanding that comparative local-government financial statistics were a public good. While we might look to the federal government to once again offer this information in today's era of heightened need, it may be challenged to take on this role in an era of sequesters.

But while we may need the private sector to provide this public good, the federal government can greatly reduce the cost of compiling a local-government financial-statement database. The SEC has required companies to file financial statements in text form — rather than via PDF — since the mid-1990s. In 2008, the SEC further standardized company financial reporting by requiring firms to file their statements in the form of eXtensible Business Reporting Language (XBRL), which imposes a consistent format on all filings. To date, neither the SEC nor the MSRB has pursued a similar course with respect to municipal financial disclosure.

Next week, the Data Transparency Coalition, a group that advocates for the use of XBRL, will hold a Financial Regulation Summit featuring numerous congressional representatives and regulators. Perhaps the extension of XBRL to the municipal-bond market can find its way onto the agenda.

Innovative financial regulation has done much to increase the liquidity and efficiency of equity markets. It is now time to extend these efficiencies to the municipal-bond market. Local government bond issuers and the taxpayers who ultimately service municipal debt stand to benefit.

GOVERNING.COM

BY MARC JOFFE | MARCH 19, 2015

Report: Transparent and Accountable Budgets.

Every year, state governments spend hundreds of billions of dollars through contracts for goods and services, subsidies to encourage economic development, and other expenditures. Accountability and public scrutiny are necessary to ensure that the public can trust that state funds are spent as well as possible.

In recent years, state governments across the country have created transparency websites that provide checkbook-level information on government spending – meaning that users can view the payments made to individual companies as well as details about the goods or services purchased or other public benefits obtained. These websites allow residents and watchdog groups to ensure that taxpayers can see how public dollars are spent.

In 2015, all 50 states operated websites to make information on state expenditures accessible to the public and these web portals continue to improve. For instance, in 2015, all but two states allow users to search the online checkbook by agency, keyword and/or vendor, and 44 states provide checkbook-level data for one or more economic development subsidy programs. Many states are also disclosing new information and are making it easier for outside researchers to download and analyze large datasets about government spending.

This report, our sixth annual evaluation of state transparency websites, finds that states continue to make progress toward comprehensive, one-stop, one-click transparency and accountability for state government spending. Over the past year, many states have launched new and improved websites to better open the books on public spending, or have adopted new practices to further expand citizens' access to critical spending information. Some states, however, still have a long way to go.

Continue Reading.

Pennsylvania's Wolf Targets Wall Street Fees in Tackling Pension.

(Bloomberg) — To ease Pennsylvania's pension obligation, Governor Tom Wolf isn't targeting public workers, the focus in neighboring New Jersey and around the country. He's eyeing payments to Wall Street.

The first-term Democrat is calling for Pennsylvania's two pension systems to reduce investment-manager fees that are higher than the average U.S. public plan. He's also counting on Wall Street banks to market bonds the state would use to bolster one of the funds.

As retirement costs consume a growing share of municipal budgets, pension boards are scrutinizing payments to money managers. California Public Employees' Retirement System plans to liquidate its hedge-fund program, while Pennsylvania's Montgomery County moved most of its holdings to cheaper, passively managed funds, which track indexes. Wolf wants to adopt lower-cost approaches that may save $200 million annually.

“We’re not talking about suddenly overnight going to a 100 percent passive investment strategy,” said Randy Albright, Wolf’s budget secretary. “We’re talking about strategically re-evaluating the mix and trying to look at ways that they can reduce risk and reduce fees.”

Taxpayer Dollars

Pennsylvania ranked second-to-last after New Jersey among states by the percentage of the required pension contribution that it made from 2001 to 2013, according to a March report from the National Association of State Retirement Administrators. Ratings companies cite the pension burden in giving Pennsylvania a grade two steps below the average for U.S. states. Standard & Poor’s and Fitch Ratings cut their marks in September to AA-, fourth-highest. Moody’s Investors Service lowered it to an equivalent Aa3 in July.

In his first budget address this month, Wolf said Pennsylvania “has been wasting hundreds of millions of taxpayer dollars on Wall Street managers.”

Across the country, pension funds are examining their relationships with investment firms, said Greg Mennis, director of the states’ public-sector retirement systems project at the Pew Charitable Trusts. They’re reconsidering their strategies after expanding higher-cost alternative investments, such as hedge funds, he said.

County Shift

California’s retirement system, the biggest state pension fund, said this month it expects to pay 8 percent less for money managers as it drops hedge funds. In Montgomery County northwest of Philadelphia, shifting most assets to Valley Forge-based Vanguard Group Inc. cut expenses by more than two-thirds, Josh Shapiro, county board of commissioners chairman, wrote in the Philadelphia Inquirer this month.

Pennsylvania administers two plans covering about 700,000 people. The funds had 62 percent of assets needed to cover promised benefits in 2013, down from 75 percent in 2010, for a combined unfunded liability of about $53 billion.

The largest system, the Public School Employees’ Retirement System, paid 1.14 percent of assets in fees in 2013, compared with the 0.42 percent average for U.S. public plans, according to the Center for Retirement Research at Boston College. The Pennsylvania State Employees’ Retirement System also exceeded the average, paying 0.66 percent.

Fee Sideshow

Officials are asking the retirement boards to lower fees to about 0.6 percent, said Albright, the budget secretary.

The call to reduce payments represents a “distraction” and a “sideshow” that won’t reverse years of underfunding and the costs of a system that guarantees worker payments, said Paul Mansour, head of municipal research at Conning.

“You really need to attack the benefit levels either for existing employees, or certainly for new ones,” said Mansour, whose Hartford, Connecticut-based company oversees $11 billion in munis. “Otherwise, it’s going to be a continued problem.”

Public pension officials can’t just look at savings — they have a responsibility to do what’s best for their funds and beneficiaries, said Keith Brainard, research director for the state retirement

administrators' group.

"You're not investing the money to save money," he said from Georgetown, Texas. "You're investing the money in order to generate investment earnings within an acceptable level of risk."

Liability Focus

Albright said he's confident the funds would achieve the same return target. Yet Evelyn Williams, a spokeswoman for the school workers' pension, said a strategy involving lower fees would probably produce a lower assumed rate of return.

"The unfunded liability is too large for any significant impact, even if there were no management fees at all," she said in an e-mail.

Williams and Pamela Hile, a spokeswoman for the state workers' system, said the management fees resulted from investment strategies that propelled their funds to earnings above indexes while meeting risk standards.

Over the past 15 years, the school workers' fund paid managers $4.96 billion and generated a net $11.5 billion in returns above indexes, Williams said. The fund for state employees earned $19.7 billion net of fees while paying $2.4 billion in fees in the past decade, Hile said.

Savings Quest

The state workers' system "constantly looks for cost savings and aggressively negotiates fees, and that focus has reduced total investment costs by $70 million over the past five years," Hile said in an e-mail.

Wolf, a 66-year-old former businessman, also wants to sell $3 billion of pension bonds and direct the proceeds into the school workers' fund, which has the greater unfunded liability at $35 billion. The move would pay off if the pension's investment earnings are greater than the borrowing costs on the debt, underscoring the significance of any changes in the system's asset managers.

Pennsylvania's projected contributions to the systems rise to a combined $6 billion annually in 2035, from about $3 billion next fiscal year.

Unlike Illinois, which is fighting a court battle to cut worker benefits, and New Jersey, where Governor Chris Christie wants teachers to freeze current pension benefits, in Pennsylvania, Wolf isn't seeking givebacks from employees.

Pennsylvania's task is to make up for years of underfunding rather than trim benefits, Albright said. Legislation enacted in 2010 already raised retirement ages and cut costs, he said.

"We already have restructured our current employee benefit plan to a relatively inexpensive one," he said.

Bloomberg News

by Romy Varghese

March 19, 2015

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Moody's: Modest Credit Impact for GASB Pension Changes, but Contribution Weaknesses Now Highlighted.

New York, March 16, 2015 — The release of 2014 Comprehensive Annual Financial Reports (CAFRs) by US public pension plans that comply with Government Accounting Standards Board (GASB) Statement 67 have only a modest credit impact, and are in line with Moody's expectations, Moody's Investors Service says in a new report.

US public pension plans are now releasing 2014 financial statements that comply with GASB Statement 67 for the first time. Moody's analysis of 54 public pension plans with liabilities over $10 billion finds the new data not only align to expectations, but offer new insight to funding trajectories.

In fiscal 2015 disclosures by state and local governments must comply with GASB 68, which for the first time requires placing net pension liabilities on their balance sheets. Moody's rating methodologies already consider unfunded pension liabilities as debt-like obligations. Thus, the new accounting has little credit impact because Moody's already approaches the liabilities in a similar way.

"While GASB 67 and 68 impose many new rules related to pension accounting disclosure, our approach to evaluating credit risk stemming from public pension remains fundamentally unchanged," Moody's Assistant Vice President — Analyst Thomas Aaron says in "New Pension Accounting Increases Clarity of Plan Funding Trajectories."

Moody's finds that contributions for nearly three quarters of public pension plans studied are insufficient to prevent reported net pension liabilities from growing, even if plan assumptions are met. Of the plans in Moody's sample, just 13 received government contributions that were enough to reduce reported net pension liabilities. Even among the plans that received 100% of the actuarially determined contribution, only a minority received contributions large enough to prevent liabilities from growing.

Rules surrounding public pension discount rates change dramatically under the new GASB rules. However, Moody's findings indicate these changes will impact only a few pension plans. Therefore, the discount rates for the large majority of pension plans will continue to match assumed rates of investment return under GASB 67 and 68.

The full report can be purchased here.

Global Credit Research – 16 Mar 2015

Fitch Ratings U.S. Public Finance 2014 Transition and Default Study.

Read the Study.

[Urban Institute Announces Initiative to Help Guide, Design, and Assess "Pay for Success" Projects Across the Country.]

WASHINGTON DC – March 16, 2015 –The Urban Institute today launched an initiative to ensure “Pay for Success” (PFS) transactions are well-designed, informed by rigorous research, and deliver outcomes as intended.

The Laura and John Arnold Foundation (LJAF) will commit $8.4 million over three years for the Urban Institute, a nonprofit research organization, to establish a broad Pay for Success Initiative at Urban and ensure current and future PFS transactions are evidence-based and effective.

Pay for Success is an innovative funding approach that aims to drive government resources toward proven social programs to deliver better results to those in need. The model provides a way for state and local governments to tackle social problems by tapping private investors to cover the up-front costs of the programs. If the programs are successful, governments pay the investors back. If they are not, the investors absorb the cost and the governments pay nothing.

Currently there is only a handful of Pay for Success deals operating nationwide; however, with rapid growth expected, Urban’s scholars will bring a research perspective to assess and advise both existing and future PFS projects, at little to no cost to the field.

“The ultimate goal of our initiative is to identify and scale evidence-based interventions through effective service providers to help people and communities. We are advocates for the evidence that forms the foundation of these agreements to pay for interventions which would otherwise go unfunded, or be funded on a smaller scale. Knowing the rate and scale at which these programs are expanding, we want to make PFS deals as strong and research-based as possible,” said John Roman, a senior fellow at the Urban Institute.

Pay for Success already is an exciting and rapidly growing field. Urban aims to support and complement the work of a number of other organizations and public leaders who have created a strong foundation for others to follow. Ultimately, Urban will help accelerate what the field can learn together.

Scholars supported by Urban’s new PFS Initiative will be engaged in a range of activities, including:

- Providing training and technical assistance;
- Developing toolkits and templates for others to follow;
- Designing new PFS transactions based on existing research;
- Helping ensure programs are evaluated accurately; and
- Sharing lessons learned for other leaders and researchers through collaborative events.

As one of the first undertakings for the PFS Initiative, Urban will host a series of virtual events in May examining the areas of public and social service that are most promising for PFS. The panel series will bring together subject matter experts, researchers, service providers, and philanthropic and government leaders from across the country. It will focus on which evidence-based programs and strategies are best poised for a PFS approach in housing, economic development, poverty reduction, and justice system reform.

Urban Institute Fellow and Director of Urban Policy Initiatives Erika Poethig explained, “Urban is uniquely positioned to conduct this work given its independent perspective, the breadth of its expertise on social and economic policy issues, and its commitment to empirical evidence. Since its

founding, Urban has used research to improve public sector programs. Pay for Success is a natural extension of that effort, and Urban's scholars are committed to helping maximize the potential of these new opportunities."

There are roughly 30 PFS projects in various stages of development in the United States, and PFS investments could total $1 billion across the next three years.

March 16, 2015

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The nonprofit Urban Institute is dedicated to elevating the debate on social and economic policy. For nearly five decades, Urban scholars have conducted research and offered evidence-based solutions that improve lives and strengthen communities across a rapidly urbanizing world. Their objective research helps expand opportunities for all, reduce hardship among the most vulnerable, and strengthen the effectiveness of the public sector.

In Atlantic City, Unease Over Emergency Managers.

Campaigning in New Hampshire recently, New Jersey Gov. Chris Christie told business leaders his move to install emergency managers in Atlantic City demonstrated his bold leadership.

"It was time to go in there, take more of a proactive role, make hard decisions," said Bill Greiner, a New Hampshire real-estate developer, said of the Republican governor's message.

Not everyone is so certain. In this struggling seaside city, some residents, business owners and local officials question whether emergency managers appointed in January will make the situation better.

In New Jersey, Atlantic City is an experiment in whether state control is the answer to the resort destination's long-standing problems. While governors have previously controlled some aspects of troubled cities such as Newark, Trenton and Camden, the state hasn't previously imposed an emergency manager.

The governor's move is also being watched outside the state. Kevin Madden, a senior adviser to Mitt Romney's 2012 campaign, said Atlantic City's decline and the state's finances are likely attack targets for Mr. Christie's opponents as he eyes a 2016 presidential bid.

Mr. Christie's appointment of emergency managers sent Atlantic City's already low bond rating further downward and left city leaders scrambling to sell about $12 million in debt in February. The city ended up paying a pricey 5% interest rate on those short-term notes and officials are now unsure how future debt auctions will go.

"It's had such a negative effect from the business community," said Mayor Don Guardian, a Republican. "They immediately assume the worst when you bring two guys in that have worked with bankruptcy."

The city intends to go back out in the market by April for roughly $50 million in financing, said Atlantic City Revenue Director Michael Stinson. The debt will be secured through a state financing program for municipalities, allowing Atlantic City to get better terms on the bonds than if it went into the market using its own lowered credit rating, Mr. Stinson said.

Senate President Steve Sweeney, the Legislature's ranking Democrat, said that bringing in two individuals with experience in municipal and corporate bankruptcies translated into more difficulties for Atlantic City.

"I think it was a big mistake," Mr. Sweeney said in a recent interview, noting the ratings downgrades that resulted. "It sent a very bad message to the markets."

The emergency managers, who in recent weeks have met with casino executives and city officials and studied the city's finances, and are expected to file their report and recommendations for the governor as soon as next week.

Turning around the city won't be easy. As casinos opened in neighboring states, the resort city of 40,000 that once bet on a gambling-led revival fell on hard times. Four casinos have closed in the past 18 months. Gambling revenue has dropped by half, from $5.2 billion in 2006 to $2.6 billion in 2014, according to the state's Department of Gaming and Enforcement.

The decline led casinos to successfully appeal their property taxes, leaving a big hole in the city's budget.

Mr. Guardian has already trimmed the workforce and cut some municipal services, citing the city's financial woes. Mr. Christie said at a recent town-hall meeting in Moorestown that an emergency manager can "right size the government" and do what government officials have been unable to do.

Mr. Christie's choice of Kevin Lavin, a restructuring expert, and Kevyn Orr, who handled Detroit's bankruptcy, has rattled confidence that the state would prevent a bankruptcy and maintain a safety net through state aid. Mr. Christie also issued an executive order that left open the possibility that the city could default.

The emergency managers declined to comment.

Emergency managers can offer financial expertise and make tough financial decisions without having to face the political pressure that elected officials can face, economists said.

Mr. Stinson, the city's revenue director, said that he has seen Mr. Lavin in the city nearly every day since he assumed the role. "They are working hard," he said of the emergency management team.

Across the city, talk in restaurants and among service workers has turned to whether the city will be the next Detroit, which emerged from bankruptcy in 2014 after officials struck deals with that city's creditors and reorganized city services. Israel Posner, executive director of the gaming institute at Stockton University, called the prospect of bankruptcy a "Damocles sword" hanging over Atlantic City.

Some think following in Detroit's footsteps might not be so bad in the long run. After that city's bankruptcy, some are betting that Detroit will bounce back, with less debt and more development. Real-estate prices have started rising in some parts of Detroit, and businesses are reinvesting in the downtown area.

Many in Atlantic City's casino industry have welcomed the emergency managers. Officials at the Golden Nugget said the city's regulatory costs and taxes had made business challenging and an emergency manager could help provide relief.

Joe Lupo, senior vice president at Borgata Hotel Casino & Spa, said the hotel believed changes needed to be made and the managers seemed qualified.

The appointment of the emergency managers surprised many because Mr. Guardian had also moved to cut the city's budget, staff and some municipal services, with Mr. Christie's approval.

"Don Guardian is there tightening the belt, shaving where he had to shave, trimming where he had to trim," said Tony Catonoso, owner of the city's famous Steel Pier. "Don's not going to sit there and pick fights. He's not going to sit there and dig in his heels just for spite. He's going to do whatever he has to do to move the city forward."

The mayor said he is meeting with the managers and working closely with them, and city officials are trying to assure outsiders that the situation isn't dire.

THE WALL STREET JOURNAL

By JOSH DAWSEY AND HEATHER HADDON

Updated March 20, 2015 2:51 p.m. ET

Schools Implementing GFOA's New Best Budgeting Practices Featured in Education Week.

Click here to read more about how Wylie ISD and Lake County Schools are utilizing the GFOA's Best Practices in School Budgeting to prioritize spending on student achievement. Also learn more about how the GFOA is expanding its early adopter group – the Alliance for Excellence in School Budgeting – to assist more districts in implementing the Best Practices.

CUSIP Request Volume Projects Increases in Corporate and Municipal Bond Issuance.

NEW YORK, NY, March 12, 2015 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for February 2015. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity, suggests a possible increase in corporate and municipal debt issuance over the next several weeks.

Total CUSIP requests for new U.S. and Canadian corporate equity and debt increased 7% in February, with a total of 1,818 new identifiers requested over the course of the month. Within those totals, domestic corporate debt CUSIP demand rose to 666 new requests in February. On a year-over-year basis, corporate CUSIP request volume was down 17.3%, reflecting a sharp slowdown in January 2015 versus January 2014.

Municipal CUSIP volume surged for a second month straight in February, increasing 37% over January totals, with a total of 1,302 new identifier requests made over the course of the month. Texas led the way among municipal bond issuers, with a total of 144 new CUSIP requests made in February alone. So far this year, Texas-based municipal securities account for more than 10% of total municipal bond identifier requests.

International debt and equity CUSIP International Numbers (CINS) orders showed mixed results in February. Requests for new international debt CINS increased 31% in February, while requests for

new equity CINS decreased 2.6%.

“The real story this month is in the municipal bond market,” said Gerard Faulkner, Director of Operations for CUSIP Global Services. “After a skittish 2014, municipal issuers are driving enormous volume so far in 2015, driven largely by re-fundings of older debt at lower interest rates.”

“This may be the last hurrah for bond issuers to take advantage of historic low interest rates,” said Richard Peterson, Senior Director of Global Markets Intelligence, S&P Capital IQ. “As the marketplace continues to hang on every word from the Fed, we expect to see a healthy volume of new bond issuance in the coming weeks that will take advantage of the current low rates.”

To view a copy of the full CUSIP Issuance Trends report, please click here.

SLGS Sales Halt May Pose Challenges for Small Issues.

WASHINGTON – An expected months-long Treasury Department suspension of sales of state and local government series securities is likely to be most challenging for small issues with short defeasance escrows, market participants said.

The Treasury suspended sales of SLGS on Friday as one of the “extraordinary measures” it takes when the U.S. government reaches its debt limit. The limit was reinstated on Monday after having been suspended since February 2014.

SLGS are special purpose Treasury securities that help municipal bond issuers avoid violating arbitrage rebate or yield restriction requirements. Issuers most often purchase SLGS for advance refunding escrows to ensure their investment yield will not significantly exceed the yield of their refunding bonds.

Issuance of SLGS count against the debt limit and the Treasury halts the sales of them to conserve headroom under the ceiling, the department said. This is the 11th time the SLGS window has been closed during the past 20 years. Often, the window has been closed for two months or less, but this time it is likely to be closed longer.

The Congressional Budget Office estimated earlier this month that Treasury is likely to have sufficient cash to make its regular payments through October or November without a debt limit increase. The Bipartisan Policy Center said Treasury could have cash until sometime in the fourth quarter because the main tax refund season has passed and there likely will be surpluses in some upcoming months. Also, revenues have increased while expenditures are fairly flat.

Treasury doesn’t typically reopen the SLGS window until the debt limit is raised or suspended, and Congress doesn’t typically take action on the debt limit until the U.S. is close to a default, said Bill Daly, director of governmental affairs for the National Association of Bond Lawyers.

An alternative to SLGS is n to open-market Treasury securities. While SLGS are bought directly from Treasury, open-market Treasuries are purchased after soliciting bids from banks and other financial institutions. Larger issuers often consider buying Treasuries even when the SLGS window is open.

Bond sales are unlikely to be delayed due to the SLGS window closure, some market participants said.

For most issuers, the SLGS window closure is “probably going to be a non-event,” said Sam Gruer, managing director of Cityview Capital Solutions.

Bill Glasso, a principal at Causey Demgen & Moore, which provides bidding agent services, said his firm was involved in escrow transactions for seven issuers on Tuesday. Every one of the issuers did better than they would have if they had purchased SLGS, he said.

But market participants cautioned that purchasing open-market Treasuries rather than SLGS can make things more complicated, especially for small bond issues with short refunding escrows.

Open-market Treasuries are “less user-friendly” than SLGS, said Michael Decker, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association.

Moody’s Investors Service considers the SLGS window closure to be negative for municipal issuers overall. Nick Samuels, Moody’s vice president and senior credit officer, said that using open market securities “makes doing some refundings for some issuers more costly, somewhat more complex.”

For small deals, acquiring open-market Treasuries could be more costly than just keeping the proceeds in cash, said David Cholst, a partner at Chapman and Cutler in Chicago. For short escrows, acquiring Treasuries may similarly be counterproductive for short escrows, he said.

Amy Kron, a senior investment officer with BLX group, an escrow bidding agent, said that issuers with smaller, shorter deals may consider holding bond proceeds in cash or delaying deals.

And the providers of the open-market Treasuries don’t have the capacity to deal with every bid they receive. As a result, “they’re being more selective” and are picking the deals that they think they can receive the most profit from and that they think they can win, said Glasso.

It may be hard for small issuers with short escrows to excite bidders, and the issuers may receive few or no bids, Gruer said. “SLGS just work better” for these kinds of transactions, Cholst said.

Receiving fewer than three bids for open-market Treasuries can lead to tax questions, market participants said. Under Treasury rules, issuers must establish that yield-restricted investments are valued at fair market value. The rules provide a safe harbor under which the fair market value of investments in a defeasance escrow can be established if the issuer receives bids from at least three disinterested parties.

There is no bidding requirement for SLGS, since they are treated as purchased at fair market value because they are purchased directly from Treasury.

Bob Eidnier, a partner at Squire Patton Boggs in Cleveland, said that the SLGS window closure may mean tax lawyers and issuers will have to accept fair market value on a basis other than by meeting the safe harbor. They may have to accept the better of two bids. In other cases, parties may accept that investments were at fair market value based on a certificate from the underwriter.

If an issuer gets no bids, it could keep its bond proceeds in cash. But this is costly because the issuer will not receive any return and the IRS could still impute a yield on the escrow. If that yield is higher than the bond yield, there could be a problem, Gruer said.

The SLGS window closure also makes things more complicated in cases where the returns on escrow investments are supposed to be rolled over into SLGS with zero yield. Under IRS guidance, if SLGS are not available, the issuer should buy other investments that should have maturities of no more than 90 days. Any return on those investments has to be paid to the federal government, Cholst said.

In May, NABL recommended that Treasury continue to allow subscriptions for 0% SLGS during periods of extraordinary measures and that only larger SLGS purchases be suspended. In July, Treasury declined to adopt the recommendations but did not explain its reasoning.

Jessica Giroux, general counsel and managing director of the Bond Dealers of America, said the SLGS window closure could present a compliance hardship for small issuers who have not engaged MAs.

“If SLGS are not available, the small issuer may suddenly need advice on investing bond proceeds, which their underwriter is not going to be able to provide per the MA rule,” she said. “So, if they have not engaged an MA, they may need to employ and pay an MA for advice or forgo investment advice altogether, whereas creating a SLGS escrow does not constitute advice and is routinely done by their underwriter in compliance with the MA rule.”

Under the municipal advisor rule, someone who provides particularized advice about escrow investments would be an MA. An underwriter can provide advice about structuring refunding escrow cash flow requirements, but it can’t provide recommendations about what to invest in unless it relies on the independent registered municipal advisor exception, according to the rule. Someone merely providing the brokerage of escrow investments would not be an MA.

Teri Guarnaccia, a partner at Ballard Spahr in Baltimore, said that it’s unlikely that the information an underwriter would provide about purchasing open-market Treasuries would be considered investment advice.

THE BOND BUYER

BY NAOMI JAGODA

MAR 18, 2015 3:37pm ET

IRS FSLG Webinar: Exclusions from Social Security and Medicare Coverage.

What: Free Webcast – Exclusions from Social Security and Medicare Coverage

When: April 9, 2015; 2 p.m. (Eastern)

How: Register for this event. You will use the same link to attend the event.

Learn about:

- Section 218 coverage & exclusions
- Mandatory coverage & exclusions
- Handling zero coverage employees
- Examples

Chicago's Gamble on Disclosure.

CHICAGO – Chicago took a gamble by voluntarily laying out in stark terms the fiscal threats that

could lead to further credit erosion and the impact on its swap and liquidity contracts, market participants said.

Mayor Rahm Emanuel's administration won praise for its openness, but the sobering information could also contribute to market jitters over the city's battered credit ratings, which have driven up interest rates on Chicago debt.

The voluntary disclosure March 6 that accompanied the city's reporting of its latest downgrade from Moody's Investors Service's offered investors information on swap terminations triggered by the latest action and the proximity of other contracts to triggers.

"There's an evolving disclosure standard and we've tried to be a case study in best practices," chief financial officer Lois Scott said in an interview after release of the filing to the Municipal Securities Rulemaking Board's EMMA site. "We haven't been in the bond market for some time and we felt there was a consistent pattern of questions as we talked to rating agencies, investors, and banks so we wanted to make sure that we were communicating the same information to all parties."

Moody's Feb. 27 downgrade to Baa2 triggered termination events on four interest rate swap contracts, exposing the city to payments totaling $60 million if demanded by the counterparties. The city has renegotiated the terms of one of the swaps, avoiding a potential $20 million payment, and negotiations continue on the others.

The disclosure offers the city protection against accusations that it withheld material financial information as regulators scrutinize disclosure practices, market participants said.

Some investors said it compliments city strides in building better investor relationships through improved access, expanded disclosure, and annual investor conferences.

On the other hand, some market participants said the information underscores the pressures on the city's balance sheet.

"We think that knowledgeable municipal investors should find the disclosure disturbing," said Michael Johnson, managing partner and head of research at Gurtin Fixed Income Management LLC.

"Once a termination has occurred, the city is at the mercy of the counterparty bank," he said. "This loss of control is a hallmark of a distressed credit." The firm shed its Chicago bonds prior to 2013 over credit concerns.

Brian Battle, director of trading at Performance Trust Capital Partners, called the voluntary disclosure "shrewd and prudent" and "the right thing to do."

The city's chief financial officer "has been around a long time," Battle said, previously working as a banker and financial advisor, and "what's she done is met a disclosure burden that might not have been a regulatory mandate but was a market mandate."

Market concerns will remain heightened until the city solves its pension woes, Battle said, which is unlikely to happen soon amid state-level inaction and a Chicago mayoral runoff April 7 pitting Emanuel against challenger Jesus "Chuy" Garcia.

Garcia has not said how he would address a looming $550 million annual spike in the city's public safety pension contributions, and Emanuel continues to count on so far nonexistent action by state lawmakers to enact benefit reforms and allow the city to phase the higher contribution levels in.

Institutional investors welcome information that's useful, so any details on that front are welcome, said Ernie Lanza, a partner at Greenberg Traurig and former MSRB deputy executive director. "By and large more information is better," he said, unless there's some error in the content. "In principle everybody should have the same information," he said.

Duane Morris LLP attorney Steven Gray is the city's lead disclosure counsel. The firm and Cotillas & Associates were co-disclosure counsel on a September offering statement that offered expanded disclosure on the impact of Chicago's credit rating deterioration.

The latest GO downgrade escalates the pressures posed by the city's floating-rate portfolio – inherited by the Emanuel administration – and leaves the city open to "more exposure to banks than is ideal" between the letter of credit support behind the deals and the swap counterparties, city officials said.

The city's 24 swaps tied to $2.4 billion of floating-rate general obligation and revenue-backed paper were almost $400 million underwater based on market valuations at the close of 2014.

The city has renegotiated terms with BMO Harris Bank on a $66.8 million floating-to-fixed-rate swap that was part of a $223 million 2005 floating rate GO issue.

It avoided a $20 million payment based on current valuations. The threshold was moved to the level under Baa2.

Wells Fargo has notified the city it reserves its right to designate an early termination date on the three swaps in which terminations were triggered by the downgrade. "The city is in ongoing discussions with Wells Fargo regarding the swaps," the disclosure says.

The city reported posting as collateral a letter of credit issued by PNC Bank in connection with a sale/leaseback transaction the city entered into in 2005 on the city-owned portion of the Orange Line rail transit route to Midway Airport. The lease deal expires in 2031.

The downgrade requires the city "to use reasonable efforts" to replace the PNC letter of credit with other collateral by March 29.

The administration's financial team has tinkered with its derivative portfolio, tightening up mismatches in basis trades and maturity dates, winning changes in rating thresholds, and terminating its swap options and other swaps in deals converting the underlying debt to a fixed-rate structure.

The city has terminated seven swap or swap options on $1 billion of floating-rate debt and struck more favorable terms on termination triggers on 12 derivatives tied to $1.3 billion of debt since 2011.

While the city has not entered into any new swaps, it did strike amendments last year on some forward starting swaps in which it captured up-front payments based on market conditions at the time.

On its LOCs, the city has sought to diversify its bank exposure and struck more favorable rating terms on new LOCs in an effort to reduce exposure on the city's weaker credits, like its GO bonds, so banks are not "in the driver's seat," administration officials said.

City officials stress that the cash flows under the swap terms are not pressuring its balance sheet but rather the termination triggers based on its credit ratings.

When the credit thresholds were set, the city's credit was stable, and even on the upswing following its establishment of a permanent $500 million reserve with proceeds of its Chicago Skyway toll bridge lease in 2005.

Two additional swaps face termination triggers if the city's GO rating is lowered one notch.

The first is one of four floating-to-fixed swaps tied to a $202.5 million 2004 GO issue. The swap is with Bank of New York Mellon for $136 million. It expires in 2019 and is negatively valued at $4.1 million. Amendments were struck on the contract in 2014.

The other swap that could see a termination triggered by another downgrade from Moody's is tied to a $117 million sales tax issue from 2002. The floating-to-fixed swap is with JPMorgan for $111.7 million. The swap expires in 2034 and is negatively valued at $29 million. The city's sales tax rating is tied to its GO level.

In addition to Chicago's GO bond swaps, it has swaps tied to its Midway Airport, water and wastewater enterprise revenue credits with rating triggers in the triple-B category.

Three second-lien water swaps have triggers at below the Baa1 level. Moody's recently affirmed the credit's A3 rating.

Three second-lien wastewater swaps are tied a $332 million issue from 2008, including two with triggers below the Baa1 level. Moody's recently downgraded the second lien wastewater credit to Baa1 level, meaning another downgrade would trigger the termination events for those Bank of America and JPMorgan derivatives. Each of the two is for $49.8 million. They expire in 2039 and are each negatively valued at about $11 million.

The city bears no collateral posting obligations on any of its swaps.

The city has 26 liquidity support, letter of credit, and direct purchase facilities on more than $2 billion of floating rate bonds from issues between 2002 and 2014 sold under its GO credit, Midway Airport second lien, O'Hare International Airport third lien, water, wastewater, sale tax credit, and tax-increment financing bonds.

The rating thresholds for events of default on most are triggered at a speculative grade rating, with the exception of four totaling $372 million that are tied to the city's wastewater credit and O'Hare International Airport, which have a threshold below the BBB level.

The city's lowest wastewater bond rating is A3 from Moody's on junior-lien revenue bonds. Its lowest underlying rating for third-tier O'Hare airport revenue bonds is A-minus from Fitch Ratings.

A default under the city's revolving lines of credit at a speculative grade rating would allow the termination of its credit facilities, requiring the city to immediately pay all outstanding amounts. The city currently has $294 million outstanding under its short term borrowing program which has a capacity of $900 million.

The filing also highlights Standard & Poor's affirmation of the city's A-plus rating and negative outlook on Feb. 27 and Fitch Ratings' Feb. 24 affirmation of the city's A-minus rating and negative outlook. The Moody's downgrade impacted $8.38 billion of general obligation debt, $542 million of sales tax bonds, and $268 million of motor fuel bonds, and $1.5 billion of wastewater debt.

THE BOND BUYER

BY YVETTE SHIELDS

MAR 17, 2015 2:08pm ET

MSRB Increases Development Fee for Professional Qualification Exams.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) has filed a rule change with the Securities and Exchange Commission to increase the development fee for MSRB professional qualification examinations to $150 from $60. The change, reflected in an amendment to MSRB Rule A-16, is effective immediately. Individuals who register for an MSRB-owned exam on or after April 1, 2015 will be charged the new rate.

The $150 MSRB fee will apply to its forthcoming Municipal Advisor Representative Qualification Examination and the pilot version of this exam to be administered later this year. Sign up here to receive details about pilot municipal advisor exam as they become available. The MSRB has scheduled an educational webinar on Thursday, April 2, 2015 at 3:00 p.m. ET to discuss municipal advisor professional qualification requirements. Register for the webinar.

The development fee for the MSRB's existing Series 51, 52 and 53 licensing exams for municipal securities professionals has been unchanged since 2009. Test fees help offset a small portion of the resources needed to create and maintain effective professional qualification exams. Municipal securities professionals that take an MSRB exam also pay an administrative fee to the Financial Industry Regulatory Authority (FINRA), which provides the online portal for exam registration and coordinates with nationwide testing centers to administer the MSRB's tests.

The MSRB's Professional Qualification Program sets basic standards of competency for municipal securities professionals and municipal advisors, and fosters compliance with MSRB rules through required examinations and continuing education. Read more here.

View the rule filing.

Read the regulatory notice.

Reed Smith: IRS Extends Continuous Construction/Continuous Efforts Safe Harbors for Production Tax Credit/Investment Tax Credit Qualification.

Production tax credits ("PTCs") are available for wind, biomass, geothermal, landfill gas, trash, hydropower, and marine and hydrokinetic facilities, if construction of the facility began before January 1, 2015. Alternatively, taxpayers can elect to take investment tax credit (the "ITC") in lieu of the PTC.

A taxpayer can establish that it began construction of a project either by having started physical work of a significant nature prior to January 1, 2015 (the "Physical Work Test"), or having paid or incurred (depending on its method of accounting) five percent or more of the total cost of the facility prior to January 1, 2015 (the "Safe Harbor"). Both the Physical Work Test and the Safe Harbor require the taxpayer to make continuous progress towards completion of a project once construction has begun. In the case of the Physical Work Test, the requirement is that the taxpayer must maintain

a continuous program of construction (the “Continuous Construction Test”). In the case of the Safe Harbor, the requirement is that the taxpayer must make continuous efforts to advance towards completion of the facility (the “Continuous Efforts Test”).

On March 11, 2015, the IRS issued Notice 2015-25, which provides that the Continuous Construction and Continuous Efforts Tests will be deemed to be satisfied with respect to a facility if the facility is placed in service before January 1, 2017. Although Notice 2015-25 does not provide a definition of placed in service for this purpose, existing Treasury Regulations treat property as being placed in service when such property is in a condition or state of readiness and is available for a specifically assigned function. Equipment that is operational but undergoing testing to eliminate defects is considered to be in a condition or state of readiness and availability for a specifically assigned function.

In the case of power plants, the IRS has stated in a number of Revenue Rulings that the following factors are to be considered:

- approval of required licenses and permits;
- passage of control of the facility to the taxpayer;
- completion of critical tests;
- commencement of daily or regular operation; and
- synchronization into a power grid for generating electricity to produce income

Importantly, the IRS does not view these factors as hard and fast rules, but only as tools to be used in determining whether property is in a state or condition of readiness and is available for a specifically assigned function.

If a facility is not placed in service before January 1, 2017, the determination as to whether the Continuous Construction and Continuous Efforts Tests have been satisfied will be based on relevant facts and circumstances. In the case of the Continuous Construction Test, the requirement is that the taxpayer has a continuous program of construction that involves continuing physical work of a significant nature. In the case of the Continuous Efforts Test, ongoing efforts could include incurring additional costs in connection with a facility, entering into binding written contracts for components or for construction of the facility, obtaining necessary permits, and performing work of a significant nature.

Notice 2015-25 updates the guidance provided in Notice 2013-60, which had been in effect prior to the one-year extension of ITC and PTC that was enacted by Congress on December 19, 2014 as part of the Tax Increase Prevention Act of 2014.

Last Updated: March 16 2015

Article by Arnold E. Grant, Henry R. King and Robert M. Vilter

Reed Smith

This article is presented for informational purposes only and is not intended to constitute legal advice.

Water Leaders Urge Congress to Repeal Ban on Tax-Exempt Bonds for WIFIA

Projects.

March 18, 2015 — In several meetings today on Capitol Hill, water utility leaders urged U.S. Congress to increase the effectiveness of the Water Infrastructure Finance and Innovation Act (WIFIA) by repealing a ban on the use of tax-exempt bonds in WIFIA-funded projects.

Signed into law as part of the Water Resources and Reform Development Act (WRRDA) in 2014, WIFIA provides low-interest federal loans for up to 49 percent of large drinking water, wastewater and water reuse projects (see “President Obama signs WRRDA into law”). However, the law, as written, prohibits tax-exempt bonds from funding the remaining 51 percent, withdrawing the most cost-effective tool for communities seeking WIFIA loans.

More than 130 water utility leaders from 47 states are visiting Washington D.C. March 18-19 for the “Water Matters! Fly In,” event, sponsored by the American Water Works Association (AWWA) and the Water Environment Federation (WEF). Delegates wore “Free WIFIA” buttons as they visited Congress to discuss infrastructure and other water issues.

“Let’s free WIFIA to reach its full potential,” said AWWA CEO David LaFrance. “The water and wastewater infrastructure needs in the United States will likely top 2 trillion over the next 25 years, and WIFIA is an important tool to help communities manage those costs. But the prohibition on the use of tax-exempt bonds is an unnecessary barrier that impairs WIFIA’s effectiveness.”

During deliberations, the Joint Committee on Taxation scored WIFIA as inducing the issuance of additional tax-exempt debt and thus generating a small tax expenditure requiring a revenue offset. At JCT’s suggestion, House and Senate conferees included the prohibition on combining tax-exempt bonds with WIFIA as the required offset. There is no infrastructure policy supporting this prohibition; it was included to address a tax score when no revenue offset could be identified.

If the ban were repealed, utilities would likely use lower-cost tax-exempt debt for the non-WIFIA share of project costs, lowering the overall cost of using the WIFIA program. As a result, WIFIA would be a cost-effective option for the much broader range of utilities that it was intended to serve. “Water Matters! Fly In” delegates also called on Congress to support full funding for WIFIA and drinking water and wastewater state revolving loan fund programs, as well as to protect the tax-exempt status of municipal bonds.

WaterWorld.com

Puerto Rico Bonds Seen Cheapening as Record Restructuring Looms.

(Bloomberg) — Puerto Rico’s power utility is moving toward a record restructuring of its $8.6 billion debt load. For high-yield municipal investors, the move may be a trigger to add the junk-rated commonwealth’s bonds.

The Electric Power Authority, called Prepa, is poised to reduce its obligations this year through negotiations with creditors. Such an agreement may cheapen Puerto Rico securities, which already trade at distressed levels, while clarifying how the commonwealth and its agencies may tackle $73 billion of debt, said John Miller, co-head of fixed income at Nuveen Asset Management. The company runs the biggest high-yield muni fund.

Signs of interest from mutual funds would be welcome news for the struggling U.S. territory, which

has relied on buying by hedge funds. Traditional purchasers stepped back as the risk grew: 54 percent of muni mutual funds hold Puerto Rico bonds this year, down from 77 percent in October 2013, according to Morningstar Inc. Puerto Rico's securities are widely held because they're tax-free nationwide.

"There will be opportunities," said Miller, who helps manage $100 billion of munis in Chicago. "We're not there yet because nothing's been restructured and we don't know who is going to take the hits here."

'Dry Powder'

Nuveen reduced its allocation about two years ago, Miller said. Its $10.8 billion High Yield Municipal Bond Fund, the largest of its kind, didn't hold any Puerto Rico as of Feb. 28, down from a 1.8 percent allocation on June 30, 2011, data compiled by Bloomberg show.

The firm has room to add commonwealth debt in its muni funds, Miller said.

"All of these funds have dry powder in their below-investment-grade buckets," Miller said. "That's another reason why we want to follow it closely and try to identify an opportunity."

Debt of Puerto Rico has earned about 0.1 percent this year, compared with 0.8 percent for the entire municipal market, according to S&P Dow Jones Indices.

Some commonwealth debt has been gaining. Prepa bonds maturing in July 2040 traded Thursday at an average of 52.6 cents on the dollar, up from about 50 cents at the start of 2015.

Borrowing History

The island was cut to junk a year ago because of its history of borrowing to balance budgets. The territory and its localities have more debt than all but two states: California and New York. Its economy has struggled to grow every year since 2006, and its population shrank by 7 percent in the past decade to 3.5 million, according to Census data.

Governor Alejandro Garcia Padilla's administration is trying to avoid defaulting on Puerto Rico's $13 billion of general obligations. Legislators passed a law allowing some public corporations to ask investors to take a loss, which might ease their financial strains and free them from relying on the island's general fund. A federal judge threw the measure out, although the island has appealed.

As a result, there's no road map for agencies seeking to reduce debt, and Puerto Rico localities can't file for Chapter 9 bankruptcy protection. That leaves investors guessing how large potential losses may be.

Puerto Rico's general obligations may be at risk: there's a high probability that the island will default on the securities in the next two years, Moody's Investors Service said in a Feb. 19 report.

Commonwealth lawmakers this week filed a bill that would allow Puerto Rico to default on its general obligations.

"The credit-negative discussions, regardless of whether they culminate in enacted legislation, signal the rising likelihood of consolidated debt restructuring that affects not only public corporations, but also the central government's general obligation and other tax-backed securities," Ted Hampton, a Moody's analyst in New York, wrote in a report Thursday.

Zero Sum

"At some point there's going to be a buying opportunity," said Peter Hayes, who helps manage $116 billion as head of munis at New York-based BlackRock Inc. "It will probably be an attempt at some type of restructuring, but will it be just in the public corporations or will it be in the general obligations? It remains to be seen."

BlackRock's $538 million High Yield Municipal Fund had 0.9 percent of assets in Puerto Rico as of Jan. 31, Bloomberg data show. While that's up from zero a year ago, the allocation was about 6 percent in July 2012, Bloomberg data show.

Prepa may fail to pay of about $400 million of principal and interest due July 1, Moody's said in a March 16 report.

The utility in August signed an agreement with creditors to extend bank loans through March 31. In return, the agency promised to file a debt-restructuring plan, which it has failed to do. The utility, bondholders, bond insurers and banks are discussing an extension. Moody's estimates a recovery rate of 65 percent to 80 percent if Prepa defaults. It would be a historic restructuring for a municipal issuer.

The Government Development Bank, which handles Puerto Rico's debt sales, declined to comment through David Millar, a New York-based spokesman.

Entry Point

Puerto Rico has proven volatile, so investors may not have to wait for a restructuring to buy.

General obligations sold in March 2014 at 93 cents rose to an average of 96.6 cents that month, then fell to 81.9 cents Feb. 9. The debt traded Thursday at about 84.1 cents.

"You can effectively exit and re-enter at will," said Jason Diefenthaler, who helps manage Wasmer Schroeder's $80.5 million High Yield Municipal Fund, which directs about 6 percent to commonwealth debt. "There's always a way to get involved with Puerto Rico."

Some investors already added as yields reached 10 percent, equivalent to a taxable 16.6 percent for top earners.

MacKay Shields LLC in New York boosted its holdings to $247 million in its four MainStay muni mutual funds as of Dec. 31, or about 10 percent of assets, up from 0.2 percent in October 2013, according to Morningstar.
The Puerto Rico bonds are insured, according to MacKay Shields.

Inaugural Year

In the inaugural year for Wasmer Schroeder's High Yield Municipal Fund, Puerto Rico accounted for as much as 9.2 percent of assets in November. That allocation is now about 6 percent, all insured, said Diefenthaler, who helps manage $5.1 billion of munis at the Naples, Florida-based firm.

The fund, which debuted on March 31, can direct as much as 10 percent to Puerto Rico, Diefenthaler said.
"If we can opportunistically add more insured paper, I would be all over that," he said. "The Puerto Rico name itself detracts from the value of that insurance in the secondary market, so there's opportunity to pick up yield."

by Michelle Kaske

March 18, 2015

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Mark Tannenbaum, William Selway

Muni Bond Yields Fall as Much as 8 Basis Points.

(Reuters) – U.S. municipal bond yield dropped as much as 8 basis points on Thursday as investors took advantage of the cheapness of tax-exempt debt versus taxable U.S. Treasuries, according to a final market read by Municipal Market Data (MMD).

March 19, 2015 3:14pm EDT

(Reporting by Robin Respaut; Editing by Jeffrey Benkoe)

Key Regulator Shows No Sign on Budging on Muni Bank Rule.

(Reuters) – A key U.S. regulator said on Wednesday it supports banks making prudent investments in the U.S. municipal bond market but showed no indication it would soften its stance on refusing to allow banks to include muni bonds as liquid assets.

Regulators in September issued rules that banks must hold enough easy-to-sell assets in case of a crisis. Municipal bonds, used by U.S. localities to fund infrastructure investments and other spending, were not included in the buffer.

Since then towns and cities have lobbied regulators to change the rules, fearing that exclusion of muni bonds from capital requirements would discourage banks from holding the bonds and drive up their borrowing costs.

“The agency considers bank investments in municipal securities a prudent activity when part of a safe and sound investment strategy,” the Office of the Comptroller of the Currency (OCC) said in a statement.

The OCC issued the statement after a Bloomberg report said the OCC and the Federal Deposit Insurance Corporation (FDIC) were refusing to budge on the issue. The Fed has publicly said it wants to amend the rule to include munis.

A rule change, however, would require agreement of the other two bank regulators, the OCC and the FDIC. While the Fed is open to a change, the OCC is most opposed to amending the rule, while the FDIC holds a middle ground, with more of a “wait-and-see” approach, a regulatory source said.

The OCC and the Federal Reserve declined to comment. The FDIC did not immediately return a request for comment.

The OCC pointed out that bank ownership of muni bonds had increased since the so-called Liquidity Coverage Ratio Rule became final in October of last year.

Retail investors are the largest holders in the $3.7 trillion municipal bond market. In the second quarter, households held 40 percent of all outstanding municipal bonds, $1.5 trillion, while banks held $458 billion, or around 12 percent according to Federal Reserve data.

U.S. states and cities wrote a letter urging regulators to allow banks to treat municipal bonds as liquid assets in October, arguing that munis are among the safest investments and “highly tradeable”.

The letter was signed by the National Governors Association, National Conference of State Legislators, Council of State Governments, National Association of Counties, National League of Cities, U.S. Conference of Mayors, International City/County Management Association and the Government Finance Officers Association.

BY EDWARD KRUDY

NEW YORK, March 18, 2015

(Additional reporting by Douwe Miedema; editing by Gunna Dickson)

Preston Hollow Capital Hires Municipal Finance Veteran to Build Origination Team.

DALLAS–(BUSINESS WIRE)–Preston Hollow Capital, LLC announced today the addition of a seasoned municipal finance professional to lead its origination efforts. Ramiro Albarran was named Managing Director and Head of Origination for the Dallas-based merchant bank. “Ramiro brings 26+ years of municipal finance experience with unique and on-point capabilities to PHC,” says Jim Thompson, the Chairman and CEO of Preston Hollow Capital.

“Ramiro brings 26+ years of municipal finance experience with unique and on-point capabilities to PHC”

“As the Head of Origination, Ramiro will oversee asset origination for PHC and build out a team dedicated to working collaboratively with the broker-dealer and financial advisor communities, borrowers and investors,” Thompson added. “We’re confident that Ramiro’s skills and relationships will help establish Preston Hollow Capital as the premier solutions provider in municipal specialty finance.”

Mr. Albarran’s entire career has been focused on complex municipal, infrastructure and real estate related asset classes, including unique financings for 7 World Trade Center, the Bank of America Tower in New York, and the Harbor Point project in Stamford, Connecticut, the latter having been one of the largest tax increment financings completed since the recession. Mr. Albarran joins from Guggenheim Securities where served as Head of the Municipal and Infrastructure Finance Group. His prior experience includes various senior roles at Bank of America including heading the public finance department as well as various specialty banking groups including real estate. He also served as a principal at Starwood Infrastructure LLC and as a partner at Stone & Youngberg LLC. Mr. Albarran received a B.A. in Economics and Engineering from Dartmouth College.

About Preston Hollow Capital and Jim Thompson

Preston Hollow Capital is a diversified merchant bank launched in January 2014 by Jim Thompson, the former President and Chief Executive Officer of ORIX USA. The PHC team, comprised of former ORIX USA senior executives and employees, seeks to produce superior risk-adjusted returns across a broad spectrum of investment strategies. Mr. Thompson, along with his wife Angela, supports Dallas-area non-profits through the Jim & Angela Thompson Foundation, and STEM education initiatives through the Blue Sky Educational Foundation. He is a board member of the Dallas Urban Debate Alliance, and is a former board member of Dallas CASA, Angel Flight South Central and the AOPA Foundation.

March 18, 2015 10:00 AM Eastern Daylight Time

Contact Preston Hollow Capital at Admin@PHCLLC.com or 214-389-0800.

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Fight Among Regulators Over Municipal Bonds Could Mean No New School for Your Kid.

WASHINGTON • States and cities have griped for months that a rule designed to make big banks safer will prompt a Wall Street exodus from the $3.7 trillion municipal bond market. While the Federal Reserve wants to make changes, two key regulators are standing in the way.

At issue is a measure approved in September that requires banks to hold a chunk of assets that could be easily converted into cash during a crisis. While munis weren't considered liquid enough to make the cut, Fed officials have been convinced after aggressive lobbying by lenders and local governments, said three people with knowledge of the matter.

The problem: The Federal Deposit Insurance Corp. and the Office of the Comptroller of the Currency remain unconvinced, the people said. With the largest U.S. banks accounting for about 12 percent of investments in munis, politicians are concerned that unless the rule is revised, it will become more expensive to build bridges, roads and schools.

This will have "real price and yield impacts," James McIntire, the treasurer of Washington state, said in an interview. "To drive up the cost of our debt issuance for no quantifiable reason would be a mistake."

The September rule was among several measures adopted by regulators to prevent a repeat of the 2008 financial meltdown, when markets froze and some banks needed a government bailout to stay afloat. It requires lenders to hold enough assets that are deemed high-quality — such as Treasuries, highly-rated corporate bonds and even the debt of foreign governments — to be able to endure a 30-day squeeze.

Many bonds backing infrastructure projects are bought and sold infrequently. Still, Fed officials have privately advocated that banks shouldn't face restrictions on holding munis that trade more

often, said the people who asked not to be named because discussions between the agencies are private.

So far, regulators at the FDIC and OCC say they haven’t seen enough evidence to bring them around to the Fed’s point of view, according to the people. The rule, which banks must fully comply with by 2017, can’t be changed without their consent.

Spokesmen for the Fed, FDIC and OCC declined to comment.

Sen. Charles Schumer, D-New York, has been a vocal critic of the decision regulators made on munis. At a September hearing, he told representatives from the Fed, FDIC and OCC that the rule would undermine “the lifeblood of development in this country.” Schumer has since continued to make his case behind the scenes in private conversations with regulators, said a person with knowledge of the discussions.

“Many municipal bonds are highly liquid and they should count as such,” Schumer said in a statement. “Creating a disincentive for banks to hold these bonds could slow or even stop major infrastructure projects in their tracks.”

While Wall Street generates revenue underwriting munis, banks also have been the biggest purchasers of the bonds in recent years, adding $200 billion to their holdings since 2010, Fed data shows. The buying has boosted prices at a time when some investors are selling because of concerns that as interest rates rise, some issuers may struggle to pay their debt.

One argument in favor of letting banks continue their buying is that borrowers in the muni market typically default less frequently than corporate issuers. Rep. Michael Capuano, D-Mass., made that point to Fed Chair Janet Yellen last month, saying at a hearing that curtailing muni investments was akin to telling lenders that their money would only be safe if it’s stuffed under a mattress.

Yellen’s response: “It’s not a question of safe; it’s a question of liquid and how rapidly these assets can be converted into cash.”

March 18, 2015 4:00 pm • By JESSE HAMILTON and CHEYENNE HOPKINS

Bloomberg News

With assistance from William Selway in Washington.

U.S. Bancorp Joins ORIX USA with First Renewable Energy Tax-Credit Syndication.

U.S. Bancorp (NYSE:USB) and ORIX USA Corp. announce the closing of U.S. Bancorp’s first renewable energy syndication, which is expected to enable SolarCity to install approximately 2,500 solar power systems at homes and businesses in nine states.

U.S. Bancorp led the transaction, introducing of an industry-leading product that will allow both first-time and experienced investors to tap into the renewable-energy tax credit market.

This agreement will help finance the installation of solar arrays in Arizona, California, Colorado, Connecticut, Hawaii, Massachusetts, Maryland, New Jersey and New York, with more to come. The

syndication is expected to finance more than $100 million in solar projects.

The 2,500 systems installed by SolarCity are projected to produce enough clean-source electricity in their first year of operation to equal removing 4,250 cars from the roads each year. The fund makes it possible for many home and business owners to install solar panels with no upfront cost, and pay less for solar electricity than they pay for utility power.

“This is a new phase of business development for U.S. Bancorp,” said Zack Boyers, chairman and CEO of U.S. Bancorp Community Development Corporation. “Entering into our first renewable energy syndication agreement allows us to expand SolarCity’s ability to install more energy-saving solar arrays on homes and businesses across the nation that will, as a result, produce more jobs and assist in the country’s economic recovery.”

The syndication is a gain on multiple fronts for U.S. Bancorp: It boosts the capital in the solar market, increases use of clean energy, and diversifies the bank’s ability to serve the needs of a growing market as well as its products and services, Boyers said.

The syndication deal marks ORIX’s entry into the renewable-energy tax credit financing market.

“We welcome the opportunity to help consumers and businesses reduce greenhouse gas emissions by becoming solar energy users,” said Andrew Garvey, managing director and head of ORIX Municipal Finance. “ORIX is a unique platform, and this transaction shows how we can make our capital available in innovative ways to achieve the financing needs of our clients.”

The installations will produce more than 350 construction and installation jobs. They will also generate $76 million in economic impact from salaries, equipment purchases, construction materials and secondary spending by workers on local services and on solar industry vendor supplies and services.

ST. LOUIS (The Associated Press) – Mar 16

About ORIX Municipal Finance ORIX Municipal Finance makes investments of approximately $10 million to $50 million in public, semi-public and private entities. The company’s investment portfolio includes transactions for a wide range of industries, including health care, housing, education, energy and transportation. ORIX Municipal Finance is a subsidiary of ORIX USA, a Dallas-based financial services firm known for providing innovative capital solutions that clients need to propel their business to the next level. ORIX USA and its family of companies have more than 1,400 employees with principal offices in Atlanta; Chicago; Hartford, Conn.; Los Angeles; Minneapolis; New York; San Francisco; Seattle; Washington, D.C.; Frankfurt, Germany; London; and Paris. ORIX USA holds approximately $7 billion of assets and manages an additional $30 billion, approximately. ORIX USA is a wholly owned subsidiary of ORIX Corporation, a Tokyo-based, publicly owned international financial services company with operations in 36 countries and regions worldwide. ORIX Corporation is listed on the Tokyo (8591) and New York Stock Exchanges (IX). For more information on ORIX Municipal Finance, visit www.orix.com.

About U.S. Bancorp Community Development Corporation With nearly $15.8 billion in managed assets as of Dec. 31, 2014, U.S. Bancorp Community Development Corporation, a subsidiary of U.S. Bank, provides innovative financing solutions for community development projects across the country using state and federally sponsored tax credit programs. USBCDC’s commitments provide capital investment to areas that need it the most and have contributed to the creation of new jobs, the rehabilitation of historic buildings, the construction of needed affordable and market-rate homes, the development of renewable energy facilities, and the generation of commercial economic activity

in underserved communities. Visit USBCDC on the web at www.usbank.com/cdc.

About U.S. Bank Minneapolis-based U.S. Bancorp (NYSE: USB), with $403 billion in assets as of Dec. 31, 2014, is the parent company of U.S. Bank National Association, the fifth largest commercial bank in the United States. The company operates 3,176 banking offices in 25 states and 5,022 ATMs and provides a comprehensive line of banking, brokerage, insurance, investment, mortgage, trust and payment services products to consumers, businesses and institutions. Visit U.S. Bancorp on the web at www.usbank.com.

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San Bernardino has Defaulted on $10 Million in Bond Payments.

(Reuters) – The southern California city of San Bernardino has defaulted on nearly $10 million in payments on its privately placed pension bond debt since it declared bankruptcy in 2012, according to documents seen by Reuters.

In addition, the city has not negotiated with its bondholders since September, according to a person familiar with the stalled negotiations.

The missed payments illustrate the trend among cities in bankruptcy to favor payments to pension funds over bondholder obligations, which has increased the hostility between creditors and municipalities.

San Bernardino declared last year that it intends under its bankruptcy exit plan to fully pay Calpers, its biggest creditor and America’s largest public pension fund with assets of $300 billion.

The city continues to pay its monthly dues to Calpers in full, but has paid nothing to its bondholders for nearly three years, according to the interest payment schedule on roughly $50 million of pension obligation bonds issued by San Bernardino in 2005.

The non-payment of the bond debt and the city’s lack of interest in talks with its pension bondholders just weeks before it must produce a bankruptcy exit plan should serve as a wake-up call to Wall Street issuers of debt to struggling cities, according to Michael Sweet, a bankruptcy attorney with Fox Rothschild in San Francisco.

In January San Bernardino’s city attorney, Gary Saenz, told Reuters the city intended to cut its bondholder debt under its bankruptcy plan.

San Bernardino’s bankruptcy is being closely watched by the $3.6 trillion U.S. municipal bond market.

In the recent municipal bankruptcies of Detroit – the biggest-ever U.S. municipal bankruptcy – and Stockton, California, bondholders were forced to accept big cuts to their debt while pensioners emerged relatively unscathed.

"Bondholders should be realizing that in Chapter 9 cases those who will invariably get better treatment by the cities are former and current employers, who are part of the community, and not the faceless bankers holding commercial paper," Sweet said.

But Sweet said San Bernardino's treatment of its bondholders could come back to haunt it. "Down the road, the city may find that the capital market is unavailable to it or that it will be penalized at a very high rate when it seeks to borrow," he said.

San Bernardino, a city of 205,000 located 65 miles east of Los Angeles, declared bankruptcy in July 2012 with a $45 million deficit.

Bondholders and public employees want to understand how distressed cities handle their debts to Wall Street compared with other creditors such as pension funds.

San Bernardino's roughly $50 million pension bond debt was used in 2005 to pay off a portion of the city's obligation to Calpers.

In an unprecedented legal argument for a Chapter 9 municipal bankruptcy, EEPK, the Luxembourg-based bank and holder of the pension bonds, and Ambac Assurance Corp, which insures a portion of the bonds, assert in a January lawsuit against San Bernardino that those bonds are part of a single pension obligation, so that any payment to Calpers by San Bernardino requires equivalent payment to the bondholders.

Next week EEPK attorneys will ask the judge overseeing the bankruptcy to set a schedule to adjudicate the lawsuit. Wells Fargo Bank, the flagship bank of Wells Fargo & Co., is the bond trustee but is not a party to the lawsuit.

On Friday, the city filed court papers to dismiss EEPK and Ambac's lawsuit. The city said the bondholder argument "transcends novelty."

Rosanna Westmoreland, a Calpers spokeswoman, said EEPK's argument was "wrong."

San Bernardino's city attorney was not immediately available for comment.

BY TIM REID

LOS ANGELES Tue Mar 17, 2015 5:34pm EDT

(Reporting by Tim Reid; Editing by Leslie Adler)

How to Stop the Stadium Wars.

In 2013 the city of Atlanta lost its baseball team to one of its suburban neighbors, the more prosperous and populous Cobb County. The Braves won't move for two more years, but in the meantime, one Georgia state senator from Atlanta has come up with a crazy idea: Expand Atlanta's municipal boundary by nearly 2 miles into unincorporated Cobb County, and annex the 60 acres where the team is building its stadium.

The proposed land grab is about as likely as 81-year-old Hank Aaron starting this season in right field, but it might not be any less reasonable than the proposal from the Braves that Atlanta rejected: Hand over $77 million in real estate and float a $200 million municipal bond issue to

rehabilitate a ballpark still in its teenage years.

What happened in Georgia was a lesson in the business of American pro sports. Like the San Francisco 49ers—the ones now playing in Santa Clara—the Braves took advantage of a highly fragmented metropolitan area to pit city and county against each other in a kind of prisoner's dilemma. After more than a year negotiating with both governments, the Braves got what they wanted from Cobb: $397 million in public money for stadium construction.

At the center of such stadium bidding wars are government bonds, which, in Cobb County, will be paid off mostly by homeowners. For a ballpark in their backyard, they'll fork over $8.6 million in property taxes every year for the next three decades. They'd better hope the Braves stick around longer than the 20 years they will have spent in Atlanta's Turner Field.

Or better yet: The next time the Cobb County Braves decide they're ready to spin the Wheel of Taxpayer Subsidy, we should all hope the whole practice has become illegal.

That's what the Obama administration proposed in its budget last month: to end the issuance of tax-free government bonds for professional sports facilities, a practice that has, according to research by Bloomberg, siphoned $17 billion of public money into arenas for NFL, MLB, NBA, and NHL franchises over the last 30 years and cost Americans $4 billion in forgone federal taxes on top of that. It's too late for residents of Cobb County, but Congress might yet save the rest of us some dough.

It's been clear for decades that new stadiums don't bring the business they promise.
Extortion at the hands of our sporting oligarchs is, of course, a popular source of outrage. The U.S. has enough major league sports stadiums built with public money to fill an NCAA bracket. The ascent of stadium costs and the financial myopia of public officials ensure that the contest will stay lively for some time to come.

So how did we wind up in this situation? Local authorities have long used tax-exempt bonds to raise money for certain private uses—whether factories, train stations, or home mortgage loans—in addition to schools, sewers, and other infrastructure projects. In most cases, the ensuing economic growth was at least intended to pay back the municipal investment. Sports stadiums were no different: Governments could raise money in exchange for a share of future revenue.

After an initial attempt in the 1960s to steer government bonds toward true public works, Congress placed a provision in the 1986 Tax Reform Act that seemed sure to kill tax-free, no-limit stadium deals. It had exactly the opposite effect. Essentially, qualifying projects now need either to serve public uses or to rely on public funding. With pro sports facilities, the former is obviously impossible, so the latter, though politically improbable, has become the way billionaire team owners retain access to cheap government financing. Cities and counties wound up borrowing more for their teams than ever before.

It's been clear for decades that new stadiums don't bring the business they promise, let alone enough economic activity to justify the investment. It's a ruse, but it works because public officials are more worried about being blamed for the loss of a team in the short run than, say, for failing public schools in the long run. And it works because the country has more big cities and rich counties than sports teams in each league, so that even if Cincinnati taxpayers wise up, their counterparts in Austin will step in.

The professional sports industry demands consumer loyalty but shows little in return. In Bloomberg, Aaron Kuriloff and Darrell Preston illustrate how smoothly the tax-money merry-go-round spins: "In

March 1984, the Colts left Baltimore one snowy morning for Indianapolis and a new $95 million stadium built partly with public debt. Baltimore lured the Browns from Cleveland after the 1995 season with a $229 million muni-bond-financed structure. To land an expansion team in 1998, Cleveland provided a $315 million publicly financed building."

But with only two intercity moves in the last 17 years of the NFL, MLB, and NHL (NBA teams have been more mobile), it's clear that the era of big moves has largely made way for a period of intra-metropolitan battles. These face-offs don't grab national headlines, require new jerseys, or motivate big fan protests. But they cost just as much money.

Atlanta is just one recent example. When voters on Long Island rejected a $400 million renovation of the Nassau Veterans Memorial Coliseum, New York Islanders owner Charles Wang announced he would move the team across the county line to Brooklyn's new Barclays Center, which was able to pick up hundreds of millions of dollars in subsidies. The 49ers spurned an offer from San Francisco and instead moved some 40 miles down the peninsula to Santa Clara.

Obama's budget isn't the first national political effort to impose federal taxes on stadium deals. New York Sen. Daniel Patrick Moynihan proposed ending the loophole in 1996, and it's been kicked around in committee since. But with groups like the Koch brothers' Americans for Prosperity now opposing stadium deals at the local level, Obama's idea has a chance of gaining bipartisan support.

Still, it wouldn't stop cities from paying for stadiums. The last time Congress made public financing more onerous, in 1986, the result was a disaster: Cities jumped to meet the new, harsher terms, opening a three-decade stadium construction spree.

One solution, instead, could be to change the way teams operate, either by bringing antitrust suits against the leagues (which sports economist Andrew Zimbalist has suggested) or by allowing cities to exert greater control over their brands (as law professor Mitchell Nathanson has imagined). Should names like the Irving Cowboys, the East Rutherford Giants, and the Orchard Park Bills be forced upon suburban squads? In his 2000 book Leveling the Playing Field, Harvard Law professor Paul Weiler fantasizes about a nationwide union of cities that could lock out pro sports teams to obtain a league-imposed "stadium cap" on taxpayer subsidies, which would effectively end bidding wars.

Stadiums may be the brightest stars in our constellation of subsidized businesses, but they are not the biggest. The main event, for subsidy reformers, is the $80 billion per year in tax breaks and incentives that cities, counties, and states use to lure and retain corporations of all stripes. In Camden, New Jersey, the state is providing a $315,000 subsidy per job. If Tesla's growth projections in Nevada fall short—as they so often do in these deals—the state could wind up paying $400,000 per job. It's a destructive cycle for every function of government and a zero-sum game.

That's a crisis that tests the limits of federalism. If we're going to meet it, we might as well warm up with a little baseball.

Slate Magazine

By Henry Grabar

MARCH 17 2015 4:30 PM

- Cities Paying Millions to Get Out of Bad Bank Deals.
- NASACT Responds to GASB's PVs on Leases.
- NASACT Responds to GASB's PVs on Financial Reporting for Fiduciary Responsibilities.
- Dealer Donations to Mayor's Fund in LA Legal, But Raise Eyebrows.
- Supremacy's Claws: How Two Judges are Changing the Pension Debate.
- *City of Topeka v. Imming* – Court of Appeals holds that, because the state law creating STAR bonds – the method chosen by the City to finance its purchase of property to establish a redevelopment district – permitted a referendum election only in cases where a protest petition is filed, citizen was not entitled to a writ of mandamus compelling an election or repeal of the ordinance, as citizen's petition was not a protest petition.
- And finally, appeals court, in a shocking turn of events, declines to order the demolition of newly-constructed 40,000 square-foot grocery store and two additional retail commercial buildings. Next time around, fellas, perhaps request injunctive relief pending appeal? Just a thought. And, although it was surely an innocent mistake, BCB is now soliciting amicus briefs for *Spellcheck v. Foxxxy Ladyz Adult World, Inc.*

MEETINGS - CALIFORNIA

CPR for Skid Row v. City of Los Angeles

United States Court of Appeals, Ninth Circuit - March 10, 2015 - F.3d - 2015 WL 1020059

Advocacy organization and two of its members brought action against city, alleging California statute making it a misdemeanor to disrupt meetings was unconstitutional, both on its face and as applied, under the First and Fourteenth Amendments. The United States District Court granted city's motion. Plaintiffs appealed.

The Court of Appeals held that:

- Statute governing disruption of meetings did not apply to disruptive conduct during public meetings of electors regarding public questions;
- Statute making it a misdemeanor to disrupt meetings was not a content-based restriction on speech; and
- Statute making it a misdemeanor to disrupt meetings was narrowly tailored to substantial state interest.

EMINENT DOMAIN - FLORIDA

Florida Dept. of Transp. v. Mallards Cove, LLP

District Court of Appeal of Florida, Second District - March 6, 2015 - So.3d - 2015 WL 968710

Mallards Cove was a defendant in a 2007 quick-take eminent domain proceeding initiated by the Florida DOT to take a tract of land owned by Mallards Cove.

The circuit court entered an order of taking on August 15, 2007, pursuant to stipulation of the parties. The DOT was required to deposit a good faith estimate of value in the amount of $2,004,320 into the registry of the court. The funds were deposited on August 30, 2007, and released to

Mallards Cove, net of property taxes, on September 13, 2007.

While the funds were on deposit in the court registry, the Clerk elected to invest the funds. The Clerk earned investment interest on the deposit in the amount of $4,396.49, and subsequently transferred ninety percent of that sum to the Department and retained ten percent, as provided by section 74.051(4).

In 2009, Mallards Cove sought a declaration that section 74.051(4) of the quick-take eminent domain statute is unconstitutional in that it directs clerks to pay ninety percent of interest earned on the quick-take deposit funds to the condemning authority and asserting a claim of inverse condemnation against the Clerk and the DOT, resulting from the disbursement of ninety percent of the accumulated interest to the DOT rather than to Mallards Cove.

The circuit court ruled that, as a matter of law, Mallards Cove owned the deposit funds from the moment the DOT deposited the funds into the registry. The circuit court further ruled that Mallards Cove owned the interest that was earned when the Clerk invested the deposit funds and that this investment interest "was property entitled to constitutional protection entirely separate and apart from the real property that was taken by the [DOT] in the underlying quick taking procedure." The circuit court extensively analyzed the requirements of class certification under Florida Rule of Civil Procedure 1.220 and ultimately granted class certification.

The District Court of Appeal reversed. As the condemnee in a quick-take proceeding, Mallards Cove was entitled to be paid full compensation for the real property taken by the DOT. No further taking occurred. Full compensation was determined pursuant to a stipulated final judgment from which no appeal was taken, and an interest award on the monies used to make Mallards Cove whole would be a "double dip." Mallards Cove had failed to establish that a justiciable case or controversy existed between it and the DOT or the Clerk.

MUNICIPAL ORDINANCE - ILLINOIS

Foxxxy Ladyz Adult World, Inc. v. Village of Dix, Ill.

United States Court of Appeals, Seventh Circuit - March 10, 2015 - F.3d - 2015 WL 1020631

Owners of adult entertainment establishment brought action against village, challenging local ordinances that banned public nudity, open containers of alcohol in public, and possession of liquor in public accommodations. The United States District Court for the Southern District of Illinois granted village's motion to dismiss for failure to state claim. Owners appealed.

The Court of Appeals held that:

- Village was required to provide some evidence demonstrating causal relationship between its ban on public nudity and its proffered interests;
- Alcohol regulations did not violate Illinois Liquor Control Act (ILCA);
- Prohibition on possession of alcohol in public accommodations was authorized by Illinois Municipal Code;
- Ban on open containers of alcohol was authorized by Illinois Municipal Code;
- Alcohol regulations did not, on their face, target establishments where protected expressive conduct was likely to occur; and
- Village's asserted interests in enacting alcohol regulations were legitimate and reasonably related to regulations.

Village was required to provide some evidence demonstrating causal relationship between its ban on public nudity and its proffered interests, i.e., public health, safety, and welfare, in order for such interests to be considered important or substantial, as required for ban to be constitutional under First Amendment.

BONDS - KANSAS

City of Topeka v. Imming

Court of Appeals of Kansas - March 11, 2015 - P.3d - 2015 WL 1042377

Citizen sought a court order compelling the City of Topeka to either repeal Ordinance No. 19915 – an ordinance calling for the City to buy property for the purpose of establishing a STAR bond-financed redevelopment district – or to hold a municipal election and let the voters decide the issue.

The Court of Appeals held that, because the law creating STAR bonds – the method chosen by the City to finance its purchase – permits a referendum election only in cases where a protest petition is filed and citizen's petition was not a protest petition, citizen was not entitled to a writ of mandamus compelling an election or repeal of the ordinance.

ZONING - MISSISSIPPI

Check Into Cash of Mississippi Inc. v. City of Jackson

Court of Appeals of Mississippi - March 10, 2015 - So.3d - 2015 WL 1015746

Check Into Cash of Mississippi Inc. (CICM) appealed the City of Jackson's decision to deny a use permit. The use permit would allow CICM to engage in the title-pledge business at its current payday-loan location.

The Court of Appeals reversed, finding that the City's decision to deny the permit was not supported by substantial evidence, and thus the decision was arbitrary and capricious.

The Court agreed with CICM that its application for a use permit presented the evidence necessary to comply with the requirements for a use permit in section 1701.02–A of the Zoning Ordinance and that the City Council did not make any findings of fact to support of its conclusion that the grant of the use permit "will adversely affect the surrounding properties, or otherwise be detrimental to the public welfare."

ZONING - NEW JERSEY

In re Adoption of N.J.A.C. 5:96

Supreme Court of New Jersey - March 10, 2015 - A.3d - 2015 WL 1015065

Builders' association and affordable housing advocacy organizations, among others, appealed from Council on Affordable Housing's (COAH) adoption of third-round substantive rules for calculation of affordable housing needs and criteria for satisfaction of needs, for purposes of municipalities' duty under *Mount Laurel* doctrine to provide for a realistic opportunity for fair share of region's needs for affordable housing.

The Superior Court, Appellate Division, affirmed in part, reversed in part, and remanded. Parties petitioned and cross-petitioned for review. The Supreme Court of New Jersey affirmed as modified. Subsequently, advocacy organization filed motion in aid of litigants' rights.

The Supreme Court of New Jersey held that Court would dissolve exhaustion-of-administrati-e-remedies requirement of Fair Housing Act of 1985 (FHA), as relief for failure of Council on Affordable Housing (COAH) to adopt third-round substantive rules for calculation of affordable housing needs and criteria for satisfaction of needs.

Grant of motion in aid of litigants' rights was warranted, as remedy from failure of Council on Affordable Housing (COAH) to adopt third-round substantive rules for calculation of affordable housing needs and criteria for satisfaction of needs, in action by builders' association and affordable housing advocacy organizations challenging validity of rules. 15 years had passed since statutory deadline for adoption of rules, 18 months had passed since Supreme Court had affirmed Appellate Division's invalidation of rules and ordered COAH to adopt valid rules, and COAH had taken no action to adopt new rules for five months since deadlocked vote on new rules.

ZONING - NEW YORK

Citizens for St. Patrick's v. City of Watervliet City Council

Supreme Court, Appellate Division, Third Department, New York - March 12, 2015 - N.Y.S.3d - 2015 N.Y. Slip Op. 02034

PCP Watervliet, LLC, a subsidiary of defendant Nigro Companies, purchased a parcel of property in the City of Watervliet from the Roman Catholic Diocese of Albany County. The parcel contained a church, school and rectory that were no longer in use and, as part of its plan to demolish the buildings and replace them with a 40,000 square-foot grocery store and two additional retail commercial buildings, Nigro petitioned the City of Watervliet City Council to rezone the parcel from residential to commercial. After a series of public meetings and an environmental review pursuant to the State Environmental Quality Review Act (SEQRA), the City issued a negative declaration and amended its zoning map as requested.

The individual plaintiffs, who reside in the City, and plaintiff Citizens for St. Patrick's, an unincorporated advocacy group opposed to the demolition of the church buildings, commenced an action challenging the negative declaration and rezoning of the property by alleging that the City failed to comply with SEQRA requirements, engaged in illegal spot zoning and violated the Open Meetings Law.

The trial court denied plaintiffs' motion for a preliminary injunction in and thereafter granted motions by the City and Nigro for summary judgment dismissing the action on the ground that none of the plaintiffs had standing. Plaintiffs appealed.

The appeals court affirmed, holding that plaintiffs' challenges to the SEQRA and rezoning determinations were moot because they did not seek any injunctive relief from the appeals court during the pendency of the appeal. The church buildings had been demolished and the grocery store was fully constructed and operational.

CONTRACTS - NORTH CAROLINA

Khan Bros., Inc. v. City of Charlotte

Superior Court of North Carolina, Mecklenburg County - March 5, 2015 - Not Reported in S.E.2d - 2015 NCBC 23

After City declined to award Khan Bros. a new Taxicab Operating Agreement and granted exclusive Airport Taxicab Operating Agreements to other companies, Khan Bros. sued, alleging that a member of the City Council had accepted bribes from the other taxi companies in exchange for awarding them the exclusive agreements.

The court held that Khan Bros. lacked standing due to the fact that the decision by the Charlotte City Council to award the Taxicab Operating Agreements to the other taxi companies and to decline to award Khan a new Agreement was the result of the independent action of the Charlotte City Council, consistent with its legal authority, and acting within its reasonable discretion, to approve or deny the Agreements.

The alleged injury about which Khan Bros. complained —i.e., the economic losses flowing from the City Council's decision not to award Plaintiff a new Taxicab Operating Agreement — was caused by the independent, legal and valid action of the Charlotte City Council and not by the improper actions of any Defendant.

See also, *Universal Cab Co., Inc. v. City of Charlotte*, Mecklenburg County, Business Court – March 5, 2015 – Not Reported in S.E.2d – 2015 NCBC 22

ZONING - OHIO

State ex rel. Sunset Estate Properties, L.L.C. v. Lodi

Supreme Court of Ohio - March 10, 2015 - N.E.3d - 2015 -Ohio- 790

Mobile home park owners brought action against village, seeking declaratory and injunctive relief and damages, challenging constitutionality of ordinance governing discontinuance or abandonment of a nonconforming use of property. The Court of Common Pleas entered summary judgment in favor of village, and owners appealed. The Court of Appeals reversed and remanded. Village appealed.

The Supreme Court of Ohio held that provision of village zoning ordinance providing that the absence or removal of nonconforming mobile homes from property for a period of six months of more shall constitute discontinuance from the time of absence or removal was unconstitutional.

PENSIONS - RHODE ISLAND

Retirement Bd. of Employees' Retirement System of City of Providence v. Corrente

Supreme Court of Rhode Island - March 9, 2015 - A.3d - 2015 WL 1012257

City retirement board voted to reduce former employee's pension benefits pursuant to Honest Service Ordinance, and then filed a civil action in Superior Court to confirm its decision. City mayor filed a motion to intervene, arguing that the interests of the mayor and the city were not adequately represented in the action, which was granted. The Superior Court granted summary judgment to the board. Intervenors and board cross-appealed.

The Supreme Court of Rhode Island held that:

- Board's action did not properly invoke either equity or declaratory judgment jurisdiction of the Superior Court, but
- Because Superior Court had been vested with subject matter jurisdiction under newly enacted Public Employee Pension Revocation and Reduction Act, Supreme Court would remand the case for further determinations.

City retirement's board's miscellaneous petition, requesting Superior Court to enter an order confirming board's decision to reduce former employee's pension pursuant to Honest Service Ordinance, did not properly invoke either the equity or declaratory-judgment jurisdiction of the Superior Court. The board, which was not an aggrieved party in the matter, had not sought an injunction or any other variety of known equitable relief but, rather, the petition was brought pursuant to the Honest Service Ordinance in order to obtain the specific relief required by the language of that ordinance.

Statute granting Superior Court jurisdiction to review decisions pursuant to any municipal ordinance providing for the revocation or reduction of pension for dishonorable service did not apply retroactively and, thus, did not remedy Superior Court's lack of subject matter jurisdiction when it adjudicated and issued final judgment on subject miscellaneous motion by city retirement board, requesting Superior Court to enter an order confirming board's decision to reduce former employee's pension pursuant to Honest Service Ordinance, before statute became effective, and Superior Court's final judgment was, therefore, void. However, statute nevertheless encompassed subject case and conferred jurisdiction on Superior Court to act on remand, where case was pending on appeal to Supreme Court at time of statute's passage, and public law enacting statute stated that statute was to take effect upon passage and to apply to all pending proceedings.

Because Superior Court, under newly enacted Public Employee Pension Revocation and Reduction Act, had been vested with subject matter jurisdiction over city retirement board's request for Superior Court to enter an order confirming the board's decision to reduce former employee's pension pursuant to Honest Service Ordinance, Supreme Court would remand the matter, and, upon remand, the Superior Court could conduct further proceedings based upon the record before it, or, in its discretion, it could simply re-enter its previous judgment.

IMMUNITY - TEXAS

Western Oilfields Supply Company v. City of Anahuac

Court of Appeals of Texas, Houston (1st Dist.) - March 10, 2015 - Not Reported in S.W.3d - 2015 WL 1061130

Western Oilfields Supply Company d/b/a Rain for Rent appealed from the trial court's granting of a plea to the jurisdiction based on governmental immunity. Rain for Rent argued that the City of Anahuac waived its immunity from a suit for breach of contract under their agreement to provide water filtration equipment and services.

The appeals court affirmed, holding that the written contract was not yet prepared when the Anahuac City Council approved going forward with Rain for Rent's proposal due to the missing portion—the rental/sale estimate—containing the pricing terms for installation of the equipment as well as for its operation.

The court noted that the absence of pricing details rendered this an estimate, rather than a final agreement.

Tax Analysts: IRS Addresses Treatment of Qualified Low-Income Building Units.

In program manager technical assistance, the IRS concluded that charging resident managers or maintenance personnel rents, utilities, or both for units in a qualified low-income building doesn't change the treatment of the units as facilities reasonably required for the qualified low-income housing project.

Citations: PMTA 2014-022

Read the letter (subscription required).

JUNE 2, 2014

Obama's Proposed Budget Would Bar Tax-Exempt Bonds to Finance Stadiums.

Florida lawmakers last year approved a plan to set aside $7 million in sales-tax dollars to help pay for building or renovating sports stadiums. But last month the Joint Legislative Budget Commission punted on the decision on whether or not to fund the four stadium projects that were before them — EverBank Field in Jacksonville, Daytona International Speedway, Sun Life Stadium in Miami-Dade County and an Orlando soccer stadium.

The issue of whether to give tax breaks to millionaires for such stadiums has been an issue for decades, and in the lead-up to the legislative session, the group Americans for Prosperity has been leading the opposition to it in Tallahassee.

Potentially a bigger threat to those and other stadiums getting funded in the future is a proposal in President Obama's 2016 budget, presented to Congress last month, that would bar the use of tax-exempt bonds to finance professional sports facilities, if more than 10 percent of the facility is used by private businesses. That means it would fall to cities and states to finance stadiums with bonds that aren't tax-exempt.

Numerous blogs and news agencies reported on this development when the president released his budget in February, but it is receiving more attention after a report in today's Wall Street Journal.

Between 1986 and 2012, sports facilities accounted for $17 billion in tax-exempt bond debt. That debt will be paid off 30 years from now and, by that time, the exemption will cost federal taxpayers $4 billion under Obama's plan.

The federal savings would be about $542 million between 2016 and 2025; however, federal tax payers will no longer be responsible for subsidizing stadiums far from their home team.

As Politico reported last month, tax-exempt bonds are not the only way local governments can use

taxpayer resources to fund stadium projects, but they are a popular avenue for raising this money.

“Tax-exempt municipal bonds represent the least-expensive source of capital available to most team owners and are the preferred method of financing stadium construction,” according to a 2012 UBS research report.

The owners of the Tampa Bay Rays are expected to look toward public financing of a new ballpark, if and when they ever get the opportunity to search for locations in Hillsborough County. The estimated costs of a retractable dome park to be built in the Tampa Bay area have been estimated to be around $550-600 million. Rays management has said in the past they would consider paying up to a third of those costs.

In the fall of 2012, a [report by the Baseball Stadium Financing Caucus]() listed the potential sources of revenue in the Tampa Bay area to fund a new stadium. In Hillsborough that included using tax-increment financing (TIF) from the city of Tampa’s downtown Community Redevelopment Agency; redirecting part of the Community Tax (CIT) to improvements for a stadium; adding a new 5 percent surcharge on car rentals, and a new 6th cent added to the tourist/bed tax. In Pinellas some of the measures include redirecting using the bonds going to pay for Tropicana Field, which will expire at the end of this year, as well as redirecting a part of the Penny for Pinellas tax.

SaintPetersBlog

By Mitch Perry on March 9, 2015

GFOA Survey May Provide MCDC Information.

WASHINGTON — The muni market may learn more about how issuers fared under the Securities and Exchange Commission’s Municipalities Continuing Disclosure Cooperation initiative after they respond next month to a survey from the Government Finance Officers Association.

The GFOA launched the survey last month in an effort to find out how issuers responded to the MCDC, which allowed both them and underwriters to report to the SEC any instances in the last five years in which they sold bonds and were not truthful in official statements about whether they were in compliance with their continuing disclosure agreements. The MCDC reporting deadline was Sept. 10 last year for underwriters, but issuers had until Dec. 1.

Bond lawyers and other market watchers have been clamoring for months for the SEC to release data about the MCDC submissions, but commission officials have played it close to the vest and declined to give any details. The GFOA survey, which first went live on the group’s website late last month, could provide some information straight from issuer officials.

The survey features 19 questions, some of which are multiple choice and others in a short answer format. It asks issuers not only whether they participated in the MCDC, but also for information about their size, the frequency with which they issue debt, and how much time and money they put into deciding whether or not to take part in the initiative.

Issuer officials were also asked how they interacted with their underwriters under the program. The MCDC placed issuers and underwriters into what SEC enforcement division officials repeatedly called a “modified prisoner’s dilemma” because they effectively report each other when self-reporting. The survey asks, for example “Were you contacted by an underwriter regarding your

continuing disclosure compliance?" and "If an underwriter contacted you indicating you failed to comply with continuing disclosure obligations, were you able to resolve all alleged instances of non-compliance without either your entity or underwriter reporting under the MCDC initiative?"

The survey also asks issuers whether the program was truly "voluntary." SEC officials have repeatedly said that participation in the MCDC was completely voluntary, though some issuer officials have said they felt forced to at least conduct a thorough review of their compliance histories.

About 200 GFOA members have responded to the survey so far, a GFOA official. The SEC said earlier this month that it will release settlements with dealer firms first because they were the first to report, but that enforcement attorneys are still working on verifying many of the self-reports that the commission received. The GFOA survey closes April 3.

THE BOND BUYER

BY KYLE GLAZIER

MAR 16, 2015 2:34pm ET

Congressman's Interest in Munis Comes from Experience.

WASHINGTON – Rep. Randy Hultgren, R-Ill. got a first-hand look at how municipal bonds can be beneficial when he visited Freedman Seating Company in Chicago.

The company has been in business for more than 100 years. It originally made cushions for carriages and is now one of the largest manufacturers of seating for commercial vehicles such as busses.

FSC has done several new-money bond financings during the last 17 years and has used the bond proceeds to purchase and renovate property in a blighted area in Chicago's west side, as well as to purchase equipment for the facilities, said its president, Craig Freedman.

The bonds allowed FSC to purchase over half a million square feet of manufacturing space and over $10 million of equipment and facilities. When the company did its first bond deal in 1998, it had fewer than 200 employees, Freedman said. Now it has more than three times that, about 750.

Hultgren, whose district includes some Chicago suburbs and is not far from FSC, said the company is "very impressive, but they absolutely would not have been able to hire as many people as they have or produce as much product as they produce but for access to manufacturing bonds."

He visited the company in September, not long after he introduced the Modernizing American Manufacturing Bonds Act. The bill would increase the maximum size of an industrial development bond issue and would expand the types of projects that could be financed with IDBs.

"We're certainly supportive of what congressman Hultgren has put forth in the bill," Freedman said.

And that's not all Hultgren has done on the muni bond front since joining Congress in 2011. The 49-year-old has been one of the most vocal supporters of municipal bonds in the House and a leading co-sponsor of legislation on bank-qualified bonds. He serves on the House Financial Services Committee, which has jurisdiction over munis and other securities.

In an interview with The Bond Buyer from his Capitol Hill office, Hultgren said he has developed an appreciation for bonds as a result of his past experiences in both the public and private sectors. He has held local and state government positions and has also worked for an investment advisory firm.

“The early public service work and then also … my career work has sparked an interest in bonds and their value,” he said.

Hultgren’s Background

Hultgren’s first publicly elected post was on the board of DuPage County, Ill., where he served from 1994 to 1998. During this time, he saw how “we, as the county or townships within the county, could get things done so much more effectively and efficiently and transparently and accountably than even [the] state government or federal government.”

County board members were also on the forest preserve commission, which was involved in bond-financed projects for land acquisition.

Hultgren then served in the Illinois General Assembly, first in the state House from 1999 to 2007 and then in the state Senate from 2007 to 2011. The state had several infrastructure programs that were bond-financed, and state legislators could work with local governments to help them fund projects, he said.

“I’ve been a strong supporter of infrastructure and making sure that we’ve got safe roads, safe bridges, that we’re able to move people safely to and from work and school,” Hultgren said.

In the state House, Hultgren was in the minority, and in the state Senate, he was in a minority so small that it could not block legislation the majority wanted to move. As a result, he learned that it is important to build bipartisan support for legislation. He took this lesson with him to the U.S. Congress.

“That has really been the focus we’ve taken with any new bills that we’ve had, is getting good, strong Democratic co-sponsors, people … we’re not going to agree with every day, but that we can work together on important issues,” he said.

Hultgren has also learned from his time in state and local government “to be realistic, that it takes some time to get things done.”

“Ultimately, we want to work towards good laws, good strategy, good plans,” and achieving that takes time, he said.

His time in Congress has reaffirmed his belief that “the best things happen locally, and the very best happen when we can work together at different levels of government — federal, state, local government — working together ultimately to serve people.”

For part of the time he was in the state Senate, Hultgren also was employed part-time as vice president at Performance Trust Investment Advisors in Chicago. He worked to find investors for bond funds created by the firm, which is now called PT Asset Management. Hultgren said he got interested in the value of bonds in people’s portfolios and the predictability and security they provide to investors.

Munis are important to Hultgren’s constituents, he said, because with interest rates very low right now, it’s hard for people, especially retirees, to find investments with returns that are high enough to live on, but not too risky.

And people tend to invest in bonds issued in their state, “so there is an accountability on the side of the person purchasing the bond also being able to follow the progress or the need for the project that’s being done,” Hultgren said.

“I think people benefit, because good work gets done and it gets done pretty quickly,” he said.

Michael Decker, managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said Hultgren’s state and local government and financial services background gives him a unique perspective on muni issues.

“We love working with him,” Decker said. “He’s a great representative of his district and a strong bond supporter.”

Legislation

Hultgren said he hopes to reintroduce the bills on IDBs and bank-qualified bonds in the current Congress “as soon as possible and as makes sense to increase likelihood of success. His office is trying to get support for the legislation in the Senate and is trying to figure out when the bills have the best chance of being considered by a House committee and ultimately by members on the House floor.

The bill on IDBs would increase the maximum size of an industrial development bond issue to $30 million from $10 million. It would also allow facilities that produce intangible property, such as software, and facilities that are functionally related to and subordinate to the production of property, such as warehouses, to be financed with IDB proceeds.

IDBs have not only benefited Freedman Seating Company, but they have also benefited other companies in Illinois. Bison Gear & Engineering Corp., a company in Hultgren’s district that he’s visited several times, has also taken advantage of IDBs.

The Council of Development Finance Agencies has worked with Hultgren on the IDB bill.

“Congressman Hultgren has been a bold and courageous supporter of tax-exempt bonds, exemplified by his introduction of the Modernizing American Manufacturing Bonds Act last year,” said Toby Rittner, CDFA president and chief executive officer.

SIFMA also supports expanding the use of IDBs, which many of its members underwrite, Decker said.

The bill on bank-qualified bonds, called the Municipal Bond Market Support Act of 2014, would increase the annual issuance limit for issuers of bank-qualified bonds to $30 million from $10 million and would apply the limit to nonprofit borrowers rather than to the issuers through which they borrow.

SIFMA also supports raising the bank-qualified bond limit. A temporary increase in the issuance limit under the American Recovery and Reinvestment Act, which has since expired, was successful, Decker said.

“We think it’s a smart idea to raise the limit,” he said.

Hultgren also wants munis to be added to the definition of high-quality liquid assets in a new federal banking liquidity rule. He is trying to figure out the right timing to do something in this area.

The current surface transportation funding law expires May 31, and Hultgren thinks Congress needs to debate how to fund transportation in a new bill. He would not support a gas tax increase, in part because it is becoming less effective as more cars use alternative power sources. He has encouraged and will continue to encourage the use of public-private partnerships, he said, but acknowledged that not every project is a good fit to be developed as a P3.

Congress will need to look at a number of different options to determine the fairest way to fund infrastructure, Hultgren said.

"I think the worst possibility is to make our kids pay for it," he said. "So we have to be responsible and do the right thing now, find a way to live within our means, and find funding sources that really are impacting people who are using the roads." Congress needs to find "something again that won't immediately be cutting ourselves off to not be able to finish the work that we need to do," he added.

Pro-Muni Letters

In addition to working on legislation relating to specific types of bonds, Hultgren is also pushing for preservation of the tax exemption for munis.

Currently, he and Rep. Dutch Ruppersberger, D-Md., are circulating a letter for their colleagues to sign that urges House leaders to support the tax exemption for municipal bonds. The two Congressmen authored a similar letter in 2013, and it had the support of more than 100 other members of Congress.

The signatories of the 2013 letter were split roughly evenly between Democrats and Republicans, Hultgren said.

"That's encouraging that there is still bipartisan support for this," he said.

Hultgren said he hopes that the new letter will have similar bipartisan support and about the same number of signers.

The letter will hopefully educate members of Congress about the importance of tax-exempt bonds so that there isn't "a late night surprise of some treatment of municipal bonds getting thrown into legislation at the last minute," Hultgren said.

The congressman said he would be surprised if Congress passes comprehensive tax reform this year and that if there are changes to the tax code this year they would be more likely to be targeted, particularly on the international tax system.

Last year, former House Ways and Means Committee chairman Dave Camp released a comprehensive tax-reform proposal that would have imposed a surtax on muni interest for high earners and would have prevented new private-activity bonds from being issued as tax-exempt.

Hultgren said he disagreed with significant parts of the proposal and saw the former Michigan Republican congressman's plan as an opportunity to talk about parts of the current tax code that work.

"Hopefully they will have heard enough from us, from others, of the value here to not do something that further hinders us," he said.

In addition to circulating the letter, Hultgren said he's encouraging issuers and borrowers in the muni market to talk to other members of Congress "about how this is a valuable tool for them that

needs to be preserved.” Issuer officials should explain that if the exemption goes away to increase revenues, there will be a long-term cost, since it will be harder for them to do good projects, he said.

The Municipal Bonds for America coalition has also had dealings with Hultgren. When the 2013 letter was being circulated, MBFA made its members aware of it. Groups then brought up the letter in meetings with Congress members, said Jessica Giroux, general counsel and managing director of the Bond Dealers of America.

Also, ahead of MBFA’s educational seminar for Capitol Hill staff last July, Hultgren, Ruppersberger, Rep. Richard Neal, D-Mass., and Rep. Tom Reed, R-N.Y., wrote a “dear colleague” letter asking their fellow Congress members to send staff to the event, Giroux said.

Hultgren is an “advocate for munis,” she said.

THE BOND BUYER

BY NAOMI JAGODA

MAR 16, 2015 1:14pm ET

Fitch: Positive Rating Drift Returns to U.S. Public Finance.

Positive rating activity has returned to Fitch Ratings’ U.S. public finance rating activity, coinciding with improved U.S. economic conditions following a protracted recovery. Downgrades trailed upgrades in 2014, by a margin of 0.7 to 1, compared with the 2 to 1 ratio recorded in 2013, according to a new Fitch report.
The share of municipal ratings downgraded and upgraded was relatively low at 3.4% and 4.9% in 2014, respectively, with rating activity volume at similar levels to 2013. The overall majority of ratings – 86.9% – remained unchanged year over year.

The tax-supported sector represents the majority (57%) of Fitch public finance security ratings and thus led rating activity with largely even results of 3.9% downgraded versus 4.1% upgraded. Rating activity was generally positive across the other public finance sectors.

Fitch-rated U.S. public finance security ratings recorded no defaults in 2014. Over the long-term period of 1999 to 2014, the U.S. public finance average annual long-term security default rate was 0.04%.

Fitch’s new study provides data and analysis on the performance of its U.S. public finance ratings in 2014 and over the long term, capturing the period 1999-2014. The report provides summary statistics on the year’s key rating trends.
The full report is titled ‘U.S. Public Finance 2014 Transition and Default Study’ and is available on Fitch’s website.

Additional information is available at ‘www.fitchratings.com’.

Applicable Criteria and Related Research: Fitch Ratings U.S. Public Finance 2014 Transition and Default Study

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Press Release: Fitch Ratings – Mon, Mar 16, 2015 18:18 GMT

Detroit Seeks Statutory Lien on $275M Barclays Deal.

CHICAGO – A bill designed to ease Detroit's first appearance in the public debt markets since its bankruptcy sailed through a Michigan legislative committee this week.

Senate Bill 160 passed the Committee on Banking and Financial Institutions by a 7-0 vote on March 3.

The legislation is now on the Senate floor and could be taken up as early as next week, according to Patrick Tiedt, chief of staff for Sen. Darwin Booher, R-Evart, one of the sponsors.

The bill would give a statutory lien to city income tax revenue backing Detroit's financial recovery bonds.

The measure essentially applies to only one of the city's bond deals: a $275 million deal that Detroit privately placed with Barclays on December 10, 2014, the city's final day in bankruptcy.

The borrowing marks the only time the city has tapped its income tax revenue to secure bonds.

The bonds, now in a variable-rate mode, are to be resold on the public market in a fixed-rate mode within 150 days of the Dec. 10 placement date, unless Barclays grants an extension.

The one-day secondary market sale, coming as soon as April, will be similar to a primary offering. Ratings from at least two agencies will be sought, according to the terms of the deal.

Detroit officials hope that the statutory lien might win an investment-grade rating from at least one rating agency.

Supporters believe SB 160 will boost investor confidence in the bonds with a statutory lien that is expected to make the bond revenue fully protected in the event of another bankruptcy or default by Detroit.

“Even though I am from a small town in northern Michigan, I recognize how important the recovery of Detroit is to the entire state of Michigan,” Booher, R-Evart, said in an email to The Bond Buyer. “I sponsored SB 160 because I believe this is common sense legislation and we should be encouraging ways to save the taxpayers money.”

Detroit, which filed for Chapter 9 bankruptcy in July 2013, floated $1.28 billion of new debt in December as it exited the bankruptcy, but none of that debt was sold in the public debt markets.

Fiscal analyst Elizabeth Pratt with the Senate Fiscal Agency said in a fiscal note that the city could see debt-service savings of $2 million to $3 million a year with the lien. The estimates come from the city’s own figures. The city’s documents also note that the Legislature passed a similar bill in 2011 to help the city of Ecorse access the bond market, although in that case the enhancement was an intercept feature, not a statutory lien.

“Bond rating agencies have stated that a statutory lien on the income-tax revenue pledged to repay the bonds would improve the bond rating and result in lower interest costs,” Pratt wrote in the fiscal note.

“What it effectively does is make the security a lot more airtight than it would be otherwise because there’s a lien on the revenue,” said Jeff Mann, a legislative analyst with the Senate Fiscal Agency who is following the bill.

The bill would apply only to Michigan cities with a population of more than 600,000, a category that includes only Detroit.

It would apply only to financial recovery bonds with a pledge of income tax revenue and only with the approval of the state treasurer.

The revenue would enjoy the lien and be held in a trust for the benefit of the bondholders regardless of whether the city directly collects the revenue, a third party collects it, or anyone else, according to the legislation.

“The lien would be superior to all other liens and interests of any kind, and would be perfected without delivery, recording or notice,” Mann’s analysis says. “The revenue held in trust would be exempt from being levied upon, taken, sequestered, or applied toward paying the debts or liabilities of the city other than those expressly specified in the agreement.”

Detroit Mayor Mike Duggan testified in favor of the bill before the banking committee. No one spoke against it.

THE BOND BUYER

BY CAITLIN DEVITT

MAR 5, 2015

Munis Now a Better Value, Says BlackRock.

Municipal bond investors should use the volatility that kicked off in February as a buying opportunity, advises investment management firm BlackRock.

"One of our themes is living with volatility," says Peter Hayes, who runs the municipal bonds group at BlackRock, which has $116 billion in assets under management. "We recommend taking advantage of any selloff to lock in a better entry point."

March has provided one such entry point after a rough February in which the S&P Municipal Bond Index returned -0.92%. For the 13 months prior, munis did well, says Hayes, so he wasn't surprised there was a correction. He says the decline wasn't due to a dramatic change in investor sentiment, but was partly due to increased supply.

That's because the decline in yields over the course of 2014 inspired local governments to refinance their debt at the new lower rates. "It took a market adjustment to absorb," says Hayes.

The new supply isn't going away anytime soon. "As long as rates stay low, we will see more refundings," says Hayes, although he thinks the rush to lock in the low rates will cool somewhat by year end.

The Federal Reserve is likely to raise rates later this year, but Hayes doesn't expect a dramatic rise in muni yields in 2015.

He concludes a research note this week on muni market performance:

> Muni-to-Treasury ratios remain historically compelling, and recent market action has left munis attractive vs. corporate bonds as well.

Barron's

By Amey Stone

March 13, 2015, 3:10 P.M. ET

Muni Market Grows in Final Quarter of 2014.

WASHINGTON — The total amount of outstanding municipal securities and loans in the market rose 0.6% to $3.65 trillion in the fourth quarter of last year, as U.S. bank muni holdings increased 2.5% and mutual fund muni holdings rose to a record high of $658 billion.

The Federal Reserve Board released the data this week in its quarterly Flow of Funds report. The

total size of the muni market was up from $3.63 trillion in the third quarter of 2014, but the muni market still experienced an overall year-over year decline from $3.67 trillion at the end of 2013. The size of the muni market has generally been declining for the past several years.

Michael Decker, a managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association, said that the quarterly uptick in the market size could mean that the slide is ending, though it might be too early to draw any conclusions.

“The total outstanding is creeping back up,” Decker said. “Maybe the trend of the market is starting to reverse.”

Bank holdings have risen sharply in recent years, totaling $452 billion at the end of 2014 compared to $419 billion the previous year and only $255 billion in 2010. Decker said banks would probably continue to increase their holdings of state and local obligations.

“Banks have clearly discovered that this product fits in their portfolios,” he said.

Matt Fabian, a partner at Municipal Market Analytics, said the rising bank holdings could actually signal that economic conditions aren’t good enough for banks to trust riskier and more lucrative investments.

“That’s a bit of an indictment that economic growth is not as strong as people would like,” Fabian said.

Fabian said the strong growth in mutual fund muni holdings, and a corresponding drop of $15 billion in household muni holdings from the third quarter of last year, is probably due in part to brokers and their firms directing retail customers into more managed products and away from direct investments. Mutual fund muni holdings were as low as $500 billion as recently as the first quarter of 2010. Regulatory requirements that apply to broker-dealers for retail investors in the fixed-income market are creating an incentive for the firms to move to mutual funds, Fabian said.

“From a compliance perspective, it’s just easier,” he said, but added that the household holdings category is a catch-all that can fluctuate depending on how the Fed decides to evaluate the data.

Money market mutual fund muni holdings ticked up 1.1% to $281.7 billion in the fourth quarter, the only quarterly increase of the year. The category has dropped sharply since it was $386.7 billion at the end of 2010 and $509.5 billion at the end of 2008.

Decker pointed to the relatively low holdings of broker-dealers as a significant sign of market conditions. Dealers held $18.9 billion of munis at the end of 2014, a $2.7 billion increase over the previous quarter but a steep decline from the $40 billion dealers accounted for in 2010.

“Clearly broker-dealers are holding less inventory,” Decker said. “That suggests overall that the market is less liquid than it was five years ago.”

State and local government holdings of munis have remained stable, rising slightly quarter-ove--quarter to $13.6 billion at the end of last year.

State and local governments accounted for $2.9 trillion of muni debt, with nonprofit organizations and industrial revenue bonds making up the balance. $2.87 trillion of those munis are long-term obligations, the Fed data shows.

The Fed funds data is next scheduled for release on June 11.

THE BOND BUYER

BY KYLE GLAZIER

MAR 13, 2015 2:46pm ET

NABL: More from the SEC.

The SEC Commissioners again this week gave muni market participants a great deal to think about. First was a speech by Commissioner Daniel Gallagher which revisited some of the themes he raised in a speech last May concerning how liabilities, particularly pension liabilities, should be disclosed. Later in the week, SEC Chair Mary Jo White gave a speech concerning disqualifications, exemptions and waivers under the securities laws, subjects which are of interest to broker-dealers who may enter into consent decrees under MCDC. While Chair White's speech did not specifically talk about the muni market or MCDC, her remarks were enlightening not only about disqualifications and waivers but also about what she thinks is the
best approach to enforcement.

Commissioner Gallagher noted "growing calls for changes to the bond disclosure regime, particularly in the muni space." In particular, he said

> The failure by municipal issuers to provide adequate disclosures of underfunded pension plans is an unpardonable sin. Politically-powerful state workers' unions, and state constitutional protections for benefits, make the reduction of these liabilities extremely difficult. The failure to set aside adequate funds to cover these liabilities creates a material risk that future payments to bondholders would need to be sacrificed. This risk is not merely theoretical; we have seen it play out already in Detroit's bankruptcy.

He goes on to say that "municipalities have taken advantage of heretofore lax governmental accounting standards to hide the yawning chasm in their balance sheets." He acknowledged that the new GASB standards regarding pensions were an improvement and can result in better disclosure of pension liabilities but he called for GASB to bring back the Annual Required Contribution, which he described as "an easy point of reference to help investors and voters compare the contribution that would be required to steadily chip away at these accumulated liabilities with that which was actually appropriated." (The definition of Annual Required Contribution and other pension-related terms can be found in the appendix to NABL's Considerations in Preparing Disclosure in Official Statements Regarding an Issuer's Pension Funding Obligations(Public Defined Benefit Pension Plans).)

However, as beneficial as Commissioner Gallagher finds the GASB rules, their use is voluntary. Commissioner Gallagher's solution is "a legislative fix to mandate the use of GASB standards for municipal issuers." That mandate could take the form either a grant of authority for the SEC to recognize GASB standards as it recognizes FASB or – and this is what got some attention – conditioning the exemption of municipal securities under the securities laws on the use of GASB standards.

One could read the text of the speech to mean that he was talking about the exemption of interest on municipal securities from federal income tax, but a footnote makes it clear he was talking about securities laws. Conditioning tax exemption on providing certain pension disclosures, though, has been proposed by Congressman Devin Nunes (R-CA) (H.R. 1628 in the 113th Congress). Congressman Nunes is a senior member of the House Ways and Means Committee and an original

co-sponsored of his bill was Rep. Paul Ryan (R-WI), now chair of that committee and a representative from a state whose governor and legislature have been involved in disputes with unions, particularly public employee unions, that have gotten national attention. Congressman Nunes' proposal should not be discounted.

Chair White's speech dealt generally with the automatic disqualifications under the securities laws and the process by which the Commission grants waivers from those disqualifications. Whether waivers will be granted in MCDC cases has become a concern among some broker dealers.

Chair White also discussed her view of what incentives are most effective in inducing compliance with the securities laws and she was very clear:

> In my experience, in the enforcement arena, the most effective deterrent is strong enforcement against responsible individuals, especially senior executives. In the end, it is people, not institutions, who engage in unlawful conduct. And the greatest disincentive for wrongdoing occurs when people believe that their own liberty, reputations and livelihoods are on the line and they recognize that real, personal consequences will follow from their misconduct. "It isn't worth the price" becomes the equation, an equation that is harder to have internalized by an impersonalized institution. (Emphasis added).

We could well see more enforcement actions against issuer officials.

National Association of Bond Lawyers

The Weekly Wrap – March 13, 2015

Few Clues Detected on Fate of Illinois Pension Overhaul.

CHICAGO – Legal observers aren't placing any bets on the outcome after watching the oral arguments in the Illinois Supreme Court case that will decide the fate of the state's overhaul of most of its employee pensions.

Only the three Republican justices on the seven-member court posed questions to the state's lead attorney, Solicitor General Carolyn Shapiro, and the two private attorneys representing the unions, retirees, and employees challenging the legislation.

The four Democratic justices remained silent during the nearly one-hour session Wednesday in which attorneys argued their sides in the dispute over whether the 2013 legislation that cut benefits for four of the state's five pension funds violates the state constitution.

The court is expected to rule sometime this spring.

"I think it was fully and fairly presented by both the state and plaintiffs," said municipal law and restructuring veteran James Spiotto, who is co-publisher of MuniNet Guide. "It's always very hard to judge from the questions what the result will be based on the questions because it's only guessing."

Silence among justices is also a hard read. "Sometimes, certain justices may take the lead on questioning on some issues and others allow them to do that," Spiotto said.

"I'm not a gambler so I wouldn't put a bet on it, but I think there's a chance it may go down to the

lower court for an argument on the merits," said Ty Fahner, a partner at Mayer Brown and a former Illinois attorney general who heads up the Civic Committee of the Commercial Club of Chicago, which has lobbied for pension reforms.

If sent back to the lower court, "I think there's a lot of work to be done to convince the court that the state has met the standard," Fahner said.

A delay could aid the state's argument that it faces a fiscal emergency as it budgetary situation is not easing.

The Supreme Court is considering the case on an expedited basis.

It could uphold a lower court ruling from November voiding the legislative package as a violation of the state constitution's pension clause, siding with union attorneys who argue the guarantee is absolute.

Or, it could decide the protections are on par with other state contracts and subject to modification in the case of a fiscal emergency as the state argued. Under that scenario, the case would likely be sent back to the Sangamon County Circuit Court where the argument over whether the state met strict standards for altering a contract would be vetted.

The court could issue a more sweeping ruling upholding the legislation, but it was not asked by the state to do so as there was no debate over whether conditions existed for the state to tap its police powers when the case was before the lower court.

Fahner also did not read too much into the silence of the majority of justices but said the probing questions and demeanor of Justice Robert R. Thomas are not a good sign for the state.

The state senator who sponsored the pension legislation offered a foreboding assessment after attending the arguments.

"I think the indications are that we'll be back to the negotiation table," said state Sen. Kwame Raoul, D-Chicago, adding he hoped the court's eventual ruling provides some guidance for lawmakers on what could withstand a legal challenge. "That may or may not happen, hopefully it will."

The questioning led by Thomas was primarily aimed at the state's arguments about its police powers, the centerpiece of its argument that it needs to override language in the state constitution protecting pensions.

Shapiro, the solicitor general, told the judges the plaintiffs' position that pensions can never be cut "remarkable."

"If the state's bond rating collapsed rendering borrowing prohibitively expensive, pensions would be entirely off limits regardless of the essential state services that might have to be eliminated," she said.

But Thomas pressed her on whether granting the use of police powers would give the state too much future license.

"If the court holds that the state can invoke its police powers to violate core constitutional guarantees to respond to an emergency that at least arguably the state itself created, then aren't we giving the state the power to modify its contractual obligations whenever it wants? For instance, the state could simply fail to fund the pension systems and then claim an emergency," the justice asked.

Shapiro stressed that the state constitution provides only a few exceptions for such modifications. “The lower court will conclude whether the circumstances justify the state’s actions,” she said.

Justice Thomas also questioned how much of the state’s fiscal woes are due to the General Assembly’s failure to extend the 2011 income tax hike. The higher rates partially expired and lawmakers have not acted to make up the lost revenue. Shapiro acknowledged that the state’s budget situation remains unresolved.

Justice Lloyd A. Karmeier pressed Shapiro further on the role of sovereign power in the constitution.

“If sovereign power resides in the people, and the people adopt a constitution which specifically provided for a pension clause having different wording than the contract clause,” does that not indicate the how the public has directed the state to act, he asked.

Shapiro answered that the state and federal constitution prohibit the state from entering into a contract that would limit its ability to act to “protect the public welfare in extreme situations.”

Chief Justice Rita Garman asked union attorney Gino DiVito whether the state’s police powers could ever be used to impair pensions. DiVito did not directly answer, instead saying “not under these circumstances.”

Union attorney Aaron Maduff then addressed the question pointedly.

The state constitution lays out situations where the state can act and “those limitations are not in the pension clause,” Maduff said.

The Illinois constitution states that membership in any Illinois pension system “shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.”

Shapiro argued that questions over the extent and cause of the state’s fiscal emergency and pension woes should be made at the lower court level.

Justices questioned why, if the state is mired in such a fiscal emergency, they were not asked to rule on whether the standard for invoking police powers was met, since further debate at the lower court level would simply delay a final decision.

Shapiro said the state believed there is enough time for the state to act on its budget.

The state contends its fiscal solvency is under threat and argues that position is underscored by its unfunded pension tab of $111 billion in a system that is just 39% funded. Rising payments are crowding out funding for essential services and infrastructure, the state argues, and the state’s bond rating has been pummeled, driving up its borrowing costs. The state is saddled with a backlog of unpaid bills of at least $5 billion and faces a $6 billion budget deficit.

THE BOND BUYER

BY YVETTE SHIELDS

MAR 12, 2015 5:04pm ET

Could Obama Budget Kill Arenas in Milwaukee and Seattle?

Planned arenas in Milwaukee and Seattle could face a new hurdle that could potentially prove insurmountable. This coming, of all places, from Washington, D.C. President Obama has his sights on public subsidies for sports stadiums and arenas.

As chief executive of the U.S. federal government, one of the duties of the president is to present an annual operating budget. The feds operate on a fiscal year that starts on October 1st and ends on September 30th, and for the government to function in a given year, an approved budget must be in place. The president typically submits his budget proposal in February to begin the long, rigorous congressional approval process.

Reports came out this weekend about a proposed amendment to federal tax law buried within the 2016 proposed budget that could have significant and lasting impacts on the business of sports in the United States for years to come. That amendment, if approved, could prevent cities, counties, and states from participating financially in arena projects.

For decades, the various sports leagues have relied on public monies to make palaces for their teams a reality. What has frequently been sold as a show of community support of a team has often become outright ransom to keep teams from leaving. According to the Wall Street Journal, in just the past 30 years, about $17 billion have been raised through government bonds for sports facilities.

Milwaukee is currently fielding a proposal by Governor Scott Walker for his state's biennial budget to issue $220 million in bonds toward supporting the arena effort to keep the Bucks. Seattle, of course, has a potential deal that, if approved, could provide $120-$200 million toward an arena in the SoDo district.

Just how could the federal government affect a city, county, or state from borrowing money through the bond process, you ask.

Municipal bonds are issued through these local entities as a means to both support and improve infrastructure. Infrastructure is, of course, publicly owned lands, buildings, and services vital to the proper function of a city. Roads, schools, sewer, utility, and police services all fall under the infrastructure category.

Bonds are technically only supposed to be issued for these purposes.

Long ago, cities began issuing municipal bonds to participate in private stadium and arena projects in the hopes that they would bolster economic development. Arguments have been waged on both sides of the issue for decades, with the sports leagues and politicians generally touting the cultural importance and economists decrying any sort of substantive economic improvement.

Cities don't want to lose their teams, and team owners prefer to make use of municipal bonding capacity because it is federally tax-exempt. This was to make it easier for municipalities to borrow to lessen the cost of infrastructure projects over time.

With no federal tax to worry about, municipal bonds are generally issued with significantly lower interest rates than private borrowers are going to find through channels. Thus, the appeal.

But there's the rub.

The Obama administration's proposal is that, because of that federal tax exemption, the government should enforce the intended use of these bonds. The U.S. Treasury Department estimates that

enforcement will save the federal government $542 million over the next ten years.

If passed into law, this wouldn't be the first time the federal government has imposed restrictions against using municipal bonds for sports facilities. According to Stateline from the Pew Charitable Trusts (via USA Today):

> *Over the life of the $17 billion of exempt debt issued to build stadiums since 1986, Bloomberg said, taxpayer subsidies to bondholders will total $4 billion.*
>
> *The tax-free bond provision dates to the 1986 Tax Reform Act. The authors of the bill actually sought to restrict the use of public subsidies for sports teams. The law said that no more than 10% of tax-exempt bonds' debt could be repaid by ticket sales or concession — a provision its authors thought would deter using them to finance stadiums because cities and states wouldn't want to obligate taxpayers to pay off the rest of the financing.*

The intent of the change didn't work because municipalities started to get creative in ways to work around the restriction. This is why increases in hotel, rental car, food, and beverage taxes, as well as securing debt with things like potential parking revenues, have become the common methods for repayment of bonds for sports projects.

Needless to say, this has the potential of drastically altering the sports business landscape as we know it, if passed into law. Could it, in effect, kill potential arena projects in Milwaukee and Seattle?

Not to don the tin foil hat, but there is a strong possibility.

The federal budget will go through its approval process over the next few months. There is a school of thought that any bonds issued prior to the start of Fiscal Year 2016 in October could be grandfathered into tax-exempt status.

If Wisconsin approves some level of municipal bonding through its state budget this year, it's quite possible they wouldn't have to worry about such a restriction.

The earliest Wisconsin's budget can be signed into law is August 6, 2015. If bonding for the Milwaukee arena is approved, however, it's not clear that the bonds could be issued prior to October 1st. That raises some question about grandfathering on the federal tax exemption.

As for Seattle's arena effort, we're likely a year away from the city council and the King County Council even being able to vote to agree to participate in the SoDo project. That could potentially push bond issuance to mid-to-late 2016, and then only if a team is acquired. If the federal tax amendment goes through, this would be too late.

Before anyone ties weights to their feet and picks out the keen spot on the bridge, President Obama's budget proposal still has to go through committee, has to be voted on by both houses of Congress, and then has to be signed into law by the president.

That's a long process over the next few months, and it's by no means a guarantee that this restriction will make it to the final budget.

Still, it's worth keeping an eye on.

By Matt Tucker @TuckeratSR on Mar 16, 2015, 2:01p 41

TAX - FLORIDA

Russell v. Southeast Housing, LLC

District Court of Appeal of Florida, Third District - March 11, 2015 - So.3d - 2015 WL 1044315

County Property Appraiser appealed a judgment holding that certain properties were not subject to ad valorem taxes for the years 2008 through 2013. The properties are five military housing complexes serving the Naval Air Station at Key West. The housing complexes are being improved and operated pursuant to a public-private partnership between the United States Navy and a private developer. The terms of the public partnership are set forth in the ground lease, operating agreement, and management agreement.

The court held that a review of these three documents revealed that the Navy retained equitable and beneficial ownership of the properties. Because property owned by the United States is immune from state taxation, the properties were immune from Florida ad valorem taxes.

ZONING - ILLINOIS

Joan Dachs Bais Yaakov Elementary School - Yeshivas Tigeres Tzvi v. City of Evanston

Appellate Court of Illinois, First District, Sixth Division - March 6, 2015 - Not Reported in N.E.3d - 2015 IL App (1st) 131809-U

The City Council of the City of Evanston to denied a zoning application by Joan Dachs Bais Yaakov Elementary School (JDBY) to rezone a parcel of industrial property in Evanston so that JDBY could use the site for a parochial elementary school. Citing the burden of removing the property from the tax rolls, the City Council denied the application. After the denial of its application, JDBY sued Evanston, asserting claims under the "equal terms" and "nondiscrimination" provisions of the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

The Appeals Court found no violation of the RLUIPA.

As to JDBY's as-applied equal terms challenge – requiring that no government shall implement a land use regulation in a manner treating a religious assembly or institution "on less than equal terms" with a non-religious assembly or institution – under the RLUIPA, the court held that JDBY argument failed, due to its failure to offer any similar nonreligious comparators for purposes of the RLUIPA.

The court found that every one of those nonreligious comparators presented by JDBY was a taxable use which would continue to pay property taxes under the accepted zoning criterion, whereas JDBY's proposed use of a parochial elementary school would result in the removal of one of the largest industrial parcels left in Evanston from the property tax rolls.

Dealer Donations to Mayor's Fund in LA Legal, But Raise Eyebrows.

WASHINGTON – Three dealer firms have donated more than $1 million to a Los Angeles nonprofit closely associated with the city's mayor, gifts some market participants say create an appearance of

impropriety even though the donations didn't violate any rules.

Goldman Sachs Gives, JP Morgan Chase & Co., and Citi Community Development made the donations last year to The Mayor's Fund, which has collected more than $5 million since its creation last June. A registered 501(c)(3) organization with no formal tie to Los Angeles Mayor Eric Garcetti, the fund is similar to other programs in New York and elsewhere. But the fund is nonetheless headquartered at city hall and Garcetti speaks to the fund about his goals for the city and helps facilitate its fundraising efforts.

Lawyers, issuer officials, and others consulted about it agreed that the three firms did not violate the rules when they gave the money to the fund, which is governed by a board independent of the city leadership and which does nothing to politically support Garcetti or any other political interest.

The Municipal Securities Rulemaking board's Rule G-37 on political contributions prohibits dealers from engaging in negotiated muni business with state or local governments for two years after making political contributions to issuer officials who can influence the award of bond business. The MSRB has published guidance that explicitly allows gifts to charitable organizations.

Also, there is no indication that the dealers have received any benefit as a result of their donations to the fund.

Los Angeles has historically done the majority of its deals competitively, but has turned to more negotiated deals in recent years. The city's chief administrative officer recommends potential debt issuances to both Garcetti and the city council and both must approve all financings. All three dealers are current members of Los Angeles' underwriter pool for both long and short-term debt.

A Goldman spokesman said the firm's $250,000 donation was targeted to a fund-backed program dedicated to providing summer jobs to at-risk Los Angeles youth, while a JP Morgan spokesman said the same of that company's $500,000 gift. Citi officials did provide any comments. All three dealer firms who gave to the fund have, in fact, gone on record as supporting strengthening pay-to-play protections by including bond ballot campaign donations as gifts that would trigger the two-year business ban.

Ernie Lanza, a partner at Greenberg Traurig in Washington and former MSRB deputy executive director said that the question of whether firms should be able to give money to charities associated with political figures is well-established, and was part of the debate during G-37's development in the early to mid-1990s. A 1997 letter written to then-Securities and Exchange Commission chairman Arthur Levitt by then-Goldman Sachs partner David Clapp and preserved by the SEC Historical Society reflected that debate. Clapp, who chaired the MSRB during G-37's development in 1993 and 1994 wrote that the MSRB's attorneys told the board that writing the rule broadly to include contributions to bond ballot campaigns and charities with close ties to politicians could be too restrictive of First Amendment rights and might be overturned by federal courts.

"From the very start of G-37 the question was there," Lanza said. "From time to time it does pop up, and people raise questions about it."

Some bond lawyers have said the rule, which withstood a First Amendment challenge some 20 years ago, could face yet another in the near future. A very similar rule for investment advisers is under attack in a lawsuit brought in the U.S. Court of Appeals for the District of Columbia Circuit by two state Republican parties and its outcome could have implications for another challenge of G-37.

Glenn Byers, assistant treasurer and tax collector for Los Angeles County, acknowledged that the

fund might look questionable to some people but said that it doesn't bother him.

"On the surface, this may not sound the best," Byers said. "But because this is a 501(c)(3) non-profit that is directed by a board independent, in theory at least, from the mayor and spending money on public projects, I'm OK with it."

Craig Holman, government affairs lobbyist for the advocacy group Public Citizen in Washington, said that as long as the board governing the fund is independent of the mayor and the fund takes no part in supporting the mayor, it is within the boundaries of the rules. But Holman said the fund's name alone could cause some to be concerned.

"It does raise red flags," he said. "I would automatically assume that it was associated with the mayor."

But some industry sources said the appearance of potential impropriety created by these kinds of donations should be captured by G-37.

"This is what the pay-to-play rules need to catch," said one executive of a dealer who did not want to be named. "The appearance just casts a negative light on the industry. The optics don't look good."

The MSRB did not respond to a request to comment.

THE BOND BUYER

BY KYLE GLAZIER

MAR 12, 2015 1:26pm ET

Senate Finance Panel Leaders Solicit Tax Reform Recommendations.

WASHINGTON — Leaders of the Senate Finance Committee are soliciting ideas from stakeholders and members of the public on how best to overhaul the nation's "broken" tax code to make it simpler, fairer and more efficient.

Committee chair Orrin Hatch, R-Utah and top Democrat Ron Wyden, D-Ore., made their pitch on Wednesday, saying they want to provide additional information and data to the committee's five bipartisan tax reform working groups.

The working groups, which are currently examining the existing tax law as well as possible policy trade-offs and reform options, are to submit reports with recommendations to the committee leaders by the end of May.

Recommendations and comments submitted to the committee by stakeholders and the public will be accepted through April 15 and will be made public at a later date, according to a release issued by the committee.

"By opening up our bipartisan working groups to public input, we hope to gain a greater understanding of how tax policy affects individuals, businesses, and civic groups across our nation," Hatch and Wyden said. "In doing so, we will also equip our working groups with valuable input, and we hope these suggestions will help guide the groups through the arduous task of putting forth substantive ideas to reform the tax code in each of their areas."

The five working groups are: Individual Income Tax, which is co-chaired by Sens. Chuck Grassley, R-Iowa, and Mike Enzi, R-Wyo., and can be reached at individual@finance.senate.gov; Business Income Tax, which is headed by Sens. John Thune, R-SD, and Ben Cardin, D-Md., and can be reached at Business@finance.senate.gov; Savings & Investment, led by Sens. Mike Crapo, R-Idaho and Sherrod Brown, D-Ohio, at Savings@finance.senate.gov; International Tax, co-chaired by Sens. Rob Portman, R-Ohio, and Chuck Schumer, D-NY at International@finance.senate.gov; and Community Development & Infrastructure, chaired by Sens. Dean Heller, R-Nev., and Michael Bennet, D-Colo. at CommunityDevelopment@finance.senate.gov.

All recommendations and comments must be submitted as a pdf attachment, which is saved using the name of the organization or individual submitting the recommendations, the committee said in its release.

Those submitting recommendations should list the name of the tax working group they want to contact. They would also include a contact name, the organization (if the submission is being made on behalf of a group), phone number, and email address in the body of the email.

If technical issues arise, parties can contact the committee at (202) 224-4515, according to the release.

The committee said it reserves the right, if these directions are not followed, to exclude the submissions from consideration.

THE BOND BUYER

BY LYNN HUME

MAR 11, 2015 12:45pm ET

Tax Analysts: Latest 'Begin Construction' Guidance Resolves Financing Issue.

The IRS released guidance March 11 that extends the deadline for beginning construction on qualified facilities for purposes of the renewable electricity production and the energy investment tax credits, resolving what many in the renewable energy industry considered an important open question that was hurting project financing.

Continue Reading (subscription required).

MARCH 12, 2015

Matthew R. Madara

IRS N-2015-26: Empowerment Zone Designation Extension.

Notice 2015-26 explains how a State or local government amends the nomination of an empowerment zone to provide for a new termination date of December 31, 2014.

It will appear in IRB 2015-11 dated March 16, 2015.

NABL Fundamentals of Municipal Bond Law Seminar: Helping Your Associates Succeed.

Each year, NABL's Seminar helps young associates gain an understanding of the key components of a municipal bond practice, and helps to connect them with their peers and industry leaders. With its three Basic Training General Sessions and 16 training session all designed to provide in-depth information on tax, securities, and state law issues pertaining to municipal finance, the Seminar is the best industry specific event your associates can attend. Need more convincing on why you should send your associate to Fundamentals? Then read some feedback from Seminar alumni.

> "Incredibly helpful to those of us with little or no real experience in this field, and need to pull together foundational blocks."
>
> "I thought the seminar was organized and provided ample opportunities to meet other bond professionals from across the country."
>
> "I thought the conference was very well organized. I enjoyed each presentation. I found the information very helpful."
>
> "Best CLE I have ever been to."
>
> "The Seminar was extremely helpful and well done. I am very happy I attended."
>
> "It was a great seminar overall. I established some new friendships that I think will last beyond the end of the seminar."

The Seminar is being held at the Hyatt Regency Grand Cypress in Orlando, FL on April 22-24. The deadline to reserve a room at the hotel is March 26.

To learn more about the sessions offered at the Seminar, click here.

For online registration, click here.

For information on the hotel, click here.

Gallagher: Mandate GASB Standards, Possibly By Linking to Tax-Exempts.

WASHINGTON – Securities and Exchange Commission member Daniel Gallagher is calling for Congress to mandate that municipal issuers use Governmental Accounting Standards Board standards, possibly as a condition for their bonds to be tax-exempt.

Gallagher issued the call at the Financial Industry Regulatory Authority's Fixed Income Conference in New York City on Tuesday, continuing to build on his track record as the SEC's most outspoken voice on munis.

He also said Congress could grant the SEC authority to recognize GASB standards, as it does for FASB benchmarks, as an alternative to requiring issuers use them as a condition of their bonds' tax-exempt status.

The Republican commissioner said that too many issuers are not adhering to GASB standards for accounting for pension liabilities, leading some to be able to “hide the yawning chasm in their balance sheets” created by overly ambitious projections of pension investment returns.

“According to the most recent information I could locate, just over two-thirds of the 30,000 or so largest state and local municipal issuers use GASB standards,” Gallagher said. “Data were not available for the extent to which an additional 20,000 smaller municipal issuers use GASB standards, but I would hazard a guess that their rate of compliance with GASB is lower than the larger issuers.”

Issuers are not currently required to adhere to GASB standards, but must do so in order to get a “clean audit” from their auditors. Also if the say they are using GASB standards, they must do so. “We need a legislative fix to mandate the use of GASB standards for municipal issuers — whether it is a grant of authority to the Commission to recognize GASB standards as they do the [Financial Accounting Standards Board’s] or as a condition placed on the bonds’ exempt status,” Gallagher continued. “This should help drive better transparency for investors in the muni market.”

Gallagher has said repeatedly that he is worried about bond exposure to muni pension and other post-employment benefit (OPEB) liabilities. The SEC’s enforcement division has also taken action on this front. Most recently, the commission charged Kansas for understating bond exposure to its pension liabilities, the third state the commission has charged for pension reporting problems.

He also said he is pleased that a number of firms have been meeting with SEC to discuss ways to facilitate electronic trading, after he called on SEC last year to engage with market participants and other interested parties to “develop creative solutions to increase liquidity in the secondary fixed income markets.”

Gallagher also touched on other issues in the muni market, repeating some of his past passionate calls for improved transparency for retail investors in the secondary market. Gallagher applauded FINRA and the Municipal Securities Rulemaking Board for their introduction late last year of joint proposals to require dealers acting in a principal capacity to disclose to investors a “reference price” of the same security traded that same day. He said in a December interview that he would have liked the rule to be more similar to a true disclosure of the dealer’s markup, but added on Tuesday that the proposals are a positive step.

He also praised the enforcement division’s work in the muni space, pointing to the SEC’s enforcement action in Harvey, Ill. and saying he supports SEC efforts to bar access to the market for muni officials or cities that don’t follow the rules. Last summer, the SEC secured an emergency order to stop a bond offering by the city based on evidence that the proceeds were to be fraudulently diverted with some of those sums directed to pay the city’s comptroller and muni adviser, Joseph Letke. In December, the city agreed to a settlement in which it agreed to stay out of the markets for as many as three years. The SEC also won a judgment against Letke, along with a bar against participating in future muni offerings.

“This case was an outstanding use of agency resources, and I fully support prohibiting municipalities that cannot or will not comply with the law from accessing the securities markets, as well as pursuing the culpable officials who perpetrate the fraud,” Gallagher said.

THE BOND BUYER

BY KYLE GLAZIER

MAR 10, 2015 5:24pm ET

IRS RP-2015-21: ACA - Correction and Disclosure Procedures for Charitable Hospitals.

Revenue Procedure 2015-21 provides correction and disclosure procedures under which failures to meet the additional requirements for charitable hospital organizations added by the Patient Protection and Affordable Care Act of 2010 will be excused. This revenue procedure affects charitable hospital organizations.

Revenue Procedure 2015-21 will be published in Internal Revenue Bulletin 2015-13 on March 30, 2015.

McDermott: United States Renewable Energy Tax Update.

Renewable energy continues to be an active area for tax planning following the legislative extension in late 2014 of the federal tax credits for wind, solar and other renewable projects. Since 2013, there has also been increased interest in the securitization of revenue streams from solar portfolios. Although the future availability of these tax incentives remains uncertain, there are still many tax-planning opportunities in the renewables market for developers and investors.

Impact of 2014 Extenders Bill on Wind Projects

After several failed attempts to enact a two-year extension package, on December 16, 2014, Congress settled on a bill that retroactively extended for one year most of the federal tax code provisions that were otherwise set to expire. The final extenders bill, H.R. 5771, included one-year extensions for the Section 45 production tax credit (PTC) and the Section 48 elective investment tax credit (ITC) for wind and other renewable projects, including biomass, geothermal, solid waste, hydropower, and marine and hydrokinetic renewable energy. Prior to the extension, the PTC and ITC were available to wind projects for which construction had begun prior to January 1, 2014. H.R. 5771 thus gave taxpayers an additional one-year window during which they can satisfy the requirement for beginning construction on wind projects through the end of 2014.

Because this extension occurred so late in the year, it did not provide wind industry participants with much time to begin construction on new projects. Generally, taxpayers can satisfy the beginning of construction requirement by either commencing physical work of a significant nature on the facility (Physical Work Test) or incurring at least 5 percent of the total cost of the facility (Safe Harbor). Thus, taxpayers had just over two weeks to either begin constructing a project or to purchase equipment that could meet the Safe Harbor. Notwithstanding the short timeframe to begin construction, some wind industry participants did enter into turbine supply agreements intended to meet the Safe Harbor in the last week or two of 2014.

One positive consequence of the one-year extension was that it potentially revived projects that had begun construction in 2013 but arguably failed to meet the additional Internal Revenue Service (IRS) requirements of maintaining continuous construction or continuous efforts on the project after 2013. These projects may have encountered delays where it is unclear under the IRS guidance whether or for how long such a delay would be excusable for purposes of satisfying the continuous construction and efforts requirement. With the enactment of the extension, the potential failure to meet the continuous construction and efforts tests in 2014 became moot to the extent progress could be made on those projects by the end of 2014 that satisfied either the Physical Work Test or

the Safe Harbor. If those projects could show that they had performed activities by the end of 2014 that would themselves qualify as beginning construction, the clock could restart on the continuous construction and efforts tests in 2015.

While the one-year extension of the ITC and PTC was more helpful to wind and other renewable energy projects than no extension, a longer extension of such credits would have permitted the continued development of projects. Since the ITC and PTC are again expired code provisions for 2015, it seems unlikely that new wind projects will begin construction this year unless such projects have the ability to incorporate equipment that qualified for the Safe Harbor prior to 2015.

Securitizations of Solar Portfolios

Another hot topic in the renewable energy world is the recent securitization of a number of solar portfolios. Since the first securitization of such a portfolio in 2013, solar developers and tax equity investors have shown continued interest in securitizing the revenue streams from host customers (either residential or commercial and industrial) that have solar equipment installed at their homes or sites.

While these securitizations do not necessarily present tax issues, some tax consequences should be considered, such as the potential for recapture of the ITC. The recapture rules broadly provide for recapture of ITCs previously taken if ownership of the solar project changes hands or, in lease transactions where the ITC is passed through to the lessee, the lease is terminated. As a result, any potential securitization generally must retain the original tax equity structure. Nonetheless, there is some flexibility to change the ownership of a lessor in a lease pass-through structure or to change the ownership of a partnership owning solar equipment to the extent no partner transfers more than 33.33 percent of its interest. This is an exciting area likely to see continued growth.

The Renewable Landscape

Unless there is a further extension of the PTC and ITC for wind in the near future, wind projects in 2015 will dwindle without the tax credits to spur new projects. Tax equity investors and other industry participants continue to make investments in solar and other renewable projects, because the ITC for solar, fuel cell, microturbine and geothermal heat pumps, among others, does not expire until January 1, 2017. The potential for extension or modification of the ITC for solar and other renewable energy beyond 2017 remains uncertain.

Last Updated: March 5 2015

Article by Madeline M. Chiampou Tully and Heather Cooper

McDermott Will & Emery

[Foley: MassDEP — A Voice of Reason in the Stormwater Permitting Debate.]

EPA has been working to craft a general permit for small Municipal Separate Storm Sewer Systems for quite some time. The [most recent draft permit], published last September, has received significant comment, most recently from the Massachusetts Department of Environmental Protection. While emphasizing cooperation and appreciate for EPA's efforts at collaboration, it is difficult to read [MassDEP's comments] as anything other than as a sign of significant concern about overreach by EPA.

What's the problem with the draft permit? Nothing that a modicum of attention to cost – and cost-effectiveness – couldn't solve. Indeed it's telling that MassDEP led its comments with concerns about costs, noting that EPA's owns estimates show that, for three small communities in the Charles River watershed, annual compliance costs would range from $865,000 to $1.7M annually.

MassDEP also requested that EPA "harmonize" the permit requirements with the Commonwealth's 2008 stormwater rules, stating that EPA should use:

> the Massachusetts Stormwater Standards as the basis for its successor MS4 permit, rather than requiring a second federal-only layer of permit requirements on top of the existing Massachusetts Stormwater Standards.

Substantively, MassDEP's most significant concern was that the draft MS4 permit reflects:

> a significant shift in approach from the BMP-based program envisioned in the 2003 permit to the current draft which includes additional provision to ensure that the discharges from small MS4s do not cause or contribute to an exceedance of water quality standards.

Hear, hear. There's a reason that stormwater standards have always been focused on attaining reductions to the "maximum extent practicable" based on best management practices. As MassDEP also noted, it is this shift that significantly drives the increase in costs. I would have thought that it went without saying, but stormwater discharges aren't like manufacturing discharges that are far more predictable and easy to control and predict.

There are a number of other important points in the MassDEP comments, including support for pollution credit trading programs, but this is the heart of the issue. If the MS4 general permit is going to succeed in obtaining cost-effective reductions in stormwater pollution, EPA is going to have to be responsive to these concerns.

To view Foley Hoag's Law and the Environment Blog please click here.

Last Updated: March 9 2015

Article by Seth D. Jaffe

Foley Hoag 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.

NASACT Responds to GASB's PVs on Leases.

Read the NASACT Response.

GASB's PVs on Leases are available here.

Jones Day: Ohio Supreme Court Strikes Down a Municipality's Efforts to

[Regulate Oil and Gas Production.]

The rise of oil and gas production in the Utica and Marcellus shale plays, encouraged by state policies, has led many municipalities to seek to exert some control over oil and gas drilling within their borders. In the past two years, the highest courts in Pennsylvania and New York have sided with municipalities and have upheld municipal zoning ordinances against challenges that such ordinances were preempted by state regulation.

The Ohio Supreme Court has weighed into this controversy, striking down a municipality's zoning and oil and gas ordinances on preemption grounds. The case produced five opinions, including a lead opinion signed by only three justices and concurred in by another. Because of the breadth of the ordinance at issue and the limited holding by the majority of justices, the Ohio court's decision leaves open the possibility that more traditional zoning approaches limiting drilling could be upheld.

In State ex rel. Morrison v. Beck Energy Corp., Slip Op. No. 2015-Ohio-485 (Feb. 17, 2015)

On February 17, 2015, the Supreme Court of Ohio issued its opinion in In State ex rel. Morrison v. Beck Energy Corp,1 holding that several municipal ordinances were preempted by Ohio's oil and gas wells and production operations statute, Chapter 1509 of the Ohio Revised Code. The decision was split, with four of seven justices in favor of striking the ordinances. Three justices joined in the lead opinion. The concurring opinion agreed with the result because the ordinances at issue set up a parallel licensing and permitting scheme that conflicted with the licensing and permitting scheme set forth in Chapter 1509. Notably, however, the concurring justice, drawing on recent decisions in New York and Pennsylvania, appeared to favor allowing municipal ordinances reflecting traditional zoning concerns that would indirectly prohibit oil and gas drilling. Thus, the Beck decision leaves open the possibility that municipal zoning ordinances that have the effect of prohibiting oil and gas drilling could be upheld.

Relevant Facts and Procedural History

Beck Energy Corporation ("Beck Energy"), an Ohio oil and gas driller, entered into a lease agreement with a landowner who owned several acres of property within the corporate limits of the City of Munroe Falls (the "City").2 Pursuant to that agreement, Beck Energy acquired the right to produce any natural gas under the landowner's property.3 In 2011, Beck Energy obtained a permit from the Ohio Department of Natural Resources ("ODNR") to begin drilling operations.4 The permit was issued pursuant to Section 1509.02 of the Ohio Revised Code.5

Amended in 2004 to provide "uniform statewide regulation"6 of oil and gas well operations, Section 1509.02 provides that the ODNR "has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state…with respect to all aspects of the locating, drilling, well stimulation, completing, and operating of oil and gas wells within this state…"7 Further, "Nothing in this section affects the authority granted to…local authorities in section 723.01 or 4513.34 of the Revised Code, provided that the authority granted under those sections shall not be exercised in a manner that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations regulated under this chapter."8

After Beck Energy began surface activities related to drilling, the City served Beck Energy with a stop-work order and filed a complaint for injunctive relief.9 The complaint alleged that Beck Energy violated several municipal ordinances related to oil and gas drilling and zoning. The oil and gas ordinances established a local permitting process, including a public hearing requirement, with fines and penalties attached for failure to comply.10 The zoning ordinances required the issuance of general and conditional use zoning certificates prior to the commencement of drilling and

incorporated the permitting process set forth in the oil and gas ordinances.11 On May 3, 2011, the trial court granted the City's request for injunctive relief until Beck Energy complied with the City's ordinances.12 On appeal, the appellate court reversed and held that the ordinances at issue could not be enforced because they were "in direct conflict" with Section 1509.02.13

Lead Opinion

In its lead opinion written by Justice Judith French and joined by two other justices, the Court held that the Home Rule Amendment to the Ohio Constitution did not grant the City the power to enforce the ordinances under review. The Home Rule Amendment provides that "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."14 Ordinances in conflict with a state law, however, are preempted. Specifically, a "municipal ordinance must yield to a state statute if (1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute."15

The lead opinion observed that the ordinances constituted an "exercise of police power," stating that the "[ordinances] prohibit—even criminalize—the act of drilling for oil and gas without a municipal permit."16 The lead opinion also stated that Section 1509.02 was a general law that operated uniformly throughout the State because it "imposes the same obligations and grants the same privileges to anyone seeking to engage in oil and gas drilling" anywhere in Ohio.17

Justice French reasoned that the ordinances conflicted with Section 1509.02 in two ways. First, the ordinances prohibited what the statute permitted: "state-licensed oil and gas production within Munroe Falls."18 She said: "This is a classic licensing conflict under our home-rule precedent. We have consistently held that a municipal-licensing ordinance conflicts with a state licensing ordinance if the 'local ordinance restricts an activity which a state license permits'."19

Second, the lead opinion observed that the ordinances conflicted with Section 1509.02 because the language of the statute demonstrated that "the General Assembly intended to preempt local regulation on the subject."20 The lead opinion noted that by designating ODNR as the "sole and exclusive authority to regulate the permitting, location and spacing of oil and gas wells" and by reserving to the State "all aspects" including "permitting" relating to the location, drilling and operation of oil and gas wells, the General Assembly intended to preempt any local regulation of the same.21 In concluding that such a "double licensing" scheme was impermissible, the lead opinion cautioned, however, that its review was "limited to the five municipal ordinances at issue in this case."22

The City had argued that no conflict existed "because the statute and the ordinances regulate two different things," i.e., the ordinances supposedly addressed "traditional concerns of zoning" while the statute related to "technical safety and correlative rights topics."23 This argument drew on recent decisions in New York and Pennsylvania for support. In Wallach v. Dryden,24 the Court of Appeals of New York held that local zoning ordinances that in effect prohibited "all oil and gas exploration, extraction and storage activities" within a municipality's corporate limits were not preempted by New York's oil and gas statute.25 As that Court further held, New York's oil and gas statute preempted "only local laws that purport to regulate the actual operations of oil and gas activities, not zoning ordinances that restrict or prohibit certain land uses within town boundaries."26 The zoning ordinances at issue did not run afoul of this distinction because they were "directed at regulating land use generally and do not attempt to govern the details, procedures or operations of the oil and gas industries."27

Similarly, in Huntley & Huntley v. Borough of Oakmont28, the Supreme Court of Pennsylvania held that a local zoning ordinance which had the effect of restricting the site selection of oil and gas wells was not preempted by Pennsylvania's Oil and Gas Act.29 The Huntley court noted that the intent behind the ordinance was to promote "the safety and welfare of [the Borough's] citizens, encouraging the most appropriate use of land throughout the borough [and] conserving the value of property."30 The Huntley court also reasoned that while government interests regarding oil and gas development and land-use control may on occasion overlap, those interests are at base distinct.31 The state's interest in oil and gas development seeks to further the efficient use of natural resources while a municipality's interest in "land-use control … is one of orderly development and use of land in a manner consistent with local demographic and environmental concerns."32

Justice French derided the City's argument and the notion that zoning ordinances could survive a preemption challenge because they dealt with an area that was different than the subject addressed by oil and gas statutes and regulations. Specifically, she called this alleged distinction "fanciful":33 "The ordinances and R.C. 1509.02 unambiguously regulate the same subject matter—oil and gas drilling—and they conflict in doing so."34

Concurring Opinion

In a separate opinion concurring in the judgment only, Justice Terrence O'Donnell agreed that the City had created a "parallel municipal permitting process for oil and gas wells" that conflicted with Section 1509.02, a general law, whereby the City's oil and gas and zoning ordinances were preempted.35 The concurring opinion, however, emphasized "the limited scope of our decision,"36 i.e., to wit:

This appeal does not present the question whether R.C. 1509.02 conflicts with local land use ordinances that address only the traditional concerns of zoning laws, such as ensuring compatibility with local neighborhoods, preserving property values, or effectuating a municipality's long-term plan for development.37 [Further] "it remains to be decided whether the General Assembly intended to wholly supplant all local ordinances limiting land uses to certain zoning districts" that did not regulate the "details of oil and gas drilling expressly addressed" by Section 1509.02.38

The concurring opinion noted that under Ohio law "municipalities have…authority to regulate land uses within zoning districts to promote the public health, safety convenience, comfort, prosperity and general welfare"39 and the zoning ordinances enjoy a "strong presumption … of … validity."40 Justice O'Donnell stated that while the statute vests ODNR with "sole and exclusive authority" regarding the location and spacing of oil and gas wells, the lead opinion purportedly ignores the fact that "'location' and 'spacing' have specialized, technical meanings in oil and gas law."41 "Scientific expertise" is thus required for the proper placement of oil and gas wells, thereby requiring special regulations directed to their location and spacing.42 "In contrast, that same scientific and regulatory expertise is not required to determine whether an oil and gas well is compatible with the character and aesthetics of a particular zoning district, such as a residential neighborhood, and we generally presume that zoning authorities are far more familiar with local conditions and therefore are better able to make land use decisions."43

In contrast to the lead opinion, the concurring opinion relied on Dryden and Huntley to support the proposition that "Courts of last resort in other jurisdictions have declined to view preemptive language in oil and gas statutes that preclude all local regulation of oil and gas drilling as irreconcilable with local zoning laws."44 The concurring opinion further observed that the Ohio legislature enacted Chapter 1509 to "preempt the inconsistent patchwork of local health and safety regulations governing the technical aspects of drilling…."45 Unlike other Ohio statues which expressly preempt local zoning ordinances, such as laws dealing with hazardous waste facilities,

casinos, or public utilities, Chapter 1509 does not do so. “Nothing in R.C. Chapter 1509 expressly addresses zoning or requires ODNR to regulate the location of oil and gas wells to ensure compatibility with local land use, preserve property values, effectuate a municipality’s long-term plan for development, or uphold any of the other traditional goals of zoning.”46

Conclusion

Municipal ordinances that directly attempt to regulate the means or manner of oil and gas drilling are now not permitted in Ohio. Given the limited nature of the majority holding, however, Beck expressly leaves open the question of whether a zoning ordinance that bans or limits oil and gas drilling using more traditional zoning concepts would be permitted.

Footnotes

1 Slip Op. No. 2015-Ohio-485 (Feb. 17, 2015).

2 Appellees’ Merit Br. at 2 (Oct. 23, 2013).

3 Id.

4 Beck Energy at 2, ¶3.

5 Id.

6 Id. citing Legislative Service Commission Bill Analysis, Sub H.B. No. 278 (2004).

7 R.C. 1509.02.

8 .Id. Section 723.01 grants municipalities “special power” to regulate public rights of way and Section 4513.34 vests municipalities with the authority to grant permits regarding the operation of heavy vehicles on local highways.

9 Beck Energy at 4, ¶7.

10 Id. at ¶9.

11 Id. at¶¶8; 37.

12 The State of Ohio ex. rel. Jack Morrison, Jr., Law Director of Munroe Falls, Ohio v. Beck Energy Corp., Case No. 2011-04-1897 at 3-4 (Summit Cty. C.P. May 3, 2011).

13 The State of Ohio ex. rel. Jack Morrison, Jr., Law Director of Munroe Falls, Ohio v. Beck Energy Corp., Case No. 25953 at 2 (Summit Cty. Ct. App. Feb. 6, 2013).

14 Ohio Const., Article XVIII, Section 3.

15 Beck Energy at 6, ¶15, citing Mendenhall v. Akron, 117 Ohio St.3d 33, 2008-Ohio-270, ¶17.

16 Id. at ¶18.

17 Id. at 8, ¶23.

18 Id. at 9, ¶25.

19 ¶26 citing Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted, 65 Ohio St.3d 242, 245 (1992); Anderson v. Brown, 13 Ohio St.2d 53, 58 (1968).

20 Id. at 11, ¶29 citing Westlake v. Mascot Petroleum Co., 61 Ohio St.3d 161, 164 (1991).

21 Id. at ¶¶29-30.

22 Id. at 12-13, ¶33.

23 Id. at 10, ¶28.

24 23 N.Y. 3d 728 (2014).

25 Id. at 739.

26 Id. at 746.

27 Id.

28 600 Pa. 207 (2009).

29 Id. at 217; 224.

30 Id. at 224.

31 Id.

32 Id. at 225. The Huntley court, however, affirmed the appellate court's holding that the Borough had improperly denied the driller a conditional use certificate. See id. at 226-230.

33 Id.

34 Id.

35 Id. at 13-14, ¶36.

36 Id. at 14, ¶38.

37 Id.

38 Id. at 15, ¶39.

39 Id. at ¶41.

40 Id. at 16, ¶42.

41 Id. at ¶43.

42 Id. at 17, ¶44.

43 Id.

44 Beck Energy at 17-18, ¶45.

45 Id. at 18, ¶46.

46 Id. at 19, ¶47.

Last Updated: March 6 2015

Article by Michael R. Gladman, David A. Kutik, Roy A. Powell, Todd S. Swatsler, Jeffery D. Ubersax and Martin T. Harvey

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.

NASACT Responds to GASB's PVs on Financial Reporting for Fiduciary Responsibilities.

Read the NASACT Response.

GASB's PVs on Financial Reporting for Fiduciary Responsibilities are available here.

A New Buzzword?

In his outlook report this week, Municipal Market Analytics' Matt Fabian coined a new acronym: MPR. It stands for Mythical Pension Reform, a term that just might catch on as two states are attempting to overhaul their flailing pension systems. The reform is imaginary; politicians like to include the expected savings in proposed budgets before the reform actually passes. This is a mistake, Fabian says. In his analysis this week on Illinois Gov. Rauner's proposed 2016 budget, Fabian says that any reliance on MPR in the budget should only be applied to future years as the state's courts "have not shown much sympathy for state budget concerns or timeliness when considering the legality of past pension reforms." (New Jersey is the other state this year attempting a major reform.)

Rauner is seeking to slash current employees' retirement benefits in an effort to close his state's continual budget gaps, including one in 2016. A previous pension reform, which cuts benefits already accrued by employees, is tied up in a legal battle. Rauner's proposal would allow current employees to keep the pensions they've already earned but future employees would get less generous benefits. The governor estimated the move would save $2.2 billion in 2016 alone.

GOVERNING.COM

LIZ FARMER | MARCH 13, 2015

Managing Volatile Tax Collections in State Revenue Forecasts.

This report, a joint initiative of The Pew Charitable Trusts and the Nelson A. Rockefeller Institute of Government, will help policymakers better understand how volatile state taxes affect the accuracy of revenue projections. It examines data from 1987 through 2013 and reveals that predicting how much money state governments will raise has become more difficult than ever. The increase in

revenue forecast errors is due largely to the growing volatility of tax collections across the states. From 2000 to 2013, the size of fluctuations in tax revenue rose in 42 states. And although no state can entirely eliminate forecasting errors, this study identifies three ways to help them manage volatility.

[Download the full report.]

March 10, 2015

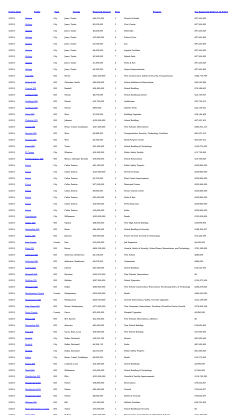
Texas Upcoming Bond Election Roundup.

Election day is May 9, 2015, and many Texas communities are proposing new debt through local bond elections. Because there is no known centralized public resource of local bond elections, information about these elections and the amount of debt being proposed in taxpayers' names is often difficult to find.

The Upcoming Bond Election Roundup attempts to solve this problem by providing you with easy access to upcoming bond propositions in Texas.

We also provide debt totals and trends for Texas cities, counties, school districts and community college districts, as well as Texas in the Debt at a Glance feature on TexasTransparency.org. If any of the entities listed in the roundup appear in Debt at a Glance, we'll link to that page for additional debt context.

Upcoming Bond Elections Across the State (Alphabetical by Entity) as of March 09, 2015.



Suspension of a Treasury Facility Seen Slowing Municipal Refunding.

(Reuters) – The U.S. Treasury confirmed on Friday that it had indefinitely shuttered a key facility used to refinance debt in the $3.7 trillion municipal bond market in a move set to slow a surge of new bond issuance that has inundated the market this year.

The suspension of the issuance of State and Local Government Series (SLGS) securities, known as the "slugs window", as of noon on Friday was ordered by the Treasury as a temporary extension to the U.S. government's borrowing limit expires on Sunday with little sign Congress will act to extend it promptly.

"Protecting the full faith and credit of the United States is the responsibility of Congress," Treasury Secretary Jacob Lew said in a letter to the legislature on Friday, informing it of the suspension and other extraordinary measures.

Issuing Treasury slugs counts against the debt limit.

Closure of a facility used by municipal governments in debt refinancing transactions is likely to slow refunding operations that have contributed the bulk of new municipal bonds issuance so far this year, analysts say.

"Suspension of slugs sales could disrupt advance refunding activity as the only main alternative is acquiring open-market Treasuries through a competitive bidding process," Oppenheimer said in a research note this week.

Municipal governments purchase slugs in advanced refinancing deals when the bonds they are refinancing are not immediately callable. The municipality puts the slugs in an escrow account and the cash flow is used to repay the debt.

Municipalities prefer to use slugs for advanced refinancing deals rather than Treasuries purchased in the open market because the Treasury tailors coupons and terms of slugs to match the refinanced debt.

Municipal bond issuance has been surprisingly strong so far this year. Refinancing deals have made up the bulk of the deals. New issuance totaled $58.8 billion in the first two months of the year, nearly double the same period last year.

Of that total, refunding deals amounted to $39.8 billion, or over two thirds of the total muni bond issuance, according to data compiled by Thomson Reuters.

"Suspending slug purchases will slow that, limiting debt service savings opportunities for state and local budgets," Moody's Investors Service wrote in a report.

Fri Mar 13, 2015 2:39pm EDT

By Edward Krudy

(Reporting by Edward Krudy; Editing by Leslie Adler and Jonathan Oatis)

Ballard Spahr: SEC Muni Enforcement Chief Offers Her Views on MCDC.

The Securities and Exchange Commission's (SEC's) year-old Municipalities Continuing Disclosure Cooperation Initiative (MCDC Initiative or MCDC) has encouraged municipal securities issuers, borrowers, and underwriters to self-report possible securities law violations related to inaccurate representations in offering documents concerning an issuer's prior compliance with its continuing disclosure obligations. At the National Association of Bond Lawyers' Tax & Securities Law Institute (TSLI) last week, members of the SEC enforcement staff appeared on a panel to provide additional MCDC details, including that underwriter MCDC cease-and-desist orders will be announced in the "coming months" and that issuers will not be named in these enforcement actions.

LeeAnn G. Gaunt, chief of the SEC's Municipal Securities and Public Pensions Unit, told the TSLI

audience that there was broad market participation in the MCDC Initiative. The SEC, however, does not plan to announce the precise number of MCDC self-reports it received or the percentage that result in a cease-and-desist order. The SEC will announce its MCDC orders against underwriters before it announces any MCDC settlements with issuers or obligated persons. Ms. Gaunt declined to assure underwriters that the SEC will waive certain statutory disqualifications that could be triggered by MCDC settlements, but indicated such waivers eventually should be obtainable.

In July 2014, the SEC announced its first MCDC cease-and-desist order against Kings Canyon Joint Unified School District of California (District). The order was noted by securities lawyers for its lack of detail about the underlying facts and legal analysis supporting the SEC's conclusion of a securities law violation. In response, Ms. Gaunt stated at TSLI that, in each underwriter order, there will be a few detailed examples of the types of continuing disclosure failures upon which the order is based. Ms. Gaunt believes that these examples will provide the municipal market with a representative and diverse set of facts that can illustrate circumstances that may prompt an SEC enforcement action. The examples will not identify a municipal securities issuer or borrower or the name of the issue.

One of the MCDC settlement terms requires underwriters to retain an independent consultant to conduct a compliance review and provide recommendations to the underwriter on its due diligence process and procedures. Ms. Gaunt indicated that the SEC will not alter its "independence" standard for purposes of MCDC. This means underwriters will have to retain a consultant who has not worked with the underwriter for a two-year period before or after the MCDC settlement.

Upon receipt of a settlement offer, the SEC is setting a tight deadline of two weeks to respond and negotiate the terms. The SEC plans to follow up with all MCDC self-reporters, including entities that will not face a cease-and-desist order. Ms. Gaunt stated that an MCDC enforcement action against an underwriter for a particular transaction will not automatically result in a related action against the issuer or other obligated person involved in the transaction.

The SEC is likely to follow up soon with issuers and other obligated persons who self-reported and/or who were reported by an underwriter. If you receive a call from the SEC, remember:

- **Extensive discussions may not serve your interests.** You should politely listen, ask the SEC staff member for his or her contact information, and let the staff member know that your counsel will call him or her back.
- **Contact your counsel.** The issuer or obligated person should contact its MCDC counsel as soon as possible. Keep in mind that the internal notes and e-mails of issuer and obligated person officers and employees are discoverable. By contrast, communications with your lawyer are protected by attorney-client privilege.
- **Retain records.** Do not destroy any potentially relevant documents.

Please refer to our webinar recording for more information on what to expect following MCDC self-reporting or a decision not to report, how the SEC may determine the materiality of any reported misstatement, and the process of SEC investigations.

March 13, 2015

by M. Norman Goldberger, John C. Grugan, Bradley D. Patterson, William C. Rhodes, and Tesia N. Stanley

Ballard Spahr's Municipal Securities Regulation and Enforcement Group helps municipal market participants navigate a rapidly evolving regulatory, investigative, and enforcement environment, enabling them to anticipate and address compliance issues and respond effectively to investigations

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This alert is a periodic publication of Ballard Spahr LLP and is intended to notify recipients of new developments in the law. It should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own attorney concerning your situation and specific legal questions you have.

Price Set for Rapid Bridge Replacement Bonds.

Two of the lead partners on the Pennsylvania Rapid Bridge Replacement Project have priced $800 million in private activity bonds (PABs) to help finance the effort.

The bonds, issued by Plenary and Walsh and priced by JP Morgan and Wells Fargo, will complement $60 million in equity from Plenary and Walsh and $225 million in milestone payments, some of which will pay down the shorter-dated PABs. The bonds carry a rating of BBB from Standard & Poor's, reported IJ Global.

The bonds will mature between 2018 and 2047, have yields of between 1.5 percent and 4.3 percent, and have an all-in interest cost of 4.1 percent.

In January, the Pennsylvania Department of Transportation finalized all terms for the $899 million Rapid Bridge Replacement P3 and signed a contract with the Plenary Walsh Keystone Partners, clearing the way for the replacement of 558 bridges throughout the state. The project is made possible by a state P3 law enacted in 2012 and approved by the state Public-Private Transportation Partnership Board in September 2013.

The project will allow the state to replace structurally deficient bridges throughout the state in a more cost effective manor than traditional procurement. In addition, the Plenary Walsh Keystone Partners will be responsible for maintenance on the bridges for 25 years after they are built.

NCPPP

By Editor March 5, 2015

Plug-and-Play Residential PACE Financing Grows in California.

Property-assessed clean energy (PACE) loan programs for homes rebounded in a big way in 2014, with residential PACE projects eclipsing the commercial PACE market.

California leads the way going into 2015, with more than $500 million in completed residential projects. The majority of that money came through the Home Energy Renovation Opportunity (HERO) program.

PACE programs allow investments in water- and energy-efficiency retrofits and distributed renewable generation to be paid back through property taxes, which lowers the risk for both lenders and owners and can potentially open up a far larger swath of the energy-efficiency market.

Already a leader, the HERO program has expanded substantially in California in the last few months. In December, the HERO program was approved by the city of San Francisco, making it the first large city in California to return to residential PACE financing since it was halted a few years back because of conflicts with federal housing regulators.

Not to be outdone by its neighbors to the north, Los Angeles County voted to adopt HERO PACE programs for the 85 cities that make up the county, including Los Angeles.

"It's good to see the LA County Board of Supervisors helping to conserve energy by approving the Residential PACE program that will help Angelenos conserve water, use less electricity, and harness renewable energy at home," Los Angeles Mayor Eric Garcetti said in a statement. Some of HERO's most popular products in California include water-saving technologies, solar panels, HVAC upgrades, energy-efficient windows and doors and roofing and insulation.

HERO is not the only PACE administrator scooping up partnerships across California. In January, Ygrene Energy Fund made its residential PACE program Ygrene Works available to every California city and county through a partnership with Golden State Finance Authority, formerly known as California Home Finance Authority.

The competition in residential PACE financing means that cities and counties can adopt PACE for homes and businesses quicker and easier than in the past. The major administrators, like HERO and Ygrene, promise no cost to taxpayers and no staff time required. By choosing more than one provider, municipalities can offer an array of financing options. California is also pushing the envelope on residential PACE with a pilot for using the loans for multi-family housing.

Although California is far in the lead on residential PACE, others are trying to ramp up. South Florida was one of the first places to get back into the residential PACE game when Ygrene launched a $230 million bond in 2013 that was available for homes and businesses.

But Ygrene and other administrators, like EcoCity Partners, have largely been on the sideline as PACE programs for homes across Florida are tied up in a court battle.

It's not PACE programs themselves that are being challenged; instead, the Florida Bankers Association is contesting the validations on the bonds that back the PACE loans, according to the Sun Sentinel. The bankers don't want PACE loans to be paid before mortgages if there are outstanding property obligations.

But it's not just the bankers. In late February, the Florida Supreme Court dismissed the appeal of the Florida Green Energy Works bond validation that was filed by a taxpayer. The court dismissed

the case because the appellant, James Gowen, “has no interest in this case,” the court stated. The court noted in the ruling this was the third PACE bond validation case where an appellant has appeared in the eleventh hour but has no direct interest in the case.

“[Florida Green Energy Works] program was structured as a statewide commercial PACE program initially, but the dismissal of this appeal allows the program to now scale up on the residential side statewide as well,” EcoCity Partners declared on social media.

Florida isn’t in the clear just yet, but the court’s most recent ruling gives PACE advocates confidence that other similar appeals will also be dismissed. Florida’s residential PACE market might not rival California’s by year’s end, but if the legal hurdles continue to fall, it could make a strong start.

greentechmedia.com

Katherine Tweed

March 6, 2015

Municipal Issuer Brief: Tough Week for Municipal Bond Issuers.

Municipal Market Analytics | Mar. 10

Read the Brief.

PACE Financing an Option for More Extensive Energy Efficiency Projects.

For more extensive, longer-term energy efficiency projects, owners may consider property-assessed clean energy (PACE) financing — a financing vehicle that allows owners to borrow money from a local government and pay it back over time on the building’s property tax bill. PACE is now available in 31 states covering about 80 percent of the population in the U.S. “We’ve seen a definite uptake in the commercial market (for PACE), despite the rocky regulatory landscape,” says ACEEE’s Bell.

NAESCO’s Gilligan agrees. “We see a lot of potential in PACE,” he says. “It’s a little more complicated than other financing, and it requires a state law plus a local law plus a program to enable it. But if you can do PACE, you’ve got lower-cost money. PACE makes it easier for comprehensive retrofits.”

A recent PACE project in Los Angeles illustrates PACE’s potential — in 2013 the Hilton Los Angeles/Universal City completed $7 million in upgrades using PACE financing and $1 million in utility rebates. The 500,000-square-foot hotel replaced HVAC, elevators, controls, lighting, and restroom fixtures. The project has a return on investment of 78 percent and owners have calculated an increase in the value of the building of more than $30 million.

“It was an aging property that needed all kinds of upgrades,” says Marky Moore, CEO of the Capital Review Group, which participated in the project. “They had big buy-in from their financial officer, and it turned out to be a stunning project. In the grand scheme of things a property is improved and value is better using a PACE program.”

More Lenders

One of the reasons PACE, as well as other financing programs, including increasingly specialized loan programs on a city-by-city or state-by-state basis, are becoming more prevalent is that "we are seeing a lot more lenders looking to participate in the energy market than we did five to 10 years ago," says Goulding. "I believe this is a testament to the fact that lenders are realizing that many energy projects are excellent projects where the ROI can be accurately calculated."

That's all good news for facility managers — both in terms of the fact that there are more options for inexpensive money for energy efficiency, and also because it raises facility managers' profile in any organization as their expertise is appreciated and relied upon. In many organizations, it won't be the facility managers making the ultimate decision about the type of financing — but being well-versed in the options and knowing which will meet the organization's needs can be the main catalyst to getting an energy project funded. "Facility managers need to be involved in the discussion regarding layering in incentives and financing projects efficiently," says Moore. "It's the facility manager who really knows the property."

FACILITIESNET

By Greg Zimmerman, Executive Editor – March 2015 – Energy Efficiency

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Cities Paying Millions to Get Out of Bad Bank Deals.

When the Great Recession delivered the biggest blow to government budgets this side of World War II, it wasn't just slashing revenue streams — it also made certain financing agreements more costly in the long run.

The agreements are called interest rate swaps, a holdover from the years leading up to 2008 when the booming market made even risky investments seem like a good idea. But in reality, these financing agreements with banks have come back to haunt governments following the financial markets crash and severe drop in interest rates. Last week, Chicago became the latest example when a credit rating downgrade by Moody's Investors Service triggered a potential $58 million penalty for the fiscally beleaguered city.

Penalties related to ratings downgrades are common in swaps, says Municipal Market Analytics Partner Matt Fabian. But typically, the ratings floor is well below the government's rating at the time of the deal.

"Remember, Chicago was super-downgraded back in 2013 — that kind of rating action is almost never expected," Fabian says. "This latest downgrade is a result of the city's huge pension liability, the complete lack of momentum in coming up with any sort of solution and a shifting [emphasis] by Moody's on outstanding liabilities."

Still, Chicago is not alone. Dozens of cities and states across the country still have swaps deals on the books. These deals were meant to save taxpayer money but are in fact doing just the opposite.

In an interest rate swap, a government wants to alter debt it has sold that must be paid back with a varying interest rate that periodically resets, depending on the market. Buying that type of debt is appealing to investors, who believe that interest rates will grow and they will get a higher return on their investment. But governments need to plan out their budgets and it is difficult for budgeters to

project debt payments that will vary versus payments that are based on a fixed interest rate. So, the government makes a deal on that debt with a bank: The bank agrees to pay out the investors at the variable interest rate and the government pays the bank a fixed rate that they negotiate. It's a way for the government to hedge against skyrocketing interest rates.

These types of deals were very common in the early to mid-2000s, particularly among larger issuers like major cities, some states and public agencies like housing or airport authorities. Many thought that they were saving taxpayer money: that the interest rate they were paying banks was lower than if they sold that debt and paid out a fixed, market rate of return to investors. But swaps fell largely out of favor after interest rates plummeted — and stayed rock-bottom-low. Governments found themselves stuck paying an interest rate far above the market while the banks pocketed the profits.

Some question the legality of such deals. The Roosevelt Institute's Saqib Bhatti argued some cities could take legal actions against the banks to recoup some of their losses. Bhatti, director of the institute's ReFund America Project that advocates for better Wall Street accountability, noted Chicago Public Schools is potentially leaving millions of dollars on the table with inaction. Last November the Chicago Tribune published a series that found banks knew the risky auction-rate bond market was in trouble during the summer of 2007, yet they turned around and sold the school district $263 million in auction-rate debt anyway.

"There's been a number of organizations in the city calling for legal action to recover past payments on these swaps," says Bhatti. "And thus far, the city has not pursued that option."

All told, the Tribune estimated that Chicago's school district issued $1 billion worth of auction-rate securities between 2003 and 2007, nearly all of it paired with interest rate swaps. The city of Chicago holds nearly $3 billion in debt tied up in swaps, an amount nearly equal to its operating budget. The city is likely renegotiating with banks to reset the terms of the four swaps tied to last week's ratings downgrade instead of paying the $58 million termination fee, although the current administration has unwound some deals by paying tens of millions in fees. If the city wanted to terminate all of its swaps, it would cost north of $300 million, according to its most recent Comprehensive Annual Financial Report. The termination fee represents the amount the debt is underwater, similar to when a homeowner owes more on a house than it's worth.

GOVERNING.COM

BY LIZ FARMER | MARCH 6, 2015

California Completes $1.9 Billion Bond Sale With $198 Million in Taxpayer Savings.

SACRAMENTO – State Treasurer John Chiang today announced successfully completing the sale of $1.9 billion in State general obligation bonds, which included the refinancing of more than $1 billion in previously-issued bonds.

"Despite investors' concerns over future interest rates, this week's sale showed a healthy appetite for California paper," Chiang said. "Recent credit upgrades have increased the market's confidence in the State's credit worthiness and individual and institutional investors alike eagerly got behind California."

The yield for 30-year 5 percent coupon bonds, 3.27 percent, was the lowest paid by the State since

at least 1989. The spread between the yield on the State's 30-year bond and the yield on the most commonly-used market index was 35 basis points. This was the State's lowest credit spread on this index for 30-year bonds since June 2007. The yield on five year bonds was 1.43 percent and the yield on 10-year bonds was 2.38 percent.

The Treasurer's decision to take advantage of the current interest rate environment by re-financing $1 billion in previously-issued, higher interest rate bonds is expected to save taxpayers more than $198 million in debt service costs over the life of the refunded bonds.

This week's sale also included $931 million in new borrowing for critical infrastructure needs, including transportation, education, and children's hospitals.

Here are some key statistics associated with this sale:

- Final size: $1.935 billion
- True interest cost: 3.06 percent
- Final re-offering yields ranged from a low of 0.17 percent for a 2016 maturity to a high of 3.27 percent (5 percent coupon)/3.68 percent (4 percent coupon) for a 30-year maturity.
- Retail orders represented more than 30 percent of bonds sold.

The next State general obligation bond sale is expected to occur in April 2015. A list of other scheduled sales can be found on the Treasurer's website.

The State Treasurer has broad responsibilities and authority in the areas of public investment and finance. In particular, he oversees the issuance of State debt and is responsible for crafting best practices for the sale of debt and the investment of public funds for California's more than 4,000 local bond issuers, including the State, school districts, cities, counties, and special districts.

March 5, 2015

Transparency Could Save Governments Billions in Borrowing.

Transparency is a divisive issue in the state and local financial market. The main sticking point is time. Governments, the argument goes, cannot be expected to operate at the speed or with the savviness that corporate markets do. But for those dragging their feet on the issue, keep this in mind: States and localities are potentially leaving billions of dollars on the table by not having financial transparency on par with the corporate world.

A new study from the University of Oregon supports this idea. Looking at the municipal bond market, researchers found that timelier information can reduce transaction fees on trades by up to 30 percent. This is particularly true for individual investors, who make up the bulk of the $3.6 trillion U.S. municipal bond market. The report, co-authored by finance professor John Chalmers, looked at the difference in municipal bond trading before and after the Municipal Securities Rulemaking Board's (MSRB) Real-Time Transaction Reporting System kicked off at the start of 2006. The system required trades to be reported in 15 minutes instead of at the end of the day. It allowed for much better price comparison by buyers.

Although Chalmers is studying trades on municipal bonds by dealers or individuals after the issuer initially sells them, he said transparency still could lead to lower costs for issuers. "The lower these trading costs, it ultimately should affect the [interest rate] you need to set on your bonds to get them

sold," he said. "An investor is going to look at their return after costs and taxes. If those costs are lower, they'd be willing to settle for less."

The idea builds on work published in 2006 by Lawrence Harris and Michael Piowar, which found that poor market quality was the primary reason that municipal bond trades were significantly more expensive than similarly sized trades in the corporate market. Additional research by Andrew Ang and Richard C. Green for the Brookings Institution in 2011 concluded that state and local governments might be paying billions of dollars each year in unnecessary fees, transactions costs, and interest expense due to the lack of both transparency and liquidity in the municipal bond market.

Ang and Green estimated that the liquidity cost alone represents approximately $30 billion per year on the current $2.9 trillion stock of outstanding bonds. "When the market is liquid and transparent, both borrowers and investors incur fewer fees and lower costs," wrote Ang and Green. "All of these factors contribute to reduced interest expense for issuers."

Massachusetts has adopted this concept and is taking a cue from the way the corporate world interacts with its investors. It launched a new investor website that has 40,000 downloadable documents on things like bond authorizations, revenue reports, budgets, audits, official statements, economic reports and pension valuations. Free software is also available so that investors can download and manipulate data.

A year ago this March, the state launched its MassDirect Notes program in which the state sells its bonds directly to investors for a two-week period each month, allowing individual investors to buy the state's bonds directly. This is akin to buying NFL tickets directly from the team versus paying more on secondary markets like StubHub. More recently, Massachusetts became the first U.S. government to launch a smartphone app for investors.

Assistant State Treasurer for Debt Management Colin MacNaught said this effort will save taxpayers millions in borrowing costs over the long term. "Whether the credit news for Massachusetts is good or bad, investors know that they'll always get good and current disclosure from the state," he said. "We think that gives them an added measure of confidence in our bonds, thus enhancing the liquidity of our paper. And every dollar we save on our borrowing is one more dollar we can redirect elsewhere to other budget areas."

What Massachusetts is doing is potentially groundbreaking. But despite the data on investor costs, there's no concrete proof that issuers can lower their borrowing costs via transparency, said Lynnette Kelly, MSRB's executive director. The Bay State is providing the market a test case in this theory.

That is reason enough to keep an eye on Massachusetts' success in this arena but here's one more: The Securities and Exchange Commission is getting tough on the municipal market and disclosures is a big part of the picture. In this respect, the more governments can take this responsibility on themselves, the better.

To that end, the MSRB is telling smaller governments, which tend to be less savvy about financial disclosures because they issue few, how they can increase transparency on their own. Most governments post their Comprehensive Annual Financial Reports online, said Kelly. But they could also make available such relevant information as meeting minutes, budgets and a list of top local employers. "This stuff is pretty easily accessible," she said. "So we're trying to make sure smaller issuers know that it should be top-of-mind and it's very, very easy to do."

GOVERNING.COM

BY LIZ FARMER | MARCH 12, 2015

For-Profit Companies Play a Big Role In Texas Water Planning.

Until recently, Texas' state water plan wasn't much to look at.

Essentially a catalog of more than 3,000 water supply projects across the state that some government or another hoped to build, it was seen as nothing more than a wish list, compiled from the work of 16 regional planning groups every five years.

That changed in 2013 when lawmakers — with Texas voters' approval — put $2 billion from the state's savings account toward actually building some of the projects. That also put a spotlight on the Texas Water Development Board, a once-obscure agency charged with state water planning.

But the water plan's new prominence is also highlighting how involved private engineering and consulting firms are in deciding what the state needs. The state water board paid such firms a total of $13.7 million for their work in putting together the most recent state water plan, with close to half of that going to the decades-old company Freese & Nichols.

The private hand has advantages and disadvantages, observers and experts say. Some worry that paying private firms to do water planning creates an inherent conflict.

"Critics would suggest that these folks operate out of 'enlightened self-interest,'" said Ron Kaiser, a professor of water policy at Texas A&M University. "They're going to push projects that have big infrastructure. … They might then have staff that could bid on these projects."

The potential for conflict is bigger now that private consultants are also in charge of scoring the water projects and giving them a ranking in the plan, said Mary Kelly, an Austin-based water lawyer. The Legislature called for the ranking in 2013.

"It's really punting a pretty important decision to a contractor" to let private firms do the ranking, Kelly said. She worries that firms used to working on reservoir projects, for instance, won't give as good of a score to a brackish water desalination plant, or a conservation initiative.

But Jody Puckett, director of Dallas Water Utilities, said the role of private firms is smaller than critics think. "It's kind of like when you make pasta, you have to run it through the mill to make spaghetti. That's their role."

Puckett is chair of the Dallas Fort-Worth region's water planning group, and said it's the group that makes final decisions about what projects end up in the water plan — not the consultants. And there's no guarantee those same consultants will get design contracts or any other work for those same projects, because they have to go through competitive bidding to get that work.

"I can see how someone might want to connect the dots, but I don't think they're necessarily connected at all," Puckett said.

Whether or not they like the system, few involved in Texas water planning think there's a better way to run it. There's not enough staff in state or local governments to do the work private firms

perform.

“There’s a level of expertise with firms like ours,” said Preston Dillard, who is a contractor in Dallas-area water planning with the firm Alan Plummer Associates. “The advantages are, you’re involving the professionals that have experience in working with water systems.”

And as the drought has reached a new level in Texans’ consciousness, firms that used to always recommend new reservoirs, water treatment plants or big pipeline projects are starting to think differently, said Ken Kramer, water resources chairman of the Sierra Club’s Lone Star Chapter.

For instance, he said, both firms that do consulting work for the Dallas area — Freese & Nichols and Alan Plummer Associates — now do work on conservation and water reuse projects, something that may have been unthinkable a few decades earlier.

“You’re seeing a little bit of an evolution,” Kramer said. “But it’s definitely a slow evolution. It’s not a revolution yet.”

Still, concern about the private sector’s role exists at the state level, too. After the Legislature slashed the state budget in 2011, the water development board lost most of its funding dedicated to helping model groundwater across the state.

That forced individual groundwater conservation districts to contract out the modeling work to engineering and consulting firms. And the data they collect is important: It often serves as the basis for deciding how much water can be sustainably pumped from an aquifer.

In a recent report, the Legislative Budget Board recommended against such a system. Districts need to use a more “standard approach” in getting their data, the report said. Otherwise, they risk “non-uniform data collection practices and methodologies … compromising the accuracy of this process.”

BY THE TEXAS TRIBUNE | MARCH 13, 2015

By Neena Satija

Should States Use Bonds to Pay for Breakthrough Drugs?

That’s what a new report proposes as states limit potentially life-saving but expensive new drugs. But some say that would be surrendering to drug makers.

When the maker of a breakthrough hepatitis C drug Sovaldi set the price at $1,000-a-pill but promised a cure that could lower costs in the long term, states scrambled last year to limit treatment to patients with the most severe cases, anticipating billions in near-term costs. A new report argues a good solution might be to use an approach that state governments already prefer with infrastructure and some social programs — taking out bonds.

The idea comes from the California-based RAND Corporation, a research organization that specifically drew on the case of Sovaldi, which earned $10 billion in sales last year for its maker, Gilead Sciences. The company boasted that its clinical trials proved the drug effectively cures the slow-moving liver disease in more than 90 percent of patients at a cost of about $84,000 for a 12-week treatment, far better than a liver transplant, which costs about $600,000.

But critics in Congress, state governments and elsewhere alleged price-gouging, noting Gilead charges other markets at a fraction of the U.S. In addition, critics say, the drug's effectiveness outside of controlled clinical settings is unclear, and hepatitis C moves so slowly that restricting Sovaldi until cheaper alternatives enter the market is the most sensible option. Express Scripts, the pharmacy benefit management company, estimated covering all of the 750,000 hepatitis C patients in state programs would cost governments more than $55 billion.

RAND is suggesting a way to make the drug more affordable, though some critics question its strategy. With more specialty drugs and breakthrough vaccinations expected to hit the market in the coming years, insurers — including state Medicaid agencies — should consider a strategy that promotes long-term investment, argued Soeren Mattke, an author of the report.

Mattke recommended that insurers issue debt instruments like bonds or mortgages directly with manufacturers. If the insurer issued a bond, it could pay interest to the manufacturer until the maturity date followed by a larger balance payment. Or they could offer fixed monthly payments, or credit lines with payments at pre-established points.

What those agreements should also include, RAND argued, are performance agreements that set payments according to proven outcomes. Scotland already has such an arrangement over Olysio, another hepatitis C treatment, according to RAND. To reduce the administrative cost of tracking patients, RAND recommended letting an impartial outside group study a sample group that represents the population.

Mattke said he had Medicaid agencies in mind specifically when he developed the idea, along with middle-income nations like Brazil and less cash-rich countries — southern Europe, for instance — that face short-term budgetary constraints. "I think Medicaid is actually the only situation where it would work in the U.S.," he said. Rather than limiting treatment to, say, 10 percent of patients, agencies should think long-term, he added. "It's a bad financial decision, because those 90 percent will continue to accrue medical costs while they're waiting for Sovaldi."

But the key problem with RAND's proposal is that it concedes the policy fight over the steep cost of drugs like Sovaldi, countered Matt Salo, executive director of the National Association of Medicaid Directors. The paper's approach "completely throws the white flag of surrender on drug prices," he said by email. "It says, 'We're okay with the price of Sovaldi being $84,000 or even $200,000, because if we can spread the actual costs out over 20 years or so, nobody will actually notice or feel the pain.'"

But additionally, Salo argued, reports from the Institute for Clinical and Economic Review call into question cost-effectiveness over the long windows envisioned under a debt agreement. If RAND's idea extends into areas like Alzheimer's, which pharmaceutical companies argue costs society trillions of dollars, manufacturers could continue charging staggering sums under questionable assumptions, he said.

Jeff Myers, who heads the trade group for private Medicaid plans, didn't dismiss the idea of debt-financing outright, but he argued that pharmaceutical companies will have to bear substantially more risk before insurers should agree to bond deals, and introductory costs do need to go down. That means accounting for actual outcomes outside of clinical settings and potentially finding ways to help patients adhere to their medications, he said.

"With hepatitis C, Gilead says [it's a] 90 percent [cure rate], but it turns out in the real world it's a lot less," he said. "That percentage has a true cost in the health system, yet Gilead bears no risk when it doesn't actually work as well as they say it does."

Chris Koller, a former insurance commissioner who runs the Milbank Memorial Fund, said he thinks the RAND idea does take cost-effectiveness into consideration. But he does question whether manufacturers that are already raking in profits would be interested in revenue streams that grant them less control, and unlike other countries, the U.S. system of public and private payers for different populations and different age groups poses logistical challenges and questions about who actually receives the financial reward of breakthrough medications.

Still, he said, he's seen arrangements in which different payers pool their money for things like vaccines in Rhode Island, where he served as a health insurance commissioner. "This is, by its design, meant to trigger discussion," he said. "We shouldn't shoot it down just because it's hard to implement."

GOVERNING.COM

Chris Kardish | Staff Writer

March 12, 2015

University of California Sells Into Falling Market: Muni Credit

(Bloomberg) — The biggest risk to the University of California's sale of $2.8 billion of bonds this week, the most it's offered at once, isn't a battle over tuition increases and taxpayer subsidies. It's the stumbling municipal market.

The 10-campus system, which educates 242,000 students, wants to use $2.3 billion of the proceeds for refunding as rising interest rates threaten the finances behind such deals.

Economic strength and accelerating sales of munis have the $3.5 trillion market on pace for its first back-to-back losses since 2013. Benchmark 10-year munis yield 2.17 percent, the highest since December, after Labor Department data last week showed the U.S. jobless rate fell to an almost seven-year low of 5.5 percent.

"Depending on what rate it takes them to issue the debt, to entice enough buyers to buy the debt, the refunding may not work for them," said John Bonnell, who oversees about $3.8 billion as assistant vice president of mutual funds at USAA Investment Management Co. in San Antonio. "They may choose not to refund as much if that happens."

Tuition Clash

Governor Jerry Brown and University President Janet Napolitano, the former U.S. Secretary of Homeland Security, are clashing over Napolitano's plan to raise tuition as much as 28 percent if Brown won't boost state funding. The Board of Regents voted in November to raise tuition 5 percent annually for five years. Brown, a board member, opposed the increase and is engaged in talks with Napolitano to end the impasse.

Yields have risen from close to five-decade lows since the start of February. Helping fuel the increase, localities offered a combined $62 billion of debt in January and February, almost double the 2014 pace, data compiled by Bloomberg show. About 68 percent of deals this year have been for refinancing, Bank of America Merrill Lynch data show.

“The Regents’ upcoming revenue-bond transactions are looking to take advantage of historically low interest rates in order to refinance existing debt and lock in low interest rates for new money needs,” Dianne Klein, spokeswoman for the university’s Office of the President, said in a statement.

Tuesday’s Business

The system leads governments issuing at least $5.9 billion of refinancing bonds this week, out of a $12.2 billion long-term sales slate, the most since December.

It’s set to begin offering $1.14 billion of general-revenue bonds Tuesday and $1.66 billion of limited-project revenue debt Wednesday. The combined amount is the most it’s sold at one time, according to data from the state treasurer’s website dating to 1996. About $1 billion of the refunding is to convert general-revenue bonds into limited-project revenue debt.

When the University of California regents borrowed in April 2014, they priced 10-year bonds to yield 2.74 percent, or about 0.17 percentage point above top-rated debt, Bloomberg data show. Standard & Poor’s rates the general-revenue debt AA, the third-highest level.

Those bonds are repaid from student fees and tuition, state subsidies, as well as grants, contracts and income from university-owned enterprises. The limited-project revenue bonds are paid from funds generated by infrastructure they finance, such as parking garages, athletic fields and student and faculty housing.
Nathan Brostrom, the system’s chief financial officer, declined to answer questions about the financing.

Funding Need

The university system also operates five medical schools and medical centers and four law schools. It’s involved in running nuclear-weapons laboratories and research facilities for the Energy Department. Its faculty and researchers have won 62 Nobel Prizes, more than any other U.S. public university system.

“The tuition controversy is short-term in nature,” said Michael Ginestro, director of muni research at Bel Air Investment Advisors, which manages $2.7 billion of munis. “If you look at the revenue, the endowment fund, the number of campuses they have and the product they deliver, it overwhelms any concerns.”

Napolitano has said additional funding is needed to stabilize revenue for a system that’s an incubator of leaders for government, industry and Silicon Valley in California’s economy, the world’s seventh-largest.
Brown, 76, who graduated from the flagship campus in Berkeley, says the system needs to rely less on taxpayer subsidies.

Tax Increases

In 2012, the Democrat won voter approval for higher sales-and income-taxes. He pledged to use the increased revenue to add more than $500 million to university funding over four years if the regents froze tuition. Lawmakers paid the first $125 million installment last fiscal year.

The tax increases he championed have spurred demand for the tax-exempt debt of California issuers. The state’s own borrowing costs have shrunk to the lowest since 2007.

“Any time the Regents issues debt it’s well-received,” Bonnell said. “I don’t think this one will be any

different.”

Beginning in 2013, the state shifted some debt service for bonds it issued for the university from its books onto the system’s accounts.

Brown’s budget for the fiscal year beginning in July would boost spending for the system by 4 percent to $3.05 billion, including $200 million for debt service. The move is intended to force the university system to factor debt costs into its fiscal outlook.

Napolitano said March 3 that unless Brown boosts aid, she’d freeze enrollment of California students while admitting more out-of-state students because they pay higher tuition and fees.

Even after climbing for weeks, yields are hovering above generational lows, so issuers can still reap savings from refinancing. A Bond Buyer index of 20-year general obligations yields about 3.7 percent, compared with the 5.8 percent average since 1961.

“Even if rates start to back up a little bit, you as an issuer are still going to get pricing that is at your advantage,” said Ginestro at Bel Air.

by Michael B Marois

March 9, 2015

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Illinois Pension Bout Tests Nation Grappling With Shortfalls.

(Bloomberg) — Illinois’s remedy for the state’s worst-in-the-nation $111 billion pension-funding shortfall was disliked by lawmakers who voted for it, the new governor who inherited it and public employee unions who sued to void it.

Attorney General Lisa Madigan on Wednesday asked the state’s Supreme Court to resurrect it.

The 2013 measure to cut cost-of-living increases and boost the retirement age was struck down last year by an Illinois judge who found it violated the state constitution’s ban on reducing public worker retirement benefits. The dispute is being watched around the country as state and local governments faced total pension shortfalls of more than $1 trillion in 2013.

Illinois Solicitor General Carolyn Shapiro argued Wednesday that the state should be able to invoke its “police powers” in a time of fiscal crisis.

“Invoking police powers is not something the state could do willy nilly,” Shapiro said responding to a question from Justice Robert Thomas. “Raising taxes cannot always be the answer to a fiscal crisis.”

Few Questions

The state Supreme Court’s seven-judge panel asked few questions during Wednesday’s hearing and gave no timeframe for a ruling. To win a reversal, Madigan must convince at least four of the court’s

seven justices that the constitutional provision — which says a public worker's pension membership is a contract "the benefits of which shall not be diminished or impaired" — is something less than absolute.

Thomas pressed Shapiro on whether the drafters of the provision intended to protect those benefits in difficult economic times. When Shapiro replied she didn't believe that was the entirety of the intent, Thomas asked if it would be "problematic" if the court believed it was.

The state cannot be forced to surrender its sovereign power to protect the general welfare of the people, Shapiro responded.

Gino DiVito, an attorney for the suing unions, countered that the provision was "explicit, clear and unambiguous" regardless of the state's argument for recognition of a possible "doomsday scenario."

Illinois has the lowest credit among the 50 U.S. states. Last month, Governor Bruce Rauner, who defeated Democrat Pat Quinn in November, proposed an array of spending cuts to close a $6.2 billion budget shortfall.

Pension Repair

If the pension fix is upheld, Illinois will save about $1 billion on its $7.5 billion contribution requirement for 2015, which means that money can be spent elsewhere, said Laurence Msall, president of the Civic Federation, a Chicago-based independent budget watchdog group.

As a candidate, Rauner criticized the pension-repair bill, under which lawmakers planned to save about $145 billion over 30 years.

Before the legislators voted on it, Rauner said the plan "barely scratches the surface of the problem." The Republican, a former venture capitalist, has called for shifting some public employees to a defined-contribution plan, similar to a 401(k).

Illinois pension changes were attained in 2013 following years of legislative gridlock and an unsuccessful attempt by Quinn to dock lawmakers' pay to force a resolution.

Public worker unions, banding together as a coalition called We Are One Illinois, sued to block the measure in January 2014, arguing its members' benefit plans are inviolable. Springfield Judge John Belz put the plan on hold in May and declared it void in November.

Health Plans

His ruling came just four months after the state Supreme Court rejected Illinois' attempt to reduce its contributions for government retiree health-insurance plans. The justices, in a 6-1 decision, relied on the same constitutional provision.

"We believe the language of the pension clause is very clear," said Anders Lindall, a spokesman for the American Federation of State County and Municipal Employees Council 31, which has more than 75,000 members.
The provision was added to the state constitution to protect public workers from lawmakers making "irresponsible choices" and then looking to retirees' life savings for a remedy, Lindall said.

Super-Contracts

Madigan maintains that interpreting the constitution that way would create super-contracts and

nullify the state's power to act for the greater good.

"If the pension clause really bars the state's exercise of its police powers under every possible circumstance, no matter how dire, then the 'contractual relationship' the clause creates is unlike any other contractual relationship recognized in American law," she said in court papers.

Illinois House Speaker Michael Madigan, the attorney general's father, won't comment on the issue, his spokesman Steve Brown said. State Senate President John Cullerton believes the law violates the Illinois constitution, spokeswoman Rikeesha Phelon said.

"He supported last year's pension reform so that it could advance as a test case," Phelon in a March 9 e-mail. Both legislative leaders are Democrats.

Nationally, state and local government pension plans in 2013 had about 72 percent of the money needed to meet retirement obligations, according to a study released in June by the Center for Retirement Research at Boston College.

State constitutions have been invoked elsewhere to try to prevent cuts to public pensions. In Rhode Island, unions settled with the state over pension cuts before their constitutional challenge could be put to the test. In municipal bankruptcy cases in Detroit and California, judges ruled that federal law overrode state bans on cutting pensions.

With the Supreme Court arguments looming, two lawsuits involving changes to Chicago employee benefits have been put on hold because their fate might hinge on what the justices decide.

"The governor's office will take appropriate action depending on how the Illinois Supreme Court rules," said Rauner's press secretary, Catherine Kelly. "The current pension system is unaffordable and is choking the state's budget."

The case is In re Pension Reform Litigation, 118585, Illinois Supreme Court (Springfield).

by Andrew M Harris

March 11, 2015

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Pennsylvania Overhaul Plan Boosts Taxes for Schools: Muni Credit

(Bloomberg) — Tom Wolf, the only Democrat to beat an incumbent Republican governor in November, wants to extend his disruptive streak by upending Pennsylvania's taxes.

Wolf, a businessman in his first elected office, proposed a new tax on natural-gas drilling, the state's first sales-levy increase in almost a half-century and a boost in the income tax to a record. The plan, released March 3 as part of his budget, would generate $4.7 billion, enough to close a projected deficit, reduce property taxes and fulfill a campaign pledge to raise education funding.

The 66-year-old took the helm as the state deals with mounting pension costs. Pennsylvania had its credit grade cut by each of the three biggest rating companies last year, to two steps below the average for U.S. states. Credit analysts pointed to one-time fixes used to balance this year's budget.

The latest proposal differs from previous plans that were "piecing things together with duct tape," said Chris Borick, director of the Muhlenberg College Institute of Public Opinion in Allentown. "His shooting for a big move is pretty important because we haven't seen it in a while."

'More Palatable'

Wolf joins about 10 governors considering tax increases, according to the National Association of State Budget Officers. The levies often are tied to particular needs, such as infrastructure or education, said Norton Francis, senior research associate at the Tax Policy Center in Washington.

"It makes it more palatable when you can say we're raising taxes for this express purpose," Francis said.
Wolf beat Tom Corbett, the first Pennsylvania governor to lose re-election since 1968, even as Republican victories gave the party 31 governorships, the most since 1999.

Corbett kept residents' taxes flat, lowered some business levies and cut funding for education and other programs. He failed to push through changes to public pensions, which are consuming a growing portion of the general fund, and a sale of the state's wholesale and retail alcohol operations.

Pennsylvania ranked last in job growth from January 2011, when Corbett took office, to December 2014, according to data compiled by Bloomberg. As expenses swelled, lawmakers balanced the $29 billion budget for the year through June with $2 billion of one-time measures.

Buyers' Demand

Investors have taken note, demanding 0.41 percentage point of extra yield to own 10-year Pennsylvania securities instead of benchmark municipal debt, data compiled by Bloomberg show. The difference is the most since at least January 2013 and is greater than the spread on California bonds, which carry a Standard & Poor's grade one step lower, at A+.

S&P, Moody's Investors Service and Fitch Ratings give Pennsylvania their fourth-highest marks. Wolf's use of tax increases is a "clear departure" from his predecessor, said Eric Kim, Fitch's director of U.S. public finance in New York.

Wolf, who was chairman of a family-owned business that supplies kitchen cabinets, told voters he'd boost education funding through a severance tax on natural-gas production, a move that Corbett opposed. Jobs in the industry almost doubled in the four years through June 2014, according to the Department of Labor and Industry.

Wolf's campaign received money from Michael Bloomberg, founder and majority owner of Bloomberg News parent Bloomberg LP.

Wolf's Shift

The governor's $29.9 billion budget would also shift education funding from property taxes to the sales and income levies. He'd increase the sales tax to 6.6 percent from 6 percent, where it's been since 1968, and the income tax to 3.7 percent from 3.07 percent, while reducing a business-income levy. Average homeowners' property-tax bills would drop by half, or $1,000.

"To create jobs that pay, schools that teach and government that works, we have to do things differently," Wolf said in his budget address.

Jeff Sheridan, a Wolf spokesman, said previous Republican bills to reduce property taxes form the basis for the governor's proposal.

The governor also called for raising the minimum wage and creating incentives for manufacturing jobs, highlighting national Democratic goals in a state that will host the party's 2016 presidential convention.

'Bad Plan'

Republicans, who control both legislative chambers, still expressed skepticism.

"It really is a very, very bad plan, put very simply, for all of Pennsylvania," Senate President Pro Tempore Joe Scarnati told reporters after Wolf's speech.

Republicans, and even some Democrats, would find it difficult to vote for tax increases because of the risk of primary challenges, said Ryan Shafik, founder of Rockwood Strategies, a Harrisburg consulting firm that works with Republican candidates.

Yet Wolf's victory by 10 percentage points showed voters consider schools a priority, said Thomas Baldino, who teaches politics at Wilkes University in Wilkes-Barre.

"If Republicans want to demonstrate that they are hearing what the public wants, they need to work with Wolf on things like education funding," he said.

Bloomberg Muni Credit

by Romy Varghese

March 11, 2015

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Bloomberg Brief: Municipal Market Weekly Video.

Taylor Riggs, an editor at Bloomberg Brief, talks with Joe Mysak about this week's municipal market news.

Watch.

March 12, 2015

Puerto Rico Agency's Note Sale Shows Climbing Debt Expenses.

(Bloomberg) — A Puerto Rico agency plans to sell notes maturing in May 2017 with an interest rate of 8.25 percent, underscoring the rising borrowing costs for the junk-rated commonwealth.

The Infrastructure Financing Authority, called Prifa, plans to issue the notes, which would be paid off with proceeds of a later bond sale, according to a filing with the Municipal Securities Rulemaking Board. Prifa also expects to sell as much as $2.9 billion of bonds backed by petroleum-tax revenue.

Proceeds of that deal would repay the two-year notes, according to a person with knowledge of the transactions who requested anonymity because they're not final.

Puerto Rico and its agencies tend to borrow through the capital markets to balance operating budgets. That practice and the island's struggling economy prompted the three largest rating companies to drop the commonwealth to speculative grade in 2014.

The borrowing costs reflect the island's fiscal stress. The interest rate on the notes is about 7.6 percentage points more than the 0.6 percent yield on benchmark debt, data compiled by Bloomberg show.
It would be the first borrowing from the commonwealth since the Government Development Bank in October sold notes maturing in June 2015 at a yield of 7.75 percent.

Repayment Plan

Funds from the fuel-tax bond are intended to repay money the Highways & Transportation Authority owes the GDB. The bank needs the cash. It said it had $1.2 billion of net liquidity as of Feb. 28, down from $2 billion in October.

The funding in Puerto Rico's budget for the fiscal year that began July 1 is also uncertain. The island's revenue through February is $121.7 million below budgeted estimates, according to Treasury Department data. That shortfall has grown from $18.8 million at the end of January.

As of Friday afternoon, the development bank hadn't provided a comment or additional details about the note sale through its New York-based spokesman, David Millar. The bank handles debt transactions for the commonwealth.

Puerto Rico bonds rallied this week after the legislature on March 10 approved changes to the Prifa oil-tax bond sale to attract buyers. Debt from the island is tax-free nationwide, so it's widely held by individuals and mutual funds.

General obligations maturing in July 2035 traded Friday at an average price of 85.4 cents on the dollar, the highest since Jan. 28, data compiled by Bloomberg show. The average yield was about 9.7 percent.

by Michelle Kaske

March 12, 2015

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Alan Goldstein, William Selway

Mutual Fund Holdings Set Record as Households Wane: Muni Credit

(Bloomberg) — U.S. mutual funds' holdings of municipal debt grew to a record $658 billion in 2014 as individuals shunned direct purchases in favor of managed money amid Puerto Rico's woes and the loss of top-rated bond insurance.

The funds increased their stake by almost 40 percent in the past five years, solidifying their position as the second-biggest category of muni buyers, according to Federal Reserve data released Thursday.

Even as regulators seek to promote transparency in the market for state and city debt, the shift underscores the diminishing role of individuals who buy bonds for their own account. Households, while still the largest muni holders, reduced ownership to the lowest in almost a decade as Detroit's historic bankruptcy and junk-rated Puerto Rico's struggle to repay $73 billion of debt steer them toward more diversified investments.

"Credit concerns, especially Detroit and Puerto Rico, have caused a lot of individuals to want professional credit advice," said Phil Fischer, head of muni research at Bank of America Merrill Lynch in New York.

Growing Influence

Mutual funds are expanding their influence as the supply of munis is shrinking. The tax-exempt market, which localities use to finance roads, bridges, public schools and water systems, dwindled for the fourth straight year, to $3.65 trillion as of Dec. 31 as officials hesitate to take on borrowing for new projects.

It's the longest stretch of declines in data going back to 1945, and the market is still contracting: Local-government obligations tallied $3.5 trillion as of Wednesday, data compiled by Bloomberg show.

The declining amount of debt and buying by funds helped munis advance 9.8 percent in 2014, the most since 2011, according to Bank of America Merrill Lynch data.

With the top federal income-tax rate the highest since 2000, the appetite for munis' tax-free interest isn't waning. Investors are just reconsidering how they buy the securities.

Holdings of households have dropped every quarter since March 2013, to $1.54 trillion at the end of 2014, the least since March 2005, Fed data show. Their ownership has dropped to 42 percent of the market, from 50 percent at the end of 2010.

Insurance Crutch

The transition gained momentum after the companies that insure munis lost their top credit ratings in the wake of the financial crisis. Unable to rely on the guarantee, buyers had to take a closer look at the creditworthiness of specific holdings, said Alan Schankel, a managing director of fixed-income strategy at Janney Capital Markets in Philadelphia.

"It's tough for individual investors," he said. "If they have 20 different positions in their portfolio, it may be difficult for them to keep on top of all of them."

The concerns of individual buyers have grown as Puerto Rico's fiscal challenges mount. The debt load of the island and its agencies is greater than all states but California and New York, even though it has about 3.5 million people. Because the territory's bonds are tax-exempt nationwide, they're widely held by both individuals and mutual funds.

Puerto Rico lost its investment grades last year as officials struggle to revive the commonwealth's economy. Its Electric Power Authority is negotiating with creditors to potentially reduce $8.6 billion of obligations, in what may become the largest muni restructuring.

Stress Push

Reports of financial stress and failures "have pushed a growing amount of investors towards some kind of managed solution," Schankel said.

Professional money managers can also help investors deal with a potential increase in interest rates, which can reduce prices on muni holdings, said Fischer at Bank of America. The consensus on Wall Street is that the Federal Reserve will raise its target interest rate from near zero this year as the economy strengthens.
Benchmark 10-year munis yield about 2.2 percent, close to the highest since November.

"They're willing to buy more assistance when they're anxious," Fischer said. "They can have a variety of anxieties, and certainly one of them is credit and another one of them deals with interest rates."

Bloomberg Muni Credit

by Michelle Kaske

March 12, 2015

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Mark Tannenbaum, William Selway

Moody's: Detroit Emerges from Bankruptcy Stronger, But Economic Hurdles Persist.

New York, March 11, 2015 — While the City of Detroit (B3 stable) has made important strides in its credit fundamentals as it emerges from Chapter 9 bankruptcy, it continues to face a number of fiscal and economic headwinds that limit its future growth, Moody's Investor Service says in a new report, "Detroit Emerges from Bankruptcy Stronger, but Economic Hurdles Persist."

Revitalizing Detroit's economy and improving its city operations are crucial to its long term success, Moody's says. In addition, Detroit's ability to balance budgets amid the ongoing economic challenges burdens the credit in the intermediate term.

"The city achieved three main successes during its Chapter 9 filing, including substantially reducing long-term debt and retirement liabilities, but it also has a robust plan to reinvest in its tax base and services and a strong new management team that will benefit from ongoing state support," says

Moody's Vice President — Senior Analyst Genevieve Nolan, and author of the report.

Positively, Detroit is dedicating resources to revitalize and strengthen its tax base through a proposed $1.4 billion reinvestment plan focusing on Detroit Police, Detroit Fire, Finance Department, General Services and blight removal. The projects will be funded with proceeds from a $120 million quality of life note issued during bankruptcy, and as well as some funds from the city's $275 million post-petition financing issued as it exited bankruptcy.

Detroit was also able to significantly reduce its long-term liabilities in bankruptcy, with its net direct debt outstanding dropping to $1.8 billion from $2.5 billion. The city's new management team will also benefit from ongoing state oversight and support.

However, Detroit's economy and tax base continues to suffer amid valuation declines, weak demographic statistics, and a dwindling population. Unemployment is still high 13.0% as of November 2014, and its decline from a peak of 25% in 2009 is partly attributable to a persistently shrinking labor force.

The city also expects assessed valuation declines to persist through 2020 as the State of Michigan and city management reviews its assessment process. While income tax receipts are estimated to rise 2.1% annually, key revenues from property taxes are projected to drop by 1.3% annually through the same period. By the end of 2023, expenses and revenue projections estimate an ending cash balance of $65.8 million, a positive yet still narrow liquidity position. Negative variations from these projections could jeopardize the city's financial plans.

While fixed costs, including annual debt service and retiree benefit contributions, were reduced during bankruptcy, they will grow after 2023 when the city is required to begin making pension contributions again.

"The city's challenges are largely ones that bankruptcy could not immediately fix and may still result in weaker credit quality over the near to medium term," said Nolan.

Moody's research subscribers can access the report here.

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Moody's: Colorado's Pension Costs and Funding Gaps Keep Growing Despite Benefit Reforms.

New York, March 12, 2015 — Even after substantial pension reform that was upheld by the state's highest court, pension contributions by the State of Colorado and its local governments continue to trail actuarial recommendations, driving up future costs and increasing unfunded liabilities, says Moody's Investors Service. Moody's places Colorado's FY 2013 adjusted net pension liabilities at $17.3 billion, equal to 93% of state revenues and 16th highest among US states.

Overall, Moody's assesses fiscal pressures from Colorado's state and local pension funds as moderate, with funding challenges caused by prior contribution shortfalls somewhat offset by the state's established flexibility to enact substantial reform. Moody's explores this assessment in detail in the latest report in its Public Pension Landscape series, called "Colorado's Pension Costs and Funding Gaps Still Growing Despite Reforms."

In Colorado, where pension liabilities are concentrated in plans administered by the Public Employees' Retirement Association (PERA), the law requires participating governments to increase their contributions through 2018. Even with these additional contributions, however, costs are continuing to be deferred to later years and unfunded liabilities continue to rise.

There is some clarity and flexibility in terms of controlling costs, however, after the state's Supreme Court ruled in October 2014 that the pension reform law the state passed in 2010 was legal. The law gave Colorado the authority to change a number of benefit provisions, including cost-of-living adjustments for retirees.

"The reforms substantially reduced PERA's aggregate unfunded liability, first reflected in the actuarial valuation for fiscal-year ended 2009. But in subsequent years, unfunded liabilities have generally continued to grow," says Moody's AVP-Analyst Thomas Aaron.

Legislation signed by the governor in 2014 that calls for studying alternate retirement system options and private sector comparisons, however, signals there could be additional state action.

Moody's also notes that the ratios of active workers to retirees are near-to-above national norms.

Having more active employees currently provides Colorado with time to address funding gaps before liabilities grow considerably larger relative to government budgets In Colorado, however, the ratio of actives to retirees has been decreasing over the past decade.

For more information, Moody's research subscribers can access this report here.

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Fitch: US Solar Power PPP Models Need Focus on Fundamentals.

Fitch Ratings-New York-10 March 2015: The settlement of the Morris Model highlights the need for local government obligors to assess whether construction contractors have the technical and financial capacity to assume the risks of the project's completion including the potential for cost overruns, schedule slippage, and equipment underperformance, Fitch Ratings says. It also

underscores that solar power project development is among the lowest risk asset classes of the power sector, but not risk free.
In our view, in addition to managing the construction contractor risks, government obligors should also assess the stability of revenue generation including whether debt repayment is supported by an assumption of a certain level of energy delivery and/or dependent on volatile regulated renewable energy credits.

The project was designed to support the development of multiple solar power installations on school and county government buildings in a single financing. The initiative was financed by the Morris County Improvement Authority (NJ) and Somerset County Improvement Authority and the debt was guaranteed by the counties. Morris, Somerset, and Sussex Counties, involved in the transaction, recently agreed to a settlement with the contractor that will complete the installations after cost overruns and delays, according to The Bond Buyer.

The events around this transaction have been a jolt to the financial community. However, investor demand for renewable power development remains high. More robust structures that minimize the likelihood that local governments will be called on to support debt repayment are required to maintain their continued interest in participating.

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The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article, which may include hyperlinks to companies and current ratings, can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

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Fitch: TX Tax Cap Bill Could Put Some Local Governments on Edge.

Fitch Ratings-New York-09 March 2015: The proposal to lower the annual property tax levy increase threshold could limit local governments' revenue-raising capability and restrict flexibility, Fitch Ratings says. Texas' State Senator Paul Bettencourt of Harris County proposed the change in a bill filed last week.
The proposal would lower the state's threshold of the annual property tax levy increase that subjects local governments to rollback petitions from 8% to 4%. It also expands the list of entities that must hold a tax ratification election if their levy increases beyond the rollback level. Texas law currently requires such election only of school districts but under SB 182 would include all local taxing agencies.

Statutory restrictions can constrain local governments' revenue-raising capabilities. However, compared with many other states, the current 8% rollback limit is generous, and the proposed 4% limit is not draconian. We believe the tax ratification election requirement may discourage boards and councils from seeking to increase levies beyond the threshold, given the cost and risk of voter disapproval.

In our view, most local government entities will likely not feel constrained by the 4% cap in most years. However, population growth creates demands for additional services, which could result in tax rate pressures that eclipse the 4% cap in a given year. According to the Census Bureau, seven of the fastest growing U.S. cities in 2013 were in Texas. Also, the 4% cap could seem insufficient if there were a notable increase in the rate of inflation.

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BDA Announces New Due Diligence Webinar Training Series for Municipal Market Bankers.

The Bond Dealers of America and Nixon Peabody have announced a new series of training webinars–exclusive to BDA member firms–focused on providing specialized due diligence training to public finance bankers. This series will be led by BDA retained counsel, Nixon Peabody and feature commentary and analysis from BDA member firm counsel and public finance bankers.

The agenda for this new series is available here.

CBO: Public Spending on Transportation and Water Infrastructure, 1956 to 2014.

Public spending—spending by federal, state, and local governments—on transportation and water infrastructure totaled $416 billion in 2014. Most of that spending came from state and local governments: They provided $320 billion, and the federal government accounted for $96 billion.

This report provides information on spending for six types of transportation and water infrastructure:

- Highways,
- Mass transit and rail,
- Aviation,
- Water transportation,
- Water resources, and
- Water utilities.

Such spending can also be divided into two broad categories—spending to purchase physical capital related to infrastructure (as well as the labor and other inputs necessary for improving and rehabilitating structures and equipment already in place) and spending to operate and maintain infrastructure. In 2014, spending for capital accounted for 43 percent of total public spending on transportation and water infrastructure, and spending for operation and maintenance for 57

percent.

[Read the Report.]

[Maine Considers a Property Tax on Some Nonprofits.]

AUGUSTA, Me. — Nonprofit organizations across the country are closely watching Maine as it considers becoming the first state to impose property taxes on hospitals, private colleges and summer camps under a plan put forth by Gov. Paul LePage.

Mr. LePage's proposal has sparked a fiery debate over what impact nonprofits have on their communities and whether they should have to cover the costs for municipal services they receive.

David L. Thompson, vice president of public policy for the National Council of Nonprofits, said all states exempted nonprofits from property taxes, either through laws or their constitutions.

Mr. LePage, a Republican, has called nonprofits "takers, not givers," and argues that they need to contribute for services like the police, firefighters and snow removal. His proposal, which is part of his $6.3 billion budget plan, would require organizations to pay taxes to municipalities if their properties were worth more than $500,000. They would pay taxes only on the property value over that threshold and get a 50 percent discount on the rate.

In Maine, hospitals, colleges and other groups that are lobbying heavily against the proposal warn that it would force them to raise costs or eliminate jobs.

The Good Shepherd Food Bank estimates it would owe $24,500 annually to the City of Auburn under the governor's plan. A spokeswoman, Clara Whitney, said it also would mean providing 100,000 fewer meals every year.

Some nonprofits already provide payments to Maine municipalities in lieu of taxes, but those payments fall well short of covering the services those organizations receive, said Jonathan LaBonte, director of the governor's Office of Policy and Management.

"The governor put this in the budget to start the conversation," said Mr. LaBonte, who also is the mayor of Auburn. "If municipalities have another approach, the governor has kept that door open."

By THE ASSOCIATED PRESS

MARCH 7, 2015

[California Pension Reform Measure to Target Calpers.]

LOS ANGELES — A ballot measure campaign to cut California's public pensions will be launched in May by a coalition of politicians and business people led by former San Jose Mayor Chuck Reed, with the state's largest retirement system a prime target.

The measure would take aim at California's $300 billion giant Calpers, which has a near-iron grip on the state's pensions. Calpers, America's largest public pension fund and administrator of pensions

for more than 3,000 state and local agencies, has long argued that pensions cannot be touched or renegotiated, even in bankruptcy.

"Calpers has dedicated itself to preserving the status quo and making it difficult for anybody to reform pensions," Reed said in an interview. "This is one way to take on Calpers, and yes, Calpers will push back."

Calpers spokeswoman Rosanna Westmoreland said: "Pensions are an integral part of deferred compensation for public employees and a valuable recruitment and retention tool for employers."

The measure will be closely watched by reformers and their union opponents in other states, in an ongoing national battle between those who say public pensions are putting intolerable strains on budgets and those who argue pension cuts unfairly penalize retirees and workers.

For most California cities, their largest debt is pension liability, a significant factor in the recent bankruptcies of Vallejo, Stockton and San Bernardino. Calpers has said it will increase pension contributions for most cities by up to 50 percent in the coming years.

Reed, a Democrat, abandoned a similar statewide ballot initiative in 2014, claiming that Kamala Harris, California's Democratic attorney general, had approved wording of the initiative that was biased and union-friendly.

But he vowed to fight on after leaving office in December, and in an interview with Reuters confirmed for the first time the launch of the initiative and its timing, while noting that a major motive was to challenge Calpers' grip.

Reed says the push will seek to place a simpler, more legally watertight pension reform measure on California's November 2016 ballot, giving mayors and other local government executives the authority to renegotiate contracts.

To win a place on the 2016 ballot, backers of the initiative will have to obtain the signatures of 585,000 registered voters, or 8 percent of the number of voters in California's last gubernatorial election, in this case 2014.

Reed and his allies have been huddling with legal advisers for months to devise a voter initiative that is simpler and less vulnerable to court challenges than last year's effort.

They have also been buoyed by a ruling in the recent municipal bankruptcy of Stockton, whose judge said California's public pensions are not inviolate.

As San Jose mayor, Reed helped pass a pension reform measure for his city, parts of which have been struck down after union lawsuits.

Reed is working with other pension reform advocates, including former San Diego Republican council member Carl DeMaio, the primary backer of a pension reform initiative in San Diego that was approved by voters in 2012; and the Ventura County Taxpayers Association's David Grau.

"We have done a lot of legal work to make sure this initiative is bulletproof," DeMaio said. "Because the unions are going to throw the kitchen sink at us."

The group is talking to potential financial backers, Reed said. Last year Reed took $200,000 from a group funded by Texas hedge fund billionaire John Arnold and they could partner again this time round, he said.

Karol Denniston, a public finance attorney and pension expert at Squire Patton Boggs in San Francisco, said voters should be working for legal change to provide more options than municipal bankruptcy: “Right now Calpers has no program for financially distressed cities,” Denniston said.

Dave Low, executive director of the California School Employees Association, said the group would campaign to defeat the measure and was “confident we can defeat it.”

By REUTERS

MARCH 11, 2015

(Reporting by Tim Reid; Editing by Megan Davies and Steve Orlofsky)

Chicago Mayor Seeks to Phase in Higher Pension Payments.

CHICAGO — Chicago Mayor Rahm Emanuel on Friday called for phasing in higher, state-mandated payments to city pension funds to avoid a shock to the city’s budget and a big property tax hike.

The move, which would require state legislation, was part of a plan released by Emanuel’s re-election campaign ahead of an April 7 runoff election against Cook County Commissioner Jesus “Chuy” Garcia, who also released his fiscal plan on Friday.

Under an Illinois law, Chicago’s contributions to its police and fire pension funds will increase by about $550 million next year. Another state law allowing cost-saving pension cuts to shore up Chicago’s municipal and laborers’ retirement funds is at risk of being voided as unconstitutional in state court.

Still, the mayor’s plan advocated measures that labor unions and others are challenging in court. These include slowing cost-of-living increases for pensions and gradually increasing workers’ contributions to ease costs.

Emanuel also called for closing Illinois tax loopholes to gain money for the third-biggest U.S. city, along with obtaining state approval for a publicly owned casino.

Garcia’s plan seeks cost savings through intergovernmental collaboration and creates a committee to examine revenue options. It does not address possible funding sources for Garcia’s campaign pledges to hire 1,000 new police officers and to replace traffic ticket revenue generated by red-light cameras he wants removed.

“It is too early to tell residents in the city of Chicago that we’re going to give them bad medicine without stepping back and taking a comprehensive look and approach to how city finances will be met,” Garcia told reporters.

He also said he opposes reducing pension benefits for current and retired city workers.

Emanuel received about 45 percent of the vote last month, short of the 50 percent level needed to avoid a runoff. He leads Garcia by 51-37 percent according to a Chicago Tribune voter poll released on Friday.

Mounting pension pressures led Moody’s Investors Service to lower Chicago’s credit rating by five notches since July 2013, with the last downgrade to Baa2 occurring on Feb. 27.

Garcia said Chicago could save as much as $350 million by consolidating purchasing and some services with other governmental bodies under the mayor's control, including the Chicago Public Schools. He also said Chicago's budget could receive a $150 million boost from reforming tax increment financing districts meant to spur economic development within certain geographic boundaries.

By REUTERS

MARCH 13, 2015

(Reporting by Karen Pierog; editing by Matthew Lewis)

U.S. Municipal Bond Market Grows to $3.652 trln in 4th Quarter.

(Reuters) – The U.S. municipal bond market grew to $3.652 trillion during the fourth quarter, Federal Reserve data released Thursday showed.

The fourth-quarter increase followed a decline to $3.631 trillion in the third quarter, according to the central bank's quarterly report.

Retail buyers shed a total of $31.9 billion of municipal bonds, marking the 16th consecutive quarter of declines in bonds held by households, the biggest buyers in the municipal bond market.

The size of the municipal bond market peaked in the fourth quarter of 2010 at $3.77 trillion, as municipalities rushed to sell Build America Bonds, which carried special tax credits. Low interest rates have kept cities, counties and states hungry to borrow and refinance, and the market has held steady at around $3.7 trillion.

Institutional investors ramped up their buying, as banks picked up $41.1 billion municipal bonds in the fourth quarter, up from the prior quarter's $34.5 billion.

Mutual funds gained $60.8 billion in the fourth quarter, compared with $51.1 billion in the third quarter, the Federal Reserve said. Property casualty-insurance companies shed $200 million and life-insurance companies picked up $5.1 billion in municipal bonds.

By Elvina Nawaguna

Thu Mar 12, 2015

(Reporting by Elvina Nawaguna; Editing by Andrea Ricci)

Connecticut Town Opts for Novel Finance Plan to Build 3.6 MW Municipal Project.

Maryland-based Standard Solar Inc. will design and install a 3.6 MW solar power system for the Town of Stafford, Conn., as part of a program to make the town's municipal load completely satisfied by renewable energy.

The project will feature three arrays: two 1.3 MW arrays located at Stafford Middle School and a 954 kW array at the town's landfill. The town is also installing a geothermal heat pump system that will replace four oil burners in the town's four largest public buildings. Replacing oil with geothermal will actually increase the electrical load; however, this will be compensated for by the output of the three solar arrays, which are expected to produce approximately 4.6 GWh of electricity per year.

Rather than follow a typical financing route for a municipality – which cannot avail itself of the federal investment tax credit (ITC) – by financing the solar project through a power purchase agreement (PPA) or lease, the town elected to purchase the systems through a tax-exempt lease purchase (TELP). This option is available to public, nonprofit and other tax-exempt organizations and enables the buyer to spread the purchase cost over the period of the lease.

"There's been a lot of talk about TELPs for municipal purchases in the U.S., but they haven't really been used for solar in my experience," says Tony Clifford, CEO of Standard Solar. "This really is pretty novel."

One of the reasons for the scarcity of TELPs in municipal solar deals is the combination of factors that move the Stafford solar project forward. Richard Shuck, Stafford's first selectman, says the town has a very active energy committee with excellent engineering support that was willing and able to take on the task of owning a solar array large enough to meet the town's needs.

"We looked at our consumption and wanted to know the most cost-effective way we could reduce energy costs," Shuck says. "The town has recognized the value of energy independence and formulated a plan to get the town to a net zero energy goal."

According to Dennis Milanovich, Stafford's town engineer, the conventional wisdom is that because municipalities cannot take advantage of the 30% ITC, they typically finance solar projects through PPAs or lease agreements. However, if the town was prepared to take on the complexities of issuing a request for proposals and assuming financial responsibility for the project, it was able to eliminate the overhead of having a third-party developer involved.

"The reality was that because we were willing to buy in such large quantity and buy it as a construction project, we got our dollars per kilowatt down to about $2.50," Milanovich says.

As currently configured, the solar project will consist of approximately 11,780 Canadian Solar CS6X 310 W modules. The two arrays at the school will be fixed-tilt ground mounts, while the landfill will have a ballasted system that won't penetrate the cap. The inverter type has yet to be determined.

Key to the viability of this approach was Connecticut's Zero-Emission Renewable Energy Credit (ZREC) program combined with the state's virtual net-metering policy. The ZRECs provide the financial returns that the town can use to pay for the system. Virtual net-metering gives the town some flexibility about where it can place the arrays and still get credit for them.

"Our existing expenditures combined with the ZRECs actually more than make up for the lack of any federal tax credit on this project," Shuck says. "Our project – combined with the geothermal – is projected to be cashflow positive right from the start."

Because the town owns the three sites selected for the solar arrays, no lease was required for the land. The two locations for the arrays near the school are also near one of the town's three circuits from the substation. The third site at the landfill where there are no loads, and thus is rendered useful solely due to virtual net metering, is on a separate circuit. This is expected to balance the project from an interconnection standpoint and facilitate utility approval.

“We couldn’t have done this without the ZRECs and the virtual net metering,” says Standard Solar’s Clifford. “If you could only use the power at the place it was being generated, the project wouldn’t be possible.”

The combination of Connecticut policies enabling the Stafford project underscores the importance of a state’s legislative and regulatory climate in promoting the growth of a vibrant solar sector. This importance of state and local policies is going to become even more significant if the ITC expires as scheduled at the end of 2016.

SOLAR INDUSTRY

by Michael Puttre on Tuesday 10 March 2015

Supremacy's Claws: How Two Judges are Changing the Pension Debate.

The billions of dollars in pension obligations faced by cities and states across the country have politicians from many of them calling for some type of reform. A commission appointed by New Jersey Gov. Chris Christie wants to freeze the state’s current pension plan, while in California, Gov. Jerry Brown has signed a bill that increases the retirement age, among other things. In Illinois, Gov. Bruce Rauner wants to eliminate overtime in the determination of pension benefits.

But now rulings by judges in Michigan and California have sparked a debate about another way to deal with pension issues, namely municipalities filing for Chapter 9 protection so that they can break contracts with retirees.

Judge Steven Rhodes of the U.S. Bankruptcy Court for the Eastern District of Michigan in Detroit and, more recently, Judge Christopher Klein in the U.S. Bankruptcy Court for the Eastern District of California in Sacramento, both arrived at a similar conclusion while adjudicating the Chapter 9 filings of the city of Detroit and the city of Stockton, respectively: municipalities can’t be stopped from changing or breaking contracts by state law, even if they involve agreements with their pensioners.

“When Judge Rhodes ruled the city was eligible for bankruptcy in December 2013, his opinion pointed out that the Supremacy Clause [in the U.S. Constitution] meant that pension agreements are subject to compromise in bankruptcy court despite their state constitutional protections,” said Kenneth Buckfire of Miller Buckfire & Co. LLC, which served as Detroit’s financial advisor and investment banker.

Forty-eight states, all but Indiana and Texas, have specific protections for pension accruals. Seven states, including Michigan, put such language in their constitutions.In August 2012, Boston College’s Center for Retirement Research reported that the majority of states protect the benefits as a contract, including California. Others label them as property. Minnesota guarantees protection even if there is not an explicit contract.

For now, the two decisions have limited reach. And the process of filing for bankruptcy isn’t easy. But officials of cash-strapped governments can be forgiven if they see the rulings as a lifeline.

The two judges, at least, weren’t impressed by state protections of something that involves federal law, which governs bankruptcies.

“The state of Michigan itself cannot legally provide for the adjustment of pensions debts or any debts of the city of Detroit,” Rhodes wrote. “It has long been understood that bankruptcy law entails impairment of contracts. For purposes of the Tenth Amendment and state sovereignty, nothing distinguishes pension debt in a municipal bankruptcy case from any other debt. e eligibility decision. The state constitutional provisions prohibiting the impairment of contracts and pensions impose no constraint on the bankruptcy process.”

Just as the language in Michigan’s constitution didn’t cow Rhodes, neither does California’s protections intimidate Klein, who, on Feb. 4, actually called the Golden State’s largest pension fund, the California Public Employees’ Retirement System, or CalPERS, a bully.

“[A]s will be seen, it is doubtful that CalPERS even has standing to defend the City pensions from modification,” Klein opined. “CalPERS has bullied its way about in this case with an iron fist insisting that it and the municipal pensions it services are inviolable.”

The state law forbidding a contract rejection with CalPERS is “constitutionally infirm in the face of the exclusive power of Congress to enact uniform laws on the subject of bankruptcy … the essence of which laws is the impairment of contracts-and the Supremacy Clause,” Klein wrote.

Atlantic City, N.J., could very well become the next battlefield on the pension reform question and whether a bankruptcy filing can help solve it.

Christie on Jan. 22 signed an executive order appointing Kevin Lavin, who previously worked at FTI Consulting Inc., as Atlantic City’s emergency manager and Kevyn Orr, who shepherded Detroit through its bankruptcy, as his special counsel.

The seacoast city’s main problem is its withering casino industry, but its pension obligations also pose issues.

“I think we are definitely going to continue to see pensions be a focus of municipal bankruptcy, even if it’s not the [main] cause of a municipality’s filing,” said Laura Napoli Coordes, a visiting professor of law at the Arizona State University Sandra Day O’Connor College of Law.

Fox Rothschild LLP partners Nicholas Casiello, Jr., and Michael Viscount, in a Feb. 2 analysis of the city’s financial condition, noted that while the emergency manager has said it’s too early to discuss bankruptcy, his background in restructuring and the appointment of Orr as Lavin’s special counsel has “led to speculation that this alternative is clearly on the table.”

For the town once known as The Queen of Resorts to file, the city council would have to approve the step by a two-thirds vote. The state Municipal Finance Commission would also have to clear the move.

According to a 2012 paper from law firm Chapman and Cutler LLP, 12 states have laws expressly allowing one of its political subdivisions to file for bankruptcy, while another 12 states will let a municipality seek court protection upon certain conditions. New Jersey, California and Michigan fall into the latter category. In 21 states, the laws are unclear or do not have specific authorization statutes on the books, while Georgia and Iowa generally prohibit bankruptcy filings.

Not everyone believes that the Rhodes and Klein decisions about pensions being alterable in bankruptcy will firmly take root. Bill Brandt, president and CEO of turnaround consulting firm Development Specialists Inc. and the current chair of the Illinois Finance Authority, said there is “ample debate” as to whether the decisions by Rhodes and Klein would pass muster while under consideration in other courts.

Some in the bankruptcy community may say that retirement benefits can be impaired in bankruptcy court, said Brandt, who has been active in the restructuring world for decades. But, he added, there are “substantial and incredibly important political concerns attached to that.”

To be sure, the Stockton and Detroit decisions aren’t binding on other municipal bankruptcy cases, said ASU’s Coordes.

“[A]s far as the rulings’ precedential value, the basic rule is that bankruptcy judges are not bound by decisions of other bankruptcy judges,” she explained. “This is true even when the bankruptcy judges are in the same district.”

The same holds true for U.S. District Courts.

“But, in general, district court rulings that are not directly related to a bankruptcy court appeal are not binding on the bankruptcy courts,” she said.

But district court rulings on bankruptcy appeals are binding, Coordes said.

Stockton’s and Detroit’s treatment of pensions in those cities’ debt-cutting plans were largely left intact. Healthcare benefits took the hit in both plans of adjustment; the coverage was essentially eliminated for both cities’ retirees.

Stockton didn’t impair its pensions directly, said John H. Knox, the city’s debtor counsel from Orrick, Herrington & Sutcliffe LLP.

He said the municipality impaired pensions indirectly by renegotiating contracts and eliminating most medical benefits.

The Stockton plan divides retirees into two categories. The first group received an average of $24,000 in pension benefits per year with no medical benefits. The second group, which receives $51,000 annually from CalPERS and $26,000 in medical benefits, will lose the medical benefit contribution but could pay for the benefits out of their own pockets.

Employees hired before Jan. 1, 2013, will no longer receive free medical benefits but could pay for the insurance out of their own pockets. Employees now pay a portion of the CalPERS contribution, which is 7% for all non-safety employees and 9% for safety employees or sworn police and fire personnel.

The city decided not to change its pension system, in part, to maintain its ability to attract quality employees. Under California law, municipalities are not required to participate in CalPERS, but doing so allows workers the benefit of portability, or taking benefits earned at one CalPERS job to another CalPERS job. Losing that, Knox said, would put the city at an “extreme disadvantage of hiring people.”

Stockton also eliminated retiree medical benefits for some, but the city allowed them to participate in its group health plans so they could get lower rates, Knox said.

Detroit, meanwhile, reduced retirement benefits and cost-of-living adjustments slightly for its pensioners.

Under the plan of adjustment, non-uniformed workers participated in the general retirement system and agreed to a 4.5% cut in pension benefits in addition to a loss of future cost-of-living adjustments. Uniformed employees received benefits from in the police and fire Retirement System participants

will have no reduction in pension payments, but cost-of-living escalators will be reduced 55%. When it comes the city's underfunded pension plans, Detroit will pay off 60% of it, or $1.88 billion, over a 40-year period.

Almost all the experts interviewed for this story agreed that a Chapter 9 filing is not the ideal choice, but sometimes there are no alternatives. "I'm fond of saying it's a terrible option until it's the only option," Orrick Herrington's Knox said.

Development Specialists' Brandt said municipal financial turmoil that requires seeking bankruptcy court protection is "a failure of public policy."

Brandt also noted that the Chapter 9 process is more arduous than a Chapter 11. After a company files a Chapter 11 petition, it's in bankruptcy. A municipality, though, must be deemed eligible for bankruptcy by meeting several requirements, including express approval from its state and fulfilling the definition of insolvency under the Bankruptcy Code.

Coordes noted that even though Stockton and Detroit received rulings allowing changes to retirement benefits, the cities took some steps to protect the pensioners. She pointed to Stockton's decision to not reduce current beneficiary payments and Detroit's efforts to bring in private money to help ease pension cuts.

Detroit's debtor counsel, Heather Lennox of Jones Day, said when Motown's professionals began to look the city's finances, the parties did not approach it with a "preordained idea."

"Everyone was going to have to make some sacrifices as a part of this case if the city was going restructure," she said.

Perhaps the most widely discussed aspect of the Detroit case was the so-called "Grand Bargain," which entailed private foundations, the state of Michigan, and the Detroit Institute of Arts each chipping in various amounts of money that eventually amounted to around $816 million in an attempt to blunt the axing of pensions.

"Consequently, the pension reductions for retirees on account of the [unfunded actuarial accrued liability] are now significantly less than the City had originally concluded would be necessary," Rhodes wrote of the global settlement.

"In many ways this is unique," Lennox said, explaining that Detroit retained "good, solid hardworking people and key industries." She added that history aided them in putting together the joint effort to help shore up the retirement benefits, as the municipality was "kind of a shining city at one time."

Such deals are not likely not to become fixtures in Chapter 9 cases, however.

"There's not enough philanthropic money in the world to bail out all the municipal pensions in this country," she said.

Buckfire said that, while it is true that pension fund benefits only suffered "nominal reductions" under Detroit's plan of adjustment, those were also ultimately achieved through settlements with the unions.

Pursuant to those deals, cost-of-living adjustments to pensions were either cut out completely or reduced by more than half, depending on the pension plan, and retirees gave up health care coverage in exchange for coverage under Affordable Care Act. This resulted in net reductions of $6

billion out of $7 billion in debt cut under the plan, he said.

Little more than seven years ago, the idea of touching pensions in bankruptcy "was treated as a little short of crazy," said bankruptcy historian David Skeel, currently a visiting professor at Harvard Law School.

But the Detroit and Stockton cases were not the first time cities flirted with impairing pensions, Skeel wrpte in an October 2013 paper for The Federalist Society's White Paper Series. Most prominently, Central Falls, R.I., which filed a Chapter 9 petition on Aug. 1, 2011, cut its pensions by roughly half and the city's retirees and employees agreed to it.

"One thing we now know, with significant confidence, is that pensions can be restructured in bankruptcy," Skeel noted.

Indeed, as the nation's cities battle financial issues and increasing pension obligations, filing for Chapter 9 protection will loom as a true alternative. And if that's the case, retirees in those cities under distress yet to come had better hope that they can get as good a result as those in Detroit and Stockton, even with the strict rulings of the bankruptcy judges in those cases.

THE DEAL PIPELINE

by contributor Andrew Hedlund | Published March 11, 2015 at 1:17 PM

FINRA Arbitration Claim Filed on Behalf of Retired Couple for Losses in Puerto Rico Municipal Bonds.

FINRA Arbitration Claim Filed by the Securities Arbitration Law Firm of Klayman & Toskes, P.A. and Carlo Law Offices Against UBS on Behalf of Retired Couple for Losses in Puerto Rico Municipal Bonds and UBS Proprietary Closed-End Funds.

SAN JUAN, Puerto Rico, Mar 11, 2015 (GLOBE NEWSWIRE via COMTEX) —

The securities arbitration law firm of Klayman & Toskes, P.A., and the Carlo Law Offices, P.S.C., located in Puerto Rico, recently filed a securities arbitration claim with the Financial Industry Regulatory Authority (FINRA), on behalf of a retired couple against UBS Financial Services Incorporated of Puerto Rico and UBS Financial Services, Inc. UBS, +1.32% (collectively "UBS"). The securities arbitration claim alleges financial damages that were the result of FINRA sales practices violations, including unsuitable investment advice, that resulted in concentrated investments in Puerto Rico municipal bonds and UBS' proprietary closed-end bond funds due to the failure to supervise its financial advisor's investment recommendations.

The FINRA arbitration claim alleges UBS and its financial advisor failed to disclose the risks associated with the recommended investment strategy. Furthermore, the undisclosed risks included increased default risks of Puerto Rico municipal securities and increased risks from the use of leverage in UBS' proprietary closed-end bond funds that were the result of material misrepresentations and omission of facts that Claimants were entitled to have disclosed. According to securities attorney, Steven D. Toskes, "In light of the retired couple's lack of investment sophistication, they relied upon UBS to devise an investment strategy that was consistent with my clients' risk tolerance and need for retirement income. UBS failed to do so and, as a result, my clients suffered damages."

The securities arbitration law firm of Klayman & Toskes, P.A., and Carlo Law Offices, P.S.C., are committed to the protection of Puerto Rico investor rights. It is our belief and conviction in the FINRA dispute resolution process and the legitimacy of Puerto Rico investor rights that governs our current investigations. The sole purpose of this release is to investigate, on behalf of our clients, the sales practices of UBS in connection with investment recommendations provided to their customers. Current and former customers of UBS who have information concerning UBS' sales practices related to investments in UBS proprietary closed-end bond funds and Puerto Rico municipal bonds are encouraged to contact Steven D. Toskes of Klayman & Toskes, P.A. or Lcdo. Osvaldo Carlo of Carlo Law Offices, at (787) 919-7325, or visit our website at www.sueubspuertorico.com.

About Klayman & Toskes

Klayman & Toskes, a leading securities and litigation law firm, practices exclusively in the field of securities arbitration and litigation, on behalf of retail and institutional investors. The firm represents investors throughout the world in securities arbitration and litigation matters against major Wall Street brokerage firms.

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Muni Bonds WIll Survive Rate Hikes, Investment Managers Say.

Even though the price of money will increase sometime this year, municipal bonds should still have decent, if unspectacular, returns, investment managers said Tuesday.

“We feel that, despite rising interest rates, that we will still be able to have for municipal investors a low- to middle-single-digit return,” Greg Gizzi, senior portfolio manager for municipal fixed income at Delaware Investments said at a conference hosted by the firm in Manhattan.

Income, not appreciating price, is the key to obtaining good numbers in municipal bonds, he said.

The recent 10-year return on municipal bonds was 4.69 percent, according to the S&P Municipal Bond Index.

Gizzi's prediction is based on his belief that income from the portfolio will offset any price drop due to the Federal Reserve increasing interest rates.

The modest interest rate increase will be accompanied by a flattening of the yield curve, he added.

The Fed, another Delaware manager said, now has the justification to increase rates.

“They have the cover to do so. The employment picture is clearly pretty strong,” said Brian McDonnell, senior portfolio manager, senior structured products analyst, Delaware Investments.

“If you look at a lot of the measures of inflation, while they don't look like they are high enough or close enough to the Fed's target to raise rates, one of the things they like to look at is inflation expectations,” he added.

McDonnell said that the expected inflation rate is 2.7 percent over the next year and about the same

rate over five years.

McDonnell said the Fed increase comes at a time when most other central banks continue to ease money supply, which means the dollar will likely strengthen. So Delaware Investments is looking for bonds that can perform well in a deflationary environment.

But so far, Gizzi added, with the market already counting on the Fed rate hike, the environment has been good for muni bonds. That's because many cities, towns and states have been cleaning up their balance sheets.

Delaware Investments has steered clear of problem spots, he said. It has no Illinois munis, noting that the effort of the new governor to correct its spending problems was recently nullified in court, although the state is appealing. Delaware Investments also has only one bond position in Puerto Rico, a hospital with a strong balance sheet, he said.

Gizzi also said that because the rate hike has been talked about for so long, it will already have been discounted by the market by the time it happens, possibly in June.

What could happen to interrupt his scenario?

Unexpected events, he added, are the greatest potential problem. It depends, Gizzi said, on the way in which interest rates are increased by the Fed.

"Are we going to see a gradual rate rise where the curve shift is flatter," Gizzi asked, "where income is going to drive the day? Or are we going to see a severe spike in rates and the long end of the curve steepen out?"

Gizzi doesn't expect the latter.

What about tax reform changing the climate for municipal bonds or bonds in general, such as inversions or corporate tax reforms?

Substantial tax changes, Gizzi said, won't happen until the next administration takes office in January 2017.

FINANCIAL ADVISOR

MARCH 11, 2015 • GREG BRESIGER

SEC Turns Up the Heat on Issuer Officials.

Two recent SEC enforcement actions demonstrate that the Securities and Exchange Commission remains intently focused on the municipal market and, in particular, on officials participating in financings that fail to accurately and completely disclose material information. In an action arising from defaulted bonds sold by a Michigan city to develop a soundstage, the SEC successfully brought fraud charges against the former mayor of the City of Allen Park, Gary Burtka, and, for the first time, charged a municipal official with "control person" liability, thereby barring him from participating in any future municipal bond offerings. In another case involving a proposed bond issue, the SEC obtained a court order halting the City of Harvey, Illinois from issuing bonds for an economic development project and brought charges against the City's comptroller, Joseph Letke.

The SEC's enforcement actions over the past several years, read together, comprise a line of cases clarifying the SEC's views of the scope of securities fraud in the municipal markets and, increasingly, the personal liability of officers of the issuers or borrowers. Although the facts in each of these cases are relatively clear and often damning, the lessons that the SEC's enforcement actions teach are important for officers of health care institutions that are borrowers in the municipal market to take to heart.

The SEC is clearly sending a message to the municipal market that inadequate, incomplete or misleading disclosure relating to municipal bonds is not only unacceptable, it is a violation of the federal securities fraud statutes and will not be tolerated. Thus, officers of borrowers of tax exempt bonds must ensure that the disclosure contained in the Official Statement regarding the borrower, as well as in the on-going annual and event disclosure, is accurate and complete. Failure to meet this obligation can lead to significant penalties, including fines and a bar from involvement with the issuance of municipal bonds, potentially threatening the ability of such officers to continue to serve in their existing positions.

What can officers of health care borrowers do to protect themselves from such liability?

1. Understand the scope of the borrower's disclosure responsibilities.
2. Assemble a strong team of internal staff and external experts to assist in preparing disclosure, both for the primary offering and for continuing disclosure.
3. Ensure that you obtain input from those persons in your organization that are knowledgeable about the various areas that are addressed in the disclosure document – it is unlikely that any single person will have all of the necessary information to prepare accurate and complete disclosure.
4. Do not completely rely on others. Read the draft disclosure and test the statements, ask questions of those preparing the materials and be certain that any inaccuracies that come to light are corrected. Do not assume that someone else will catch an inaccurate statement; ultimately, the document is the issuer or borrower's responsibility.

The National Law Review

Tuesday, March 10, 2015

Foley & Lardner LLP

David Y. Bannard

Partner

David Y. Bannard is a partner and business lawyer with Foley & Lardner LLP. He focuses his practice on representing airports in a wide variety of matters, including regulatory compliance, leasing, rate-setting and concessions agreements, and public finance matters. Mr. Bannard is an experienced bond lawyer, having served as bond counsel to airports and other issuers, and counsel to borrowers and underwriters, as well as in-house issuer's counsel, in many transactions. He is a member of the firm's Finance & Financial Institutions, Public Finance,...

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SEC Commish Praises Muni Bond Fraud Enforcement Push.

Law360, New York (March 10, 2015, 3:31 PM ET) — A top Republican on the U.S. Securities and Exchange Commission on Tuesday backed the agency's increased use of enforcement powers to clamp down on municipal bond fraud, and delivered a tough message to municipalities when he called a failure to adequately disclose pension shortfalls "an unpardonable sin."

In a speech before a Financial Industry Regulatory Authority conference in New York, SEC Commissioner Daniel Gallagher heaped praise on the efforts of the agency's specialized enforcement unit for municipal bonds and public pensions. He noted in particular the unit's emergency action last year to stop a bond offering by a Chicago suburb after finding evidence that some of its proceeds were going to be illegally diverted to the city's comptroller and bond adviser, Joseph Letke.

The city of Harvey in December reached a settlement with the SEC that imposed certain conditions on it for three years, while the agency also secured a default judgment against Letke himself.

"This case was an outstanding use of agency resources, and I fully support prohibiting municipalities that cannot or will not comply with the law from accessing the securities markets, as well as pursuing the culpable officials who perpetrate the fraud," Gallagher said.

His remarks come as the SEC continues to turn away from a historical reticence to bring enforcement actions against municipalities and government workers over alleged bond frauds and misconduct, even though its powers over the market are limited. For example, the so-called Tower Amendment prevents the SEC from requiring issuers to file offering documents ahead of an issuance, and the agency has no authority to directly regulate the content and form of municipal disclosures, Gallagher said.

However, the SEC's enforcement efforts appear to be improving transparency within the municipal bond market, he said.

For one, its Municipalities Continuing Disclosure Cooperation initiative, an effort the agency launched last year to get issuers and underwriters to come forward about possible disclosure violations in exchange for leniency, is perhaps the reason for a 40 percent bump in the number of financial and operating disclosures made publicly available last year compared to the previous year before, Gallagher noted.

The commissioner did not signal any new enforcement initiatives targeting failures to disclose unfunded pension liabilities, but it is an area in which the SEC has previously taken action in settlements with New Jersey, Illinois and, most recently, Kansas.

In addition to poor disclosure of pension shortfalls being an "unpardonable sin," Gallagher also said these liabilities amount to "a true systemic risk," particularly given recent changes to accounting for pension liabilities that has forced plan administrators to disclose a more realistic assessment of their shortfalls than they had before.

"But don't hold your breath waiting for FSOC to address it," Gallagher quipped, referring to the Financial Stability Oversight Council. "They are probably too busy with Level III assessments of lemonade stands anyway."

Separately, Gallagher urged the bond industry to lead its own migration toward electronic or exchange-based trading of corporate bonds, saying it otherwise may face the prospect of Congress

imposing its own solution on the industry if rising interest rates spark a liquidity crisis.

In his speech, the commissioner repeated warnings about storm clouds brewing over the corporate debt market, as dealer bond inventories shrink to record low levels and rising rates could force investors to flee riskier assets. Put together, these could put a freeze on the market's liquidity, Gallagher said, a particular problem considering the degree to which mutual fund complexes and insurance companies have bulked up their reserves of these assets.

To address this, Gallagher repeated calls he made in the fall for the SEC to help spur electronic or exchange trading of corporate debt, which he said could help keep the marketplace flowing for these securities. But, he added, the process should not wait for issuers to start standardizing typically "bespoke" offerings that would be easier to trade.

Instead, it is the market's infrastructure that could adapt to the challenges of trading corporate paper, he continued, noting that options exchanges regularly transact unique contracts.

If the industry doesn't move, then Congress could step in with a "draconian" solution such as forcing all corporate bonds to be traded on an exchange, Gallagher added. "This is exactly what happened in another over-the-counter market, the swaps markets, in the Rube Goldberg invention known as Title VII of Dodd-Frank."

By Ed Beeson

–Editing by John Quinn.

SEC Official Eyes Accounting Mandate for Municipal Issuers.

(Reuters) – Issuers of municipal bonds should be required to adhere to certain accounting standards to enhance transparency in the $3.7 trillion U.S. muni market, U.S. Securities and Exchange Commissioner Dan Gallagher said on Tuesday.

In a speech at a Financial Industry Regulatory Authority conference in New York, the Republican commissioner said that just over two-thirds of the nation's 30,000 biggest state and local government bond issuers incorporate practices recommended by the Governmental Accounting Standards Board (GASB). He added that the 20,000 remaining smaller issuers probably have a lower rate of compliance.

"We need a legislative fix to mandate the use of GASB standards for municipal issuers, whether it is a grant of authority to the commission to recognize GASB standards as they do the (Financial Accounting Standards Board's), or as a condition placed on the bonds' (tax) exempt status," Gallagher said.

Past attempts in the U.S. Congress to beef up transparency through accounting practices, particularly with regard to growing public pension costs, have fizzled under opposition from labor unions and others.

While new GASB standards for pension liabilities "are a step in the right direction," Gallagher said, they are not the complete answer.

"By permitting partial use of the rate of return on assets for funded liabilities, the new GASB

standards allow for some political gamesmanship, such as legislation asserting that lawmakers in the future will make back-loaded, catch-up contributions to fully fund the liability," Gallagher said.

Disclosure of annual required contributions (ARC) by the governments, which was eliminated by GASB, should be resurrected, he added.

"Bringing back the ARC can help hold accountable governments whose contributions are insufficient to make good on their pension promises," he said.

March 10, 2015 4:44pm EDT

(Reporting By Karen Pierog; Editing by Steve Orlofsky)

- GASB Issues Final Statement on Fair Value Measurement and Application.
- Recommended Best Practices in Disclosure for Direct Purchase Bonds, Bank Loans, and Other Bank-Borrower Agreements.
- SEC Gives Dealers 2 Week Window on MCDC Settlements.
- Lawyers Question Rating Disclosure Requirements.
- MSRB: Financial Disclosures Way Up, Bank Loans Not so Much.
- MSRB Seen Requiring ATS Pre-Trade Price Disclosures.
- SLGS Window to Close.
- Webinar on MSRB Rule G-45 on 529 Plan Data Collection.
- MSRB Supervision Webinar.
- And finally, Great Moments in Pedagogy is brought to you this week by *Nassar v. Jackson*, in which all you need to know about the interpersonal dynamics of the school board can be summarized by this quote from the opinion, "The hostility devolved into a profanity-laced exchange." School board of Hughes, Arkansas. Keepin' it classy.

UTILITIES - TENNESSEE

City of Memphis v. Shelby County

Court of Appeals of Tennessee, at Jackson - February 20, 2015 - Slip Copy - 2015 WL 739849

The ultimate issue in this lawsuit was how much of the electric and gas tax equivalent payments made by the Memphis Light, Gas and Water Division (MLGW) to the City of Memphis must be shared with Shelby County. The City claimed that it overpaid Shelby County in electric tax equivalents in recent years, while Shelby County claimed that it was underpaid in gas tax equivalents. The trial court found that the City paid the correct amount of electric tax equivalent payments for the years in question and rejected the City's claim for damages for alleged overpayment.

The trial court found that Shelby County was not entitled to a share of the gas tax equivalent payments for the years in dispute and rejected its claim for alleged underpayment. Accordingly, the trial court denied both parties' claims for monetary damages. The trial court resolved the parties' requests for declaratory and injunctive relief by declaring the manner and method of payment of the tax equivalents in the future. Both parties raise issues on appeal.

The Court of Appeals held that:

- The City was not entitled to subtract the dividend based payment required by subsection 693(6) of the City Charter from the total tax equivalent payment made by MLGW prior to calculating Shelby County's share;
- Subsection 693(4) of the City Charter calculated tax equivalents on a basis inconsistent with what is dictated under the Electric Law and was therefore repealed by the Electric Law to the extent that the Charter provision applies to the calculation of electric tax equivalent payments;
- The 0.225 multiplier shall be applied to the total tax equivalent payment calculated under Tennessee Code Annotated § 7–52–304 when determining the electric PILOTs due to Shelby County under Tennessee Code Annotated § 7–52–307; and
- Payments due to Shelby County under both the electric and gas tax equivalency laws shall be paid directly to Shelby County by MLGW in accordance with the state statutes."

MUNICIPALITIES - ALABAMA

Bynum v. City of Oneonta

Supreme Court of Alabama - February 27, 2015 - So.3d - 2015 WL 836700

City residents brought action against city, seeking declaratory and injunctive relief, challenging city's right to hold referendum election on whether to allow sale of alcohol in city. The Circuit Court entered order granting declaratory relief in favor of city and denying residents' request for injunctive relief. Residents appealed.

The Supreme Court of Alabama held that:

- Statute allowing municipalities of over 1,000 to hold referendum elections on sale of alcohol, but not allowing municipalities in three specific counties to hold such elections, violated equal protection, and
- Unconstitutional portion of statute was not severable.

Statute allowing municipalities with populations of 1,000 or more to hold referendum elections on whether to allow sale of alcohol, but not allowing municipalities in three specific counties to hold such elections, violated equal protection, since there was no rational basis to distinguish between the three excluded counties and the other 64 counties in the state.

Unconstitutional portion of statute governing whether municipalities with populations of 1,000 or more could hold referendum elections on whether to allow sale of alcohol, violating equal protection by excluding municipalities in three specific counties from holding such elections, could not be severed from portion of the statute allowing such elections for municipalities in remaining 64 counties. Statute did not contain a severability clause, legislature excluded the three counties for no rational reason, and severing language excluding the three counties would be to undermine the clear intent of the legislature.

TAX INCREMENT FINANCING - ALABAMA

Pate Flagship, LLC v. Cypress Equities Southeast, LLC

United States District Court, N.D. Alabama, Western Division - February 26, 2015 - F.Supp.3d - 2015 WL 816547

Pate Flagship, LLC entered into a Purchase Agreement with Cypress Equities Southeast, LLC for 35

acres of real property in Tuscaloosa, Alabama.

The Purchase Agreement included the following provision:

(e) Enhancement Interest. As additional part of the purchase price[,][Cypress Equities] agrees to pay [Pate Flagship] a sum equivalent to one-half of the Enhancement Interest created on the Property as and when received by [Cypress Equities]. For all purposes of this Agreement, "Enhancement Interest" shall be all TIFF money or any other funds received by [Cypress Equities] from any governmental entity or agency for, or TIFF money or any other funds spent by any governmental entity or agency (in lieu of the receipt by [Cypress Equities] of TIFF money or any such other funds from any governmental entity or agency), directly or indirectly on, the proposed development, or the construction of any infrastructure, landscaping or improvements of any kind whatsoever, during the proposed development of the Property.

Pate sued Cypress for anticipatory breach of contract after Cypress took the position that the interest savings from the authorization of GO Zone Bonds, as well as certain cash payments or services in kind from the City of Tuscaloosa, were not Enhancement Interests as defined by the Purchase Agreement.

The District Court held that:

- Any interest savings from GO Zone Bonds were not Enhancement Interests under the terms of the Purchase Agreement; and
- Pate's mere conclusory allegations that certain benefits received from the City were Enhancement Interests were not sufficient to state a claim of for breach of contract regarding the same.

EMPLOYMENT - ARKANSAS

Nassar v. Jackson

United States Court of Appeals, Eighth Circuit - March 3, 2015 - F.3d - 2015 WL 871766

Caucasian public school district employees brought action against public school district employer and school board members, alleging that they were discharged on account of their race, asserting violation of their due process rights, and asserting a state-law defamation claim. The District Court entered judgment, upon a jury verdict, in favor of employees, denied defendants' motion for judgment as a matter of law, and awarded attorney fees. Defendants appealed.

The Court of Appeals held that:

- Defendants waived argument on appeal that evidence was insufficient to support race discrimination claim;
- Damages award of $340,000 for due process violation was excessive;
- Defendants did not waive argument on appeal that damages award was excessive;
- Proper hourly attorney fees rate for employee's lead counsel was $375; and
- Fees award would not be reduced because some of the attorney's time entries were block-billed.

District Court did not improperly award school district employee's lead counsel $375 per hour, rather than his usual rate of $250 per hour, solely because counsel worked on contingency, after employee prevailed in his due process claim against school district; Court explained that it awarded enhanced rate because of lead counsel's experience and his superior legal and advocacy skills.

LIABILITY - CALIFORNIA

State ex rel. Dept. of California Highway Patrol v. Superior Court of Orange County

Supreme Court of California - February 26, 2015 - P.3d - 15 Cal. Daily Op. Serv. 1932 - 2015 Daily Journal D.A.R. 2241

Motorist brought personal injury action against California Highway Patrol (CHP) after a collision with a tow truck in CHP's Freeway Service Patrol (FSP) program. The Superior Court denied summary judgment for CHP. CHP petitioned for writ of mandate. The Court of Appeal granted petition.

The Supreme Court of California held that:

- FSP program did not give rise to a special employment relationship between CHP and tow truck driver, but
- FSP statutes do not prohibit CHP from acting as special employer of tow truck drivers.

California Highway Patrol's (CHP) Freeway Service Patrol (FSP) program did not give rise to a special employment relationship between CHP and tow truck driver sufficient to make driver an "employee" of CHP under the vicarious liability provisions of the Government Claims Act, since CHP was not an "employer" of the driver under the FSP statutes, even though the FSP service provider's contract with county transportation authority provided that CHP officers could direct tow truck drivers when an officer was present while roadside assistance was provided, even though FSP tow trucks were required to bear a CHP logo, where CHP did not select drivers or even service providers to participate in an FSP program, and tow truck driver was employed by the service provider.

LABOR - FLORIDA

Dade County Police Benev. Ass'n v. Miami-Dade County Bd. of County Com'rs

District Court of Appeal of Florida, First District - February 26, 2015 - So.3d - 2015 WL 798849

In June 2011, the Dade County Police Benevolent Association (Union) and the Mayor of Miami-Dade County began negotiations for successor collective bargaining agreements (CBAs) for the rank-an--file and supervisory police officers employed by the County. By November 2011, the parties reached agreement on all issues except one: whether the bargaining unit employees would be required to contribute an additional percentage of their base wages towards the cost of health insurance. The parties reached an impasse on this issue because the Mayor wanted an additional 5% contribution and the Union opposed any additional contribution. The parties agreed to submit the impasse directly to the County Commission for "final resolution," waiving their right to a special magistrate proceeding.

On January 5, 2012, the County Commission conducted a public hearing on the impasse and adopted Resolution No. R–02–12, which "ratifie[d] and settle[d] the collective bargaining impasse by determining that there shall be no additional contribution to the County's cost of health care." The Resolution directed the Mayor and the Union to reduce this now-resolved impasse issue to writing along with the other previously agreed-upon issues so the CBAs could be submitted to the Union for ratification. The Resolution also stated that it would "become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override

by [the County Commission].”

On January 11, 2012, the Mayor vetoed the Resolution pursuant to the authority provided to him by the Home Rule Amendment and Charter for Miami–Dade County (Charter). The Charter states that the Mayor “shall have veto authority over any legislative [or] quasi-judicial … decision of the Commission,” and it authorizes the County Commission to override the Mayor’s veto at its next regular meeting by a 2/3 vote. See Charter, § 2.02.E.

The Public Employees Relations Commission (PERC) concluded that the County did not commit an unfair labor practice when the Mayor vetoed the County Commission’s resolution of an impasse under section 447.403, Florida Statutes (2011). The Union appealed.

The District Court of Appeal ruled in favor of the Union, holding that section 447.403 did not permit a local executive branch official to veto the legislative body’s resolution of an impasse.

BOARD MEMBERSHIP - GEORGIA

Kanitra v. City of Greensboro

Supreme Court of Georgia - March 2, 2015 - S.E.2d - 2015 WL 854196

Holdover member of city planning and zoning board brought action against city, alleging city lacked to the authority to replace him with a successor without regard to cause. The trial court ruled that once member became a holdover member of the board, the city council could appoint a new member at any time without specific cause. Member appealed.

The Supreme Court of Georgia held that:

- City council was permitted to replace holdover member at any time by the appointment of a successor, and the protection of the removal-for-cause provision of city charter was not available to holdover member when the city did so, and
- Holdover member did not have a legitimate claim of entitlement to his position on the board once he became a holdover official, and thus, was not entitled to due process protections before the board appointed his successor.

OPEN MEETINGS - IDAHO

Arnold v. City of Stanley

Supreme Court of Idaho, Boise, February 2015 Term - February 26, 2015 - P.3d - 2015 WL 797971

Citizens filed a complaint seeking to have action taken by city at city council meeting declared null and void, arguing that the meeting violated Idaho’s open meeting law. The District Court granted summary judgment to the city. Citizens appealed.

The Supreme Court of Idaho held that:

- As a matter of first impression, citizens were not adversely affected by the alleged violation of the open meeting law and, therefore, did not have standing to bring the challenge, and
- City was entitled to attorney fees.

Citizens were not affected, as required by statute, by violation of open meeting law, and, therefore, they did not have standing to challenge action taken by city at a city council meeting that the citizens claimed adversely affected their property rights, where citizens had made no attempt to attend the meeting, and had their comments read into the record at the meeting, and the only alleged violation was an early start to the meeting and failure to amend the meeting notice to account for that change.

CONTRACTS - MASSACHUSETTS

Celco Const. Corp. v. Town Of Avon

Appeals Court of Massachusetts, Norfolk - March 2, 2015 - N.E.3d - 2014 WL 7928217

Successful bidder for work on a town water main extension project brought action against town after it refused bidder's request for an equitable adjustment to the contract price to recover its increased costs for rock removal after the amount of rock turned out to exceed the estimate by more than 1,500 cubic yards. The Superior Court Department entered summary judgment in favor of town. Bidder appealed.

The Appeals Court held that bidder was not entitled to an equitable adjustment.

Bid documents expressly disclaimed the accuracy of the stated amount of rock and stated that the amount of rock was indeterminate, and the nature of the rock itself, and the means and cost to remove it, did not differ in any way from what was anticipated in the contract documents.

ELECTIONS - NEW JERSEY

In re December 09, 2014 Special School Election

Superior Court of New Jersey, Appellate Division - March 4, 2015 - A.3d - 2015 WL 893080

County filed declaratory judgment action, requesting determination as to whether municipality or limited purpose regional school district was responsible to bear cost of special school election. The Superior Court concluded that district should bear cost and directed it to make payment to county. District appealed.

The appeals court held, as an issue of first impression, that district, rather than municipality, was required to bear cost of special school election.

Limited purpose regional school district, rather than municipality that initiated request to withdraw from district, was required to bear cost of special school election to determine municipality's proposed withdrawal. Although statute governing withdrawal from limited purpose regional school districts was silent as to who should bear cost, that statute, when read together with statutes governing costs of school elections and definitions of "school election" and "special election," obligated district to bear cost, and legislative history supported that conclusion.

EMPLOYMENT - VIRGINIA

Roop v. Whitt

Supreme Court of Virginia - February 26, 2015 - S.E.2d - 2015 WL 798792

Sheriff's deputy filed a complaint alleging that his termination was impermissible retaliation in violation of state law. The Circuit Court dismissed action, and deputy appealed.

The Supreme Court of Virginia held that sheriff's deputy, who is an employee of the sheriff, is not a "local employee" for purposes of statute providing that nothing shall be construed to prohibit or otherwise restrict the right of any local employee to express opinions on matters of public concern.

Constitutional officers, including sheriffs, are creations of the Constitution itself, and their offices exist, abeyant and unfilled, by virtue of constitutional origination from the moment their county or city is created by the legislature. Their offices and powers exist independent from the local government and they do not derive their existence or their power from it, and their compensation and duties are subject to legislative control, but only by state statute and not local ordinance.

Constitutional officers are elected by the voters for prescribed terms, and they are neither hired nor fired by the locality, and therefore, they are not "local employees" within meaning of statute providing that nothing shall be construed to prohibit or otherwise restrict the right of any local employee to express opinions to state or local elected officials on matters of public concern, nor shall a local employee be subject to acts of retaliation because the employee has expressed such opinions.

TAX - ILLINOIS

Grand Chapter, Order of Eastern Star of State v. Topinka

Supreme Court of Illinois - January 23, 2015 - N.E.3d - 2015 IL 117083

Fraternal organization that operated nursing home brought declaratory judgment action against Department of Public Health alleging that provision of Public Aid Code that taxed licensed beds of nursing home providers violated uniformity clause of state constitution. The Circuit Court granted summary judgment in favor of organization. Department appealed.

The Supreme Court of Illinois held that, as applied, section of Public Aid Code did not violate uniformity clause.

Nonproperty tax classification bore some reasonable relationship to object of legislation or public policy, and therefore, as applied to fraternal organization that was not-for-profit corporation and ran nursing home, section of Illinois Public Aid Code that taxed licensed beds of all Illinois nursing home providers did not violate the uniformity clause of the state constitution. Purpose of tax was to fund Long-Term Care Provider fund, which provided disbursements for seven distinct purposes, nursing home was licensed and operated under various permits issued by Department of Public Health, which received nearly $2 million annually from Long-Term Care Provider Fund, and nursing benefited from operating within regulated industry that was subject to uniform standards of quality and care, enforcement and oversight of which was paid for in part by Long-Term Care Provider Fund.

TAX - CALIFORNIA

Jacks v. City of Santa Barbara

Court of Appeal, Second District, Division 6, California - February 26, 2015 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 1950 - 2015 Daily Journal D.A.R. 2246

Utility consumers, who incurred 1% surcharge on their electricity bills collected by electric company and remitted to city, filed class action complaint against city, seeking order declaring that surcharge was invalid as a tax imposed without voter approval, enjoining city from further collection of surcharge, and requiring city to repay revenues already collected. The Superior Court granted city summary judgment. Consumers appealed.

The Court of Appeal held that surcharge was a tax subject to voter approval, rather than a franchise fee.

Franchise agreement between city and electric company treated surcharge differently from franchise fee, from the perspective of utility consumer there was no functional difference between surcharge and user utility tax, and surcharge was not being collected for grant of right of way, but rather for revenue purposes.

IRS Publication: Tax Exempt Status for your Organization.

The IRS has released a publication entitled, Tax Exempt Status for your Organization.

SEC Gives Dealers 2 Week Window on MCDC Settlements.

NEW ORLEANS – The Securities and Exchange Commission's enforcement division is contacting dealers who reported their own possible violations of securities laws under a voluntary enforcement program initiated last year, giving them two weeks to decide if they still want to take advantage of the lenient settlement terms.

LeeAnn Gaunt, chief of the enforcement division's municipal securities and public pensions unit, updated bond lawyers on the progress of the Municipalities Continuing Disclosure Cooperation initiative during a panel at the National Association of Bond Lawyers' Tax and Securities Law Institute here.

Much of the discussion in multiple panels focused on the MCDC, a program launched last year to allow both issuers and underwriters to voluntarily report, for any bonds issued during the last five years, any time they misled investors about their compliance with their continuing disclosure obligations. Underwriters had to report by Sept. 10 and issuers by Dec. 1 last year.

While declining to offer a time frame or the number of participants in the program, Gaunt said the market can expect to see a wave of settlements with dealers first because the SEC received their submissions before issuers and has had longer to investigate them. Gaunt asked attorneys in the room to raise their hands if they had clients who self-reported, and many indicated that they did.

"We are confirming for ourselves that all of the violations you all reported are violations in our view," Gaunt said. "We are contacting dealers. Some dealers have been contacted."

Gaunt said that while the SEC is willing to discuss terms with a dealer, it will only offer two weeks for the dealer to decide if it wants to settle under the MCDC program or take its chances with a traditional enforcement action. For now, Gaunt said, the two week decision period has only been applied to dealers and not to issuers.

Gaunt said that the orders coming out of the MCDC will be about real violations and will provide some guidance on the SEC's thinking about what sorts of continuing disclosure failures it considers material. Many bond lawyers were upset after a vague settlement with King's Canyon Joint Unified School District in California last year offered little meat for lawyers to parse through.

Gaunt and Mark Zehner, deputy chief of the unit, also discussed other major recent enforcement actions with bond lawyers at the conference. Dean Pope, a partner at Hunton & Williams in Richmond, Va., who spoke on a panel, said the SEC's case against officials in Allen Park, Mich. has many public officials spooked. In January, the SEC settled with the former mayor and city administrator of the Detroit suburb for fraudulent conduct related to a failed movie studio financing. The case set a precedent by charging the ex-mayor, Gary Burtka, with being liable as a "control person" with authority over the issuer and administrator, even though he had not executed any fraudulent bond documents himself.

"This is a big case," Pope said. "It's generating, and will continue to generate, a lot of concern."

Zehner said the SEC clumps charges into primary and secondary liability. Secondary liability includes not just a control person, but also things like aiding and abetting, failure to supervise, and others, he said.

"We are fairly comfortable with, and accustomed to, bringing secondary liability claims," Zehner said.

One lawyer asked if the SEC could have chosen to bring secondary liability charges against other Allen Park officials such as the city council and simply chose not to because of the facts and circumstances there. Zehner said that was correct.

Enforcement activities were a major topic in discussions in the continuing disclosure panel at the conference as well. The MCDC was designed to stop issuers from releasing offering documents that inaccurately claim that they that they have been in compliance with their self-imposed disclosure obligations when they have not.

This approach has led to some debate about what information issuers should include in their official statements. Robert Feyer, a partner in Orrick Herrington & Sutcliffe's San Francisco office, said he had a client simply say nothing in its most recent OS because it was confident it has been in compliance for the past five years and the SEC's Rule 15c2-12 does not require an OS to say anything if the issuer is in compliance.

Rebecca Olsen, chief counsel in the SEC's Office of Municipal Securities, said OMS has coordinated closely with enforcement on the MCDC and will use what it learns from the initiative to give the office direction going forward. The Municipal Securities Rulemaking Board revealed earlier this week that continuing disclosures on its EMMA website rose sharply last year, a spike MSRB executive director Lynnette Kelly attributed partly to the MCDC.

"In my mind the MCDC has already been a tremendous success," Olsen said.

The NABL conference continues on Friday.

THE BOND BUYER

BY KYLE GLAZIER

MAR 5, 2015 2:44pm ET

SLGS Window to Close.

The Treasury Department has announced that subscriptions for SLGS will not be accepted after noon Eastern Time next Friday, March 13. The SLGS window will remain closed until further notice. Subscriptions received by noon Eastern Time next Friday will be issued on the date requested. The Treasury Department notice is available here.

Lawyers Question Rating Disclosure Requirements.

NEW ORLEANS — Many bond lawyers feel that, with all municipal rating agencies already or preparing to beam rating changes to EMMA, the Securities and Exchange Commission should amend its rules so that issuers no longer have to worry about filing event notices of their upgrades and downgrades.

Many attendees at the National Association of Bond Lawyers' Tax and Securities Law institute conference here expressed that sentiment over two days in panel discussions and in separate interviews. The conversation is being driven by the Municipal Securities Rulemaking Board's announcement earlier this month that the ratings of Moody's Investors Service would soon begin appearing live on EMMA, joining those of Standard & Poor's, Fitch Ratings, and Kroll Bond Rating Agency.

The SEC's Rule 15c2-12 on disclosure prohibits dealers from underwriting bonds unless they reasonably determine that the issuer has entered into an agreement to disclose via EMMA its audited financial and operating information as well as "material events," including rating changes, when they occur.

During a panel discussion on continuing disclosure Thursday, MSRB executive director Lynnette Kelly said she hoped Moody's would begin providing ratings on EMMA and live updates to those ratings as soon as May. Panelist Bill Hirata, a former general counsel to Digital Assurance Certification who now runs his own firm in North Carolina, asked SEC muni office chief counsel Rebecca Olsen if the commission would drop rating changes from 15c2-12's material events list.

"Right now we're closely monitoring this development," Olsen said.

The conversation continued at a later panel on disclosure policy, where several lawyers were confident that the SEC would soon drop requiring issuers to manually upload notices that their ratings had been changed.

"They have to," one bond lawyer said.

Another attorney said that because of the new technology on EMMA, the SEC would be unlikely to think an issuer materially breached its continuing disclosure agreement by not uploading a notice of

the rating change. But a few were less sure and thought the SEC might still think that was a problem.

“They would,” another lawyer said. “The SEC would.”

Ben Watkins, the director of Florida’s division of bond finance and a lawyer himself, said in a separate interview that the current disclosure rule has never worked very well and that it might be time for the SEC to come around to adjusting it.

“Sometimes it’s better to acknowledge that there’s a defect in the system,” Watkins said.

The rule has been the subject of much talk following an SEC Paperwork Reduction Act request made late last year for comments on the burdens associated with complying with the rule. Many market participants submitted comments that went beyond that scope, including NABL, which questioned the efficacy of many parts 15c2-12 in the digital age. The MSRB has called for the commission to take a comprehensive look at the rule.

The NABL conference concluded Friday.

THE BOND BUYER

BY KYLE GLAZIER

MAR 6, 2015 12:38pm ET

Deloitte Power & Utilities Quarterly Accounting Update Webinar – Q1 2015.

Power & Utilities Quarterly Accounting Update webinar – Q1 2015

Wednesday, March 25, 2015
12:00 – 1:30 PM ET

Prepared by Deloitte & Touche LLP’s Energy & Resources Group, this Quarterly Accounting Update webinar will focus on the Power & Utilities sector technical accounting and regulatory issues presented by Deloitte specialists and thought leaders. Webinar participants will be able to gain an understanding of new accounting rules, and other utility accounting matters, and use this knowledge in preparing for quarterly accounting and reporting requirements.

Register now.

Reminder: Register for the Employee or Independent Contractor Webcast.

What: Employee or Independent Contractor?

When: March 12, 2015; 2 p.m. (Eastern)

How: Register for this event. You will use the same link to attend the event.

Learn about:

- Defining “Employee”
- The three control factors
- Key vendor characteristics
- The Voluntary Classification Settlement Program

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