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Bloomberg Brief: Municipal Market Weekly Video - 3/05/15.

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

Watch the video.

March 5, 2015

Barclays Said to Hire Citigroup's Foux as Head of Muni Strategy.

(Bloomberg) — Barclays Plc has hired Mikhail Foux from Citigroup Inc. to head municipal strategy, according to two people with knowledge of the move.

Foux worked at Citigroup for eight years, including as a member the muni strategy group with George Friedlander and Vikram Rai. He previously worked at Credit Suisse Group AG and Banco Santander SA, according to his LinkedIn profile.

He will fill the role formerly occupied by Tom Weyl, who left Barclays last year to head new business development at MBIA Inc.'s municipal-bond insurance unit, National Public Finance Guarantee Corp. Foux will start this month and be based in New York, according to one of the people, who requested anonymity because the hiring hasn't been announced.

Barclays was lead manager on about $19 billion in muni sales last year, sixth among underwriters in the $3.5 trillion market, according to data compiled by Bloomberg. That included a $3.5 billion general-obligation offer from Puerto Rico, the largest long-term muni issue of 2014.

Marc Hazelton, a spokesman at Barclays in New York, declined to comment.

by Brian Chappatta

March 5, 2015

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March Headwinds Grow as Sales Double From 2014 Pace: Muni Credit.

(Bloomberg) — After logging its first monthly loss since 2013, the $3.5 trillion municipal market faces headwinds again in March amid accelerating issuance and speculation investors will sell local debt to make tax payments.

With yields hovering above five-decade lows, refinancing boosted muni sales to a combined $62 billion in January and February, almost double the 2014 pace, data compiled by Bloomberg show. City and state bonds have lost money in March in eight of the past 10 years, partly as investors sold to help pay tax bills before the April 15 filing deadline.

“Heading into this time horizon, seasonal factors tend to provide the foundation for market weakness,” said Jeffrey Lipton, head of municipal research at Oppenheimer & Co. in New York. “The road to performance will certainly be paved with volatility.”

The municipal market has lost about 0.3 percent in March, according to Bank of America Merrill Lynch data. It declined about 1 percent in February, snapping a record 13-month rally as fixed-income assets dropped while offerings by localities surged.

March Slog

If history is any guide, more losses are ahead: Yields on benchmark 10-year munis have risen in March for six straight years, with the average increase about 0.16 percentage point, Bloomberg data show. Bond yields move inversely to prices.

Munis aren’t alone in their March struggles. Treasuries declined in March in seven of the past 10 years, and corporate debt in six.

At about 2.16 percent, the benchmark 10-year muni interest rate is the highest since December. Yet municipalities are still coming to market to reap savings through refinancing. The University of California, New York City and Dallas are set to lead about $6 billion in refinancing next week, out of about $10.4 billion of sales.

Since 2004, supply has been higher in March than in January and February every year except 2011, Bloomberg data show. The sales upswing often coincides with declining demand from investors because they’ve mostly already reinvested coupon payments received in December and January, according to Citigroup Inc. research.

Tax Shift

Tax-related selling has also contributed to the pattern of March weakness, although that may be shifting as income levies have risen, said James Dearborn, head of munis in Boston at Columbia Management Investment Advisers, which oversees $30 billion in local debt. The top federal rate climbed to 39.6 percent as of last year, the highest since 2000, increasing the appeal of tax-exempt income, he said.

“The increase in the personal income-tax rate has changed people’s sense about selling munis to pay for taxes,” Dearborn said. “As they’re looking at their tax bill, they’re often thinking, munis are the last thing I want to be selling.”

State and city debt is faring better this month than both Treasuries and corporate debt, both of which have lost about 0.5 percent since the end of February.

“We could certainly be positioning ourselves for negative performance in March, but the question is, with that negative performance, are we still going to outperform Treasuries?” said Lipton at Oppenheimer. “There’s a real possibility that we can.”

Bloomberg Muni Credit

by Meenal Vamburkar

March 5, 2015

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[Moody's: Most Large Local Governments Have Low Retiree Healthcare Outlays, Although Outliers are Present.]

New York, March 05, 2015 — Annual budget contributions and liabilities associated with retiree healthcare, also known as other post-employment benefits (OPEBs), vary widely and burden some local governments more significantly than others, Moody’s Investor Service says in a new report, “Retiree Healthcare Contributions Typically Low for Largest US Local Governments; Potential Wildcard for Outliers in Bankruptcy.”

Typical non-pension OPEBs consist of retiree healthcare and life insurance. They are usually not pre-funded, and instead are paid on a pay-as-you-go basis.

“The pay-as-you-go method of funding OPEB benefits is less expensive in the near term for most of the 50 largest local governments,” says lead author of the report and Moody’s Associate Analyst David Gutierrez. “As such, OPEBs are not currently an outsized budgetary burden for most of the issuers.”

Moody’s views OPEBs differently than pensions or debt. “OPEBs are not a dollar-certain future liability as with debt or defined-benefit pensions. As such, we analyze OPEBs primarily as a budgetary expense, although the long-term obligation of unfunded liabilities is also important to our analysis,” according to Gutierrez.

Usually these benefits are a small budgetary cost for issuers and are about a third the size of the median pension contribution or one-tenth the size of debt service cost across the top 50 issuers (ranked by debt outstanding). In the short term, median costs for OPEBs for local governments are not likely to significantly exceed the 1.5% of operating revenue last reported in fiscal 2013, Moody’s says, but OPEB outlays will rise in the future due to healthcare inflation and growing retiree populations, and as more governments move from pay-as-you-go funding to a prefunding approach.

But, Buffalo, NY (A1 stable), Honolulu City and County (Aa1 stable) both have budgetary contributions five times the median.

Detroit's bankruptcy settlement included major cuts to retiree healthcare costs while leaving the city's pension plan only slightly impaired. Pre-bankruptcy Detroit had the highest OPEB outlays at 12.8%, with Buffalo and Honolulu City and County coming in at 8.5% and 8.1%, respectively.

Detroit's OPEB contributions were computed prior to the judicial approval of its bankruptcy settlement. The city has since slashed its OPEB liability as much as 90%, after the emergency manager negotiated significant cuts by rolling unused assets into a fund and discontinuing the plan for current retirees.

The sweeping reforms seen in Detroit are unlikely to occur in other local governments. However, some governments are shifting more of these costs to employees or discontinuing plans to new hires altogether. Moody's found 20% of the top local government issuers have taken steps to reform retiree healthcare.

While OPEB liabilities have weaker legal protections, reforms may prove difficult. Strategies include negotiating prices for services, increasing contribution rates for active employees, raising service length eligibility, reducing dependent care, and directing retirees to healthcare exchanges.

The report is available here.

GASB Issues Final Statement on Fair Value Measurement and Application.

Norwalk, CT, March 2, 2015—The Governmental Accounting Standards Board (GASB) has issued final guidance on accounting and financial reporting issues related to fair value measurements, which primarily applies to investments made by state and local governments.

GASB Statement No. 72, Fair Value Measurement and Application, defines fair value and describes how fair value should be measured, what assets and liabilities should be measured at fair value, and what information about fair value should be disclosed in the notes to the financial statements.

Under the new Statement, fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Investments, which generally are measured at fair value, are defined as a security or other asset that governments hold primarily for the purpose of income or profit and the present service capacity of which are based solely on their ability to generate cash or to be sold to generate cash.

"The Board's new guidance responds to stakeholder requests for greater clarity regarding the fair value standards and for improved consistency and comparability in governments' fair value measurements and disclosures," said GASB Chairman David A. Vaudt. "The Board believes that requiring governments to provide additional information about how they measure the fair value of their assets and liabilities will increase financial statement users' understanding of the nature of the fair value information they receive and enhance users' ability to make decisions with that information."

Prior to the issuance of Statement 72, state and local governments have been required to disclose how they arrived at their measures of fair value if not based on quoted market prices. Under the new guidance, those disclosures have been expanded to categorize fair values according to their relative reliability and to describe positions held in many alternative investments.

A GASB In Focus on fair value is available here.

Recommended Best Practices in Disclosure for Direct Purchase Bonds, Bank Loans, and Other Bank-Borrower Agreements.

The National Federation of Municipal Analysts has released the draft "Recommended Best Practices in Disclosure for Direct Purchase Bonds, Bank Loans, and Other Bank-Borrower Agreements" (Bank Loan RBP). The Bank Loan RBP is the product of a subcommittee of the NFMA Industry Practices & Procedures Committee.

To view the press release for this paper, click here.

Comments on the paper will be accepted through May 3, 2015.

- MSRB Publishes New Fact Book of Municipal Market Data and Invites User Feedback.
- MSRB Creates Professional Qualification Standards for Municipal Advisors.
- Best-Ex Rule Presents Liquidity, Compliance Challenges.
- Conduit Issuers, Dealers Face Some MA Challenges.
- Orrick Advises Goldman on Unique Bridge Financing to Propel Transbay Transit Center Project Down the Track.
- S&P: Proposed Criteria Changes Will Bring Greater Transparency to U.S. Municipal Water and Sewer Systems.
- Mixed Reviews on Disclosing Tax Incentives.
- IRS Issues Proposed Regs on Determining AFRs for Tax-Exempt Bonds: Tax Analysts
- Orrick: New Clean Renewable Energy Bonds IRS Notice 2015-12 Application Submission and Requirements.
- *Louisiana Local Government Environmental Facilities and Community Development Authority v. All Taxpayers* – After District Court declines to validate PACE bonds on due process grounds, Court of Appeal holds that state taxpayers and property owners do not have a protected property interest in challenging the validity of a bond resolution, but that it could not validate the bonds due to the Development Authority's failure to publish or introduce into evidence the bond resolution, notwithstanding the fact that no objections to the validation had been filed.
- *Hartland Glen Development, LLC v. Township of Hartland* – Court of Appeal rejects Tax Tribunal's blanket assertion that special assessments encumbering property can never result in a decrease in the property's true cash value (TCV); remands for factual inquiry as to whether the outstanding special assessments in this instance can and did decrease the property's TCV.
- And finally, we learned this week, via *Binschus v. State, Dept. of Corrections*, that the term "endorsed hallucinations" doesn't mean what we initially assumed, thus foreclosing a promising source of revenue for this admittedly delusional publication.

PUBLIC UTILITIES - CALIFORNIA

Wilson v. Southern California Edison Company

Court of Appeal, Second District, Division 4, California - February 9, 2015 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 1425

Homeowner brought action against electrical utility for nuisance, negligence, and intentional infliction of emotional distress, alleging that utility failed to properly supervise, secure, operate, maintain, or control electrical substation next door to her home, which allowed uncontrolled stray electrical currents to enter the home. The Superior Court entered judgment on jury verdict for homeowner which awarded compensatory ($1 mil.) and punitive damages ($3 mil.), and utility appealed.

The Court of Appeal held that:

- Issue of whether statute governing judicial review of Public Utilities Commission (PUC) applied was an issue of subject matter jurisdiction that could not be waived;
- PUC did not have exclusive authority over homeowner's tort claims;
- Evidence was insufficient to show that stray voltage caused homeowner's physical injuries;
- Utility's conduct was not extreme and outrageous;
- Utility did not breach any duty of care to homeowner in connection with stray voltage;
- Jury's improper consideration of homeowner's physical injuries required remand of nuisance claim for retrial; and
- Conduct allegedly ratified by utility's managing agents was not despicable.

Issue of whether statute governing judicial review of PUC applied in homeowner's tort action against electrical utility regarding stray voltage from substation was an issue of subject matter jurisdiction that could not be waived by electrical utility's failure to raise the issue as an affirmative defense in its answer. The statute divested trial courts of jurisdiction to entertain lawsuits that would interfere with the PUC's regulation of utilities.

PUC did not have exclusive authority over homeowner's tort claims against electrical utility regarding stray voltage from neighboring substation, although PUC had issued regulations requiring grounding of substations. It was possible that utility could comply with grounding regulations and still mitigate the stray voltage resulting from grounding, it was unclear whether litigation would hinder or interfere with PUC's regulatory policy, and there was no indication that PUC had investigated or regulated the issue of stray voltage, or that stray voltage could not be mitigated without violating the grounding regulation.

Jury's improper consideration of homeowner's physical injuries, which were not proven to be caused by stray voltage from nearby electrical substation, required remand of nuisance claim against electrical utility for retrial. While absence of evidence of physical injuries would not preclude recovery, under homeowner's theory of the case, her physical injuries were an integral part of the harm she purportedly suffered.

LAND USE - CALIFORNIA

Saltonstall v. City of Sacramento

Court of Appeal, Third District, California - February 18, 2015 - Cal.Rptr.3d - 15 Cal. Daily Op. Serv. 1680

Objector filed challenge under California Environmental Quality Act (CEQA) to city's certification of environmental impact report (EIR) and approval of project to build new downtown entertainment and sports arena. The Superior Court denied objector's challenge and objector's motion to augment administrative record. Objector appealed.

The Court of Appeal held that:

- City did not violate CEQA by committing to project prior to completing its EIR;
- City was not required to study remodeling of existing arena as project alternative;
- City's EIR analysis of traffic congestion was not deficient;
- Alleged failure to address potential impacts to crowd safety did not render EIR analysis deficient; and
- Objector forfeited argument for review that administrative record should have been augmented.

City did not violate California Environmental Quality Act (CEQA) by committing to project to build new downtown entertainment and sports arena prior to completing its environmental impact report (EIR), even though city took steps toward planning arena prior to completing its EIR. Under CEQA, city was allowed to engage in land acquisition for its preferred site before finishing its EIR, statute intended to facilitate expedited CEQA review specifically for arena project expressly allowed city to exercise eminent domain power to acquire site of arena before finishing environmental review, and preliminary nonbinding term sheet between city and investment group formed to build arena constituted agreement to negotiate regarding project and did not foreclose environmental review.

CONTRACTS - CONNECTICUT

Bellsite Development, LLC v. Town of Monroe

Appellate Court of Connecticut - January 27, 2015 - A.3d - 155 Conn.App. 131

Developer brought action against town and its first selectman for breach of contract, promissory estoppel, and negligent misrepresentation. Following jury verdict in favor of developer on claims for breach of contract and negligent misrepresentation, the Superior Court denied defendants' motion to set aside the verdict. Defendants appealed.

The Appellate Court held that:

- Evidence was insufficient to support finding that first selectman had actual authority to bind town to contract with developer;
- Doctrine of apparent authority was inapplicable in context of municipal contract;
- Town council did not ratify contract by accepting benefits of contract; and
- First selectman did not know or have reason to know that her statement concerning town's intentions during discussions with developer was false at the time she made it.

E&O INSURANCE - CONNECTICUT

Town of Monroe v. Discover Property & Cas. Ins. Co.

Superior Court of Connecticut, Judicial District of Fairfield - February 6, 2015 - Not Reported in A.3d - 2015 WL 776970

The Town of Monroe sued its insurer for breach of contract after insurer declined to defend Town in a breach of contract suit due to the exclusion of contract claims in the Town's E&O policy. The Town retained its own counsel and incurred costs of defense. Following a trial, the jury returned a verdict of $700,000 against the Town (later overturned in the *Bellsite* decision contained herein).

The Town maintained that the insurer's refusal to provide coverage under the E&O policy was a breach of contract which had resulted in damages to it and sought a declaratory judgment that the insurer was obligated to defend it and breached its obligation. The Town argued that, although the policy excluded contract claims, the inclusion of a negligent representation claim in the underlying suit obligated the insurer to defend.

The court disagreed, finding that the negligent representation claim arose out of the same facts and circumstances as the express contract claim and thus, under the terms of the policy exclusion, the insurer was not obligated to defend or indemnify the Town.

“The plaintiff Bellsite’s claim alleged in count two arises out of the same facts and circumstances as does the express contract claim of count one. Specifically, Bellsite incorporated all of the paragraphs of count one into count two without alleging any specific representations or statements that were made by the plaintiff outside of the very acts that Bellsite claims constituted the creation of an agreement and which formed the basis for its claim of contractual breach. Because of the way Bellsite presented its complaint, the factual basis for the second count is tied inextricably to the factual basis for the first count. Bellsite relied on the same facts and made the same claims in both counts of its complaint. In the first count, it alleges that the town breached its contractual obligation to compensate it for services related to the development of the cell tower. In the second count, Bellsite alleges that it relied on the contractual representations of the town that it would reimburse Bellsite for expenses incurred for the development of the cell tower. Based on review of Bellsite’s complaint, the court concludes that Bellsite made a claim for breach of an express and or implied contract in count one. In order to overcome any defense by the town that it could not be held liable in the absence of approval by the town council under the town charter, Bellsite restated the same facts and asserted a claim for negligent misrepresentation.”

EDUCATION - IDAHO

Nampa Educ. Ass'n v. Nampa School Dist. No. 131

Supreme Court of Idaho, Boise, February 2015 Term - February 26, 2015 - P.3d - 2015 WL 797968

Teachers’ union association brought action against school district seeking a declaratory judgment that addenda to the standard teachers’ contract, which provided that teachers would voluntarily reduce their annual compensation by donating from one to four days of compensation to the district, were unlawful and unenforceable. The District Court entered summary judgment in favor of association. District appealed.

The Supreme Court of Idaho held that:

- Association had standing to bring action;
- Issue of whether addenda were unlawful and unenforceable was not moot; and
- Addenda that were not approved by the state superintendent of public instruction were illegal and unenforceable.

Teachers’ union association had standing to bring declaratory judgment action against school district alleging that addenda to the standard teachers’ contract, which provided that teachers would voluntarily reduce their annual compensation by donating from one to four days of compensation to the district, were unlawful and unenforceable. Association was chosen as the exclusive organization to represent all certificated educators in district, excluding administrators, association alleged addenda violated education code governing professional personnel, and association had interest in ensuring that contracts between teachers and local board complied with statutory requirements.

Issue of whether addenda to the standard teachers' contract, which provided that teachers would voluntarily reduce their annual compensation by donating from one to four furlough days of compensation to the district, were unlawful and unenforceable was not moot, in teachers' union association's declaratory judgment action against district, even though action was filed about two months before last furlough day in addenda. Furlough day had passed by the time trial court heard matter, and district admitted issue would come up again.

Addenda to standard teachers' contract, which were not approved by the state superintendent of public instruction and which provided that teachers would voluntarily reduce their annual compensation by donating from one to four days of compensation to the district, were illegal and unenforceable. Statute granting district the power to employ teachers on written contract in form approved by superintendent applied to all employment contracts, including amendments to initial contracts, and addenda became part of contracts of teachers who signed them.

MUNICIPAL ORDINANCE - IOWA

City of Sioux City v. Jacobsma

Supreme Court of Iowa - February 20, 2015 - N.W.2d - 2015 WL 711071

Owner of vehicle appealed magistrate's order finding him liable for municipal infraction citation for speeding as detected by automatic traffic enforcement equipment. The District Court affirmed. Owner appealed.

The Supreme Court of Iowa held that:

- Ordinance, consistent with concepts of due process, can rationally impose liability on a vehicle owner who concedes being the owner and that the vehicle was speeding;
- Stipulation provided a sufficient basis to impose liability on owner;
- Ordinance was not so arbitrary and unreasonable as to offend Inalienable Rights Clause of Iowa Constitution; and
- Ordinance was not preempted by State laws.

BOND VALIDATION - LOUISIANA

Louisiana Local Government Environmental Facilities and Community Development Authority v. All Taxpayers

Court of Appeal of Louisiana, First Circuit - February 12, 2015 - So.3d - 2015-0162 (La.App. 1 Cir. 2/12/15)

The Louisiana Local Government Environmental Facilities and Community Development Authority (the LCDA) brought a Motion for Judgment, pursuant to the state's Bond Validation Act to establish the validity, and legality of a proposed issuance of Property Assessed Clean Energy Special Assessment Revenue Bonds (PACE bonds) and related contracts, prior to the marketing of the PACE bonds.

Pursuant to the requirements of the Bond Validation Act, the LCDA named as defendants all taxpayers, property owners, citizens of the State of Louisiana, and nonresidents owning property or subject to taxation therein; and, in accordance with the requirements of La. R.S. 13:5124, sought an order directing the publication of the Motion for Judgment and of the time and place fixed for the hearing on the Motion, in The Advocate, a daily newspaper published in the City of Baton Rouge, Louisiana, being the official journal of the LCDA. Additionally, as required by La. R.S. 13:5124(B), a certified copy of the Motion for Judgment was sent by certified mail to the State Bond Commission and the Louisiana Attorney General. No objections to the Motion for Judgment were filed.

At the hearing, the court expressed concerns regarding a lack of due process resulting from the method of notice to all defendants, a class which included all property owners of the State of Louisiana, by publication in The Advocate. Accordingly, the district court denied the Motion for Judgment to validate the PACE bonds pursuant to the statutory framework of the Bond Validation Act on the basis that the Bond Validation Act did not provide for proper notice to all property owners in the State of Louisiana, as defendants to this action

The LCDA appealed, contending that the district court erred in: (1) denying the LCDA's Motion for Judgment seeking to validate municipal bonds and related agreements, documents and proceedings pursuant to the Bond Validation Act, when no challenge or opposition had been asserted; (2) denying the LCDA's Motion for Judgment based on its belief that the service by publication provision of the Bond Validation Act was unconstitutional when no challenge to the manner of notice or the constitutionality of the statute had been asserted; (3) ignoring controlling Louisiana Supreme Court precedent holding that the right to challenge the validity of municipal bonds is not a right to life, liberty or property protected by the Due Process Clause of the United States Constitution; and (4) ignoring controlling Louisiana Supreme Court precedent affirming the constitutionality of the service by publication provision of La. R.S. 13:5124.

The Court of Appeal held that:

- The named defendants, i.e., the taxpayers and property owners of the State of Louisiana and all other persons interested in the issuance of the PACE bonds, did not have a protected property interest in challenging the validity of a resolution authorizing the issuance of bonds by a political subdivision, thus, service of the Motion for Judgment, seeking validation of such bonds by publication in The Advocate did not raise any constitutional due process concerns;
- Because no answer was filed by any person following the publication of the LCDA's Motion for Judgment, the courts were required to "consider and pass upon" the merits of the action and decide whether, in light of the evidence submitted by the LCDA, it carried its burden of establishing its entitlement to the requested Motion for Judgment;
- As the LCDA had not introduced into evidence the bond resolution allegedly authorizing the issuance of the PACE bonds or any evidence to show its proper passage, the court could not render a judicial determination of the validity of all proceedings taken in connection with the authorization of the PACE bonds, and thus could not confirm the validity of the PACE bonds; and
- Amended the district court's judgment to dismiss the LCDA's Motion for Judgment without prejudice, thereby allowing the LCDA to seek further relief in the future, upon proper proof, pursuant to the Bond Validation Act, with regard to its proposed issuance of the PACE bonds.

ZONING - MASSACHUSETTS

[Andersen v. Town of Falmouth]()

Appeals Court of Massachusetts, Barnstable - February 26, 2015 - N.E.3d - 2015 WL 790013

Town residents sought an enforcement action by the town's building commissioner asserting that the town was in violation of a local zoning by-law by operating a wind turbine without a special permit. The building commissioner denied their request and residents appealed to the ZBA, which affirmed the building commissioner. The Superior Court affirmed the decision of the ZBA and the residents appealed.

At trial, the residents argued that the building commissioner and the ZBA incorrectly interpreted the Town zoning by-law to allow the issuance of a building permit for a wind turbine without a special permit. The judge, however, deferred to the opinion of the building commissioner, affirmed by the ZBA, that the by-law did not apply in the limited circumstance where the Town itself desired to construct and operate a windmill for municipal purposes in a district where all such purposes are permitted as of right.

The Appeals Court reversed, holding that the Town was not exempt from the by-law and was thus obligated to obtain a special permit.

IMMUNITY - NEW YORK

Westchester Community College v. Westchester Community College Federation of Teachers Local 2431

United States Court of Appeals, Second Circuit - February 25, 2015 - F.3d - 2015 WL 774615

Adjunct professor brought action against community college, college officials, and union alleging that college violated her constitutional rights by firing her for comments she made in class and that union breached its duty of fair representation. The District Court granted in part and denied in part college's motion to dismiss, and it filed interlocutory appeal.

The Court of Appeals held that community college in State University of New York (SUNY) system was not entitled to Eleventh Amendment immunity; abrogating *Davis v. Stratton*, 575 F.Supp.2d 410, *Staskowski v. Cnty. of Nassau*, 2006 WL 3370699, *Kohlhausen v. SUNY Rockland Cmty. Coll.*, 2011 WL 1404934.

Community college in State University of New York (SUNY) system was not entitled to Eleventh Amendment immunity in former adjunct professor's wrongful termination suit against it, even though college received one-third of its budget from state, governor appointed four of its ten board members, college's officers, curriculum, and budget are subject to board approval, and SUNY provided standards and regulations governing its organization and operation, where local sponsors were required to levy taxes if college's budget exceeded maximum costs allowed by state, there was no indication that state had control over its day-to-day operations, and college was statutorily distinct from SUNY.

EMINENT DOMAIN - NEW YORK

National R.R. Passenger Corp. v. McDonald

United States Court of Appeals, Second Circuit - February 24, 2015 - F.3d - 2015 WL 755839

National Railroad Passenger Corporation (Amtrak) commenced action against New York State Department of Transportation to challenge authority of New York State to condemn property that it owned. The United States District Court entered summary judgment in state's favor, and Amtrak appealed.

The Court of Appeals held that limitations period for suit accrued no later than when Amtrak had actual knowledge of public hearing related to planned taking.

Under New York law, limitations period for Amtrak's claim that state's taking of its property was preempted by federal law accrued no later than when Amtrak had actual knowledge of public hearing related to planned taking, rather than when title to property actually vested in state, even though state failed to give Amtrak formal notice strictly according to state statutory procedures and did not serve Amtrak at statutory address where it was to receive service of process, where state official had sent email informing Amtrak that state agency would hold public hearing on subject of condemning Amtrak's land, and agency published determinations and findings necessary for condemnation of land.

ZONING - OREGON

Oakleigh-McClure Neighbors v. City of Eugene

Court of Appeals of Oregon - February 19, 2015 - P.3d - 2015 WL 720336

Opponents of development sought judicial review of final order of Land Use Board of Appeals (LUBA) affirming city's decision to approve a multi-unit development after LUBA did not permit neighbor who had submitted written testimony for city hearing on application to intervene.

The Court of Appeals held that opponents' notice of intent to appeal city's approval was effectively filed as to neighbor when opponents served notice on neighbor, and thus neighbor's motion to intervene was timely.

Notice of intent to appeal city's approval of multi-unit development to Land Use Board of Appeals (LUBA), filed by opponents of the development, was effectively filed as to neighbor, who submitted written testimony opposing development to city for hearing and sought to intervene in appeal, when opponents served notice of intent to appeal on neighbor, not when party filed its original notice, and thus neighbor's motion to intervene was timely under statute requiring a motion to intervene to be filed within 21 days of filing of notice of intent to appeal, even though neighbor's motion was filed more than 21 days after opponents filed their original notice. Opponents failed to serve notice of intent to appeal on neighbor when they filed their original notice, and neighbor's motion to intervene was filed within 21 days of being served with notice.

LIABILITY - WASHINGTON

Binschus v. State, Dept. of Corrections

Court of Appeals of Washington, Division 1 - February 23, 2015 - P.3d - 2015 WL 754230

After former inmate, who had been released from county jail following incarceration for committing nonviolent crimes, killed six people and injured several others while experiencing a psychotic episode, estates of five people inmate killed and four people he injured brought lawsuit against counties in which defendant had been incarcerated for negligence. The Superior Court granted counties summary judgment. Estates and injured persons appealed.

The Court of Appeals held that:

- Fact issue existed as to whether county in which inmate was initially incarcerated knew or should have known of inmate's violent propensities;
- There was no evidence as to whether county to which inmate was transferred was aware of inmate's violent disposition;
- Fact issue existed as to whether injuries to victims were reasonably foreseeable;
- Alleged improper mental health evaluation and treatment of inmate did not create duty to protect victims; and
- Fact issue precluded summary judgment on claim that counties proximately caused victims' injuries.

TAX - MICHIGAN

Hartland Glen Development, LLC v. Township of Hartland

Court of Appeals of Michigan - February 19, 2015 - Not Reported in N.W.2d - 2015 WL 728640

Property Owner appealed the opinion and judgment issued by the Michigan Tax Tribunal (MTT) regarding property tax assessments levied by Hartland Township on Owner's golf course for tax years 2011 and 2012. The crux of the appeal concerned the MTT's ruling that sewer-related special assessments encumbering the property and payable in installments, some of which were past due with the remaining due in the future, did not result in a decrease in the property's true cash value (TCV). The MTT essentially found this proposition to be true in all tax cases involving property subject to outstanding special assessments.

This conclusion was based, in part, on the argument that a township special assessment is levied on particular real property to cover the costs of an improvement project that must benefit that real property, with the requirement that the amount of the assessment be reasonably proportionate to the benefit. Thus, one could conclude that the cost of the special assessment is automatically offset by the directly-proportionate increase to the property resulting from the improvements to the property underlying the special assessment

The Court of Appeal rejected this argument, reversed, and remanded.

The Court of Appeal noted that the Owner's appraiser opined that the outstanding special assessments decreased the golf course's TCV and the Township's appraiser indicated that, if a purchaser had to make future special-assessment payments, it would likely decrease the property's TCV. Therefore, there was no evidence supporting the MTT's ruling that the outstanding special assessments would not decrease the TCV. The MTT treated the issue as a purely legal question, but the testimony of the township's appraiser suggested that it is a factual question, at least in part, where he testified that a decrease in TCV would likely result if a purchaser had to assume an outstanding special assessment, but a new appraisal would have to be undertaken to make a definitive determination.

The Court of Appeals remanded for the purpose of conducting a factual inquiry as to whether the outstanding special assessments can and did decrease the property's TCV.

"To provide clarity on remand, we provide the following directives. First, because the focus of the dispute concerns the special assessments and because the related appeal challenges those assessments, remand proceedings here shall await final resolution of that appeal. Thereafter, and as framed by and depending on the result of the other appeal, proceedings are to be conducted to fully explore the question whether outstanding special assessments can and did decrease the property's

TCV. The proceedings should entail arguments, testimony, and evidence on the issues and questions raised and highlighted in this opinion, including clarification and elaboration with respect to the township's appraiser's testimony cited in this opinion and possibly the preparation of new appraisals."

IRS Issues Proposed Regs on Determining AFRs for Tax-Exempt Bonds: Tax Analysts

The IRS has issued proposed regulations that provide the method to be used to adjust the applicable federal rates under section 1288 for tax-exempt obligations and the method to be used to determine the long-term tax-exempt rate and the adjusted federal long-term rate under section 382. (REG-136018-13)

Read the proposed regs (subscription required).

Letter Urges House Leaders to Back Exemption.

Reps. Dutch Ruppersberger (D-MD) and Randy Hultgren (R-IL) are circulating a Dear Colleague letter urging House members to sign onto a letter addressed to House leadership supporting the tax-exempt status of municipal bonds. The letter addresses proposals to both cap and eliminate the deduction, saying those efforts "would severely curtail state and local governments' ability to invest in themselves… increase borrowing costs to public entities and shift costs to local residents through tax or rate increases."

Both the Dear Colleague letter and the letter to House leadership can be seen here. Despite the deadline on the Dear Colleague in the link, NABL members can contact their Representatives (or suggest their clients do so) and urge the Representatives to sign on to the letter.

MBFA Sends Letter to Senate Finance Committee Tax Reform Working Group.

The Municipal Bonds for America (MBFA) Coalition sent a letter to Senators Dean Heller (R-NV) and Michael Bennet (D-CO), the co-chairs of the Senate Finance Committee Community Development & Infrastructure tax reform working group. The working groups are in the process of gathering information to make recommendations on their group's topic regarding tax reform to the full Senate Finance Committee. The MBFA wrote in strong support of the current law tax exemption for municipal bonds, discussing the benefits of bonds for state and local governments, community investment, and taxpayers.

MBFA Letter to Senate Finance Committee Tax Reform Working Group

February 27, 2015

MSRB Creates Professional Qualification Standards for Municipal Advisors.

The Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission (SEC) to create baseline standards of professional qualification for municipal advisors. The new standards will be incorporated through amendments to the MSRB's existing Rules G-2 and G-3 on professional qualifications and take effect April 27, 2015.

"The MSRB's professional qualification program aims to ensure that regulated municipal market professionals meet certain threshold requirements in order to engage in business activities that have a direct impact on financial decisions made by investors, states and municipalities," said MSRB Executive Director Lynnette Kelly. "Municipal securities dealers have had to meet competency requirements for many years. The approval of these rule amendments takes us a step closer to putting municipal advisors under a similar regime."

The Dodd-Frank Wall Street Reform and Consumer Protection Act charged the MSRB with developing professional standards as part of a comprehensive regulatory framework for municipal advisors. Revised MSRB Rule G-3 establishes two classifications of municipal advisor professionals, representative and principal, with firms required to designate at least one principal to oversee the municipal advisory activities of the firm.

The MSRB last month approved the content outline for the Municipal Advisor Representative Qualification examination, which will be filed with the SEC and made publicly available as a study aid. The MSRB plans to administer a pilot exam later this year that will precede the final exam, which is expected to be available in 2016. To facilitate the transition to the new exam requirement, the MSRB's rule provides for a one-year grace period during which individuals will be able to take the municipal advisor representative exam while still engaging in municipal advisory activities.

Amended Rule G-3 also eliminates the requirement of apprenticeship. Previously, municipal securities representatives were required to apprentice for 90 days before conducting business with the public. Omitting the apprenticeship requirement for dealers — and not establishing it for municipal advisors – allows both types of firms to identify appropriate training and supervision for new employees.

The MSRB has scheduled a webinar to provide more information on the municipal advisor representative professional qualifications test and related requirements on April 2, 2015 at 3:00 p.m. ET. Register for the webinar.

Read the regulatory notice.

MSRB Webinar: New Professional Qualification Standards for Municipal Advisors.

The Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission (SEC) to create baseline standards of professional qualification for municipal advisors. The new standards will be incorporated through amendments to the MSRB's existing Rules G-2 and G-3 on professional qualifications and take effect April 27, 2015.

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Register for the webinar.

NABL Questions BABs Reissuance Memo.

NABL sent a memorandum today to the IRS Chief Counsel's office disagreeing with the conclusion in Advice Memorandum 2014-009. The advice memorandum concluded that BABs which were defeased were reissued. The AM relied on part of a sentence, taken out of context, in the preamble to the reissuance regulations to come to its conclusion even though BABs meet the requirements of the regulations.

The NABL memorandum is available here.

Best-Ex Rule Presents Liquidity, Compliance Challenges.

FORT LAUDERDALE – The Municipal Securities Rulemaking Board's best execution rule may create liquidity problems for certain areas of the municipal market and will pose compliance challenges for everyone, industry officials said at a conference here on Monday.

The officials spoke at the National Municipal Bond Summit on a panel on the best-ex rule, which was approved by the Securities and Exchange Commission in December and will take effect late this year.

The rule requires dealers to use "reasonable diligence" to determine the best market for a municipal security and then buy or sell the security in that market so that the resulting price to the customer "is as favorable as possible under prevailing market conditions." Dealers do not have any new responsibilities under the rule to investors with assets of at least $50 million as long as those investors affirm that they are sophisticated municipal market professionals or SMMPs.

Steve Winterstein, managing director of research and chief strategist for municipal fixed income at Wilmington Trust Investment Advisors who was on the panel, said money managers' lawyers may not let them affirm they are SMMPs because that may be seen as an abrogation of the policies and procedures they already have in place to clients, as those client's fiduciaries. And if money managers don't affirm they are SMMPs, then dealers may not want to trade with them because of the additional regulatory burdens.

"I don't think those issues have been fully vetted with in-house counsel," Winterstein said. If a money manager or other investor doesn't sign on with a dealer as an SMMP, it may never hear from that dealer again, he added.

"It could be that there is a part of the market that just won't be able to function," said Tom Vales, the chief executive officer of TMC Bonds, an alternative trading system, who moderated the panel.

Vales pointed out that ATS', which electronically match buyers and sellers to find counterparties for trades, must register as dealers, but do not have any "middlemen" or staff that can provide the due diligence needed to comply with the best-ex rule.

Vales added, however, that TMC Bond's clients are very sophisticated and that the TMC provides a lot of price information for dealers that would help them comply with the best-ex rule.

Sheila Amoroso, co-director of the municipal bond department for Franklin Templeton Fixed Income Group, said from the audience that she is worried the rule will impact liquidity by forcing traders to take more time and be more cautious before bidding on munis.

Angelique David, senior managing director, general counsel and corporate secretary for the dealer firm Ziegler said "that's a challenge." How do you get traders to do their jobs, while documenting everything so that they can show they got a good price? she asked.

Traders have to do due diligence and "document their decision tree" in determining pricing for a muni, she said. The problem, she added, is that people can disagree over what constitutes "reasonable diligence."

David said it is critical for dealers to develop and put in place new policies and procedures, as well as to test them, to make sure they will allow a trader to comply with the best-ex rule. "It's not enough to say you are complying with the fair dealing rule," she said.

"It's important to test them … before [the Financial Industry Regulatory Authority] does" in an examination, she said.

"FINRA will rarely tell you that a price was wrong," David said. "They will tell you that your procedures and your policies weren't designed to get your there. They will say your process didn't get to that fair price."

Vales asked the panelists how or whether the best-ex rule plays into new bond issuances and whether it would make a difference whether the bonds were sold competitively or on a negotiated basis.

Dan Kiley, senior vice president and head of municipal fixed income trading at Wells Fargo Advisors, said that he doesn't think a new issue warrants due diligence on pricing. "I think market forces take you to where the market is priced," he said.

But David cautioned against that view, saying the Securities and Exchange Commission recently visited her firm and wanted to look at primary market transactions.

A number of the panelists questioned how one determines the best price. Winterstein said that munis sometimes have characteristics that must be factored into the price. He used the analogy of a real estate transaction, saying two houses may look the same, but one has an extra bedroom or bathroom or a pool and therefore a higher price.

THE BOND BUYER

BY LYNN HUME

MAR 2, 2015 12:37pm ET

Municipal Market Shrinks $7.84 Billion in February; Returns Fall.

(Bloomberg) — The U.S. municipal bond market shrank in February by $7.84 billion, contracting for at least the 14th month in a row as redemptions and maturities overwhelmed sales of new securities.

States and localities issued $31.5 billion of new bonds last month, compared with $23.2 billion that came due and $16.2 billion of debt called early, according to data compiled by Bloomberg. Since the start of 2014, the amount of outstanding securities has decreased by $167.6 billion, reducing the $3.5 trillion market by 4.54 percent.

The shrinkage helps explain why munis outperformed Treasuries even as the U.S. debt market declined last month. The Bank of America Merrill Lynch US Municipal Securities Index lost 0.99 percent in February, the first drop since the end of 2013, while the Bank of America Merrill Lynch US Treasury & Agency Index fell 1.69 percent, the most since May 2013.

Municipal bond sales are set to be little changed in the next month while the amount of redemptions and maturing debt falls.

States and localities plan to issue $11.4 billion of bonds over the next 30 days, according to data compiled by Bloomberg. A week ago, the calendar showed $11.6 billion planned for the coming month. Supply figures exclude derivatives and variable-rate debt. Some municipalities set their deals less than a month before borrowing.

California Bonds

California plans to sell $1.9 billion of bonds, Maryland has scheduled $922 million, Los Angeles Department of Water and Power will offer $495 million and Cypress and Fairbanks Texas Independent School District will bring $297 million to market.

Municipalities have announced $13.1 billion of redemptions and an additional $10 billion of debt matures in the next 30 days, compared with the $26.3 billion total scheduled a week ago. Last year, the market shrank by 4 percent. This year, maturities are poised to drop 38 percent to $176 billion from the 2014 levels.

Issuers from New York have the most debt coming due in the next month, with $2.52 billion, followed by California at $1.17 billion and Wisconsin with $488 million. California has the biggest amount of securities maturing, with $803 million.

Investors added $274 million to mutual funds that target municipal securities in the week ended Feb. 18, compared with $693 million in the previous period, according to Investment Company Institute data compiled by Bloomberg.

Muni Yields

Exchange-trade funds that buy municipal debt increased in value by $206 million last month, or 1.29 percent, to $16.1 billion.

State and local debt maturing in 10 years now yields 106.2 percent of Treasuries, Bloomberg data show. Since 2000, the gap has averaged 93.8 percent.

Bonds of Michigan and California had the best performance over the past year compared with the average yield of AAA rated 10-year securities, the data show. Yields on Michigan’s securities narrowed 11 basis points to 2.38 percent while California’s declined 10 basis points to 2.30 percent.

Puerto Rico and New Jersey handed investors the worst results. The yield gap on Puerto Rico bonds widened 66 basis points to 9.61 percent and New Jersey's rose 13 basis points to 2.70 percent.

by Kenneth Kohn

March 2, 2015

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Moody's, After Absence, Joins Popular Muni-Bond Database.

A widely-used online database that provides credit ratings of municipal bonds has long lacked the participation of a big name: Moody's Investors Service.

That all changed Monday, when Moody's and the Municipal Securities Rulemaking Board said the world's second-largest ratings agency would join the database's ranks later this year. The database and website, called Electronic Municipal Market Access, or Emma, is heavily leaned upon by mom-and-pop investors who make up the bulk of the $3.6 trillion municipal bond market.

The free website contains ratings information, prices and even disclosure documents. It generally caters to investors doing their research at home — and not a trading-floor desk. On Emma's home page, site visitors are asked, "Are You Getting a Fair Price?" and are encouraged to watch a video on how to use the database.

Moody's had been noticeably absent from the Emma database, creating confusion at a time when ratings agencies are taking increasingly divergent views on municipal debt. Standard & Poor's Ratings Services and Fitch Ratings joined Emma in 2011. Upstart firm Kroll Bond Rating Agency provided its bond grades last year.

Most individual, or retail, investors lack the sophisticated network of financial data, market intelligence or subscription-based terminals—where the credit ratings are aggregated.

"We are pleased that Moody's will provide its ratings for display," said Lynnette Kelly, executive director of the Municipal Securities Rulemaking Board, which runs the Emma website.

One of the reasons why Moody's declined providing its ratings to the database was a different level of disclosures used by the ratings agency itself on its website versus those demanded by Emma, according to a person familiar with the matter. Because Emma is available to the general public, there were concerns providing Moody's ratings to the database could create liability-related issues, the person said.

"Moody's ratings have always been available without cost to all market participants via our website, which, as our primary distribution channel, provides convenient access to all of our credit ratings and research," a Moody's spokesman said.

It's unclear what may have changed Moody's mind about providing its ratings to Emma.

A report last year by Janney Capital Markets found that the potential for discrepancy between ratings from Moody's and S&P increased last year after S&P released new criteria for local governments, and warned of potential ratings shopping by issuers, financial advisors and investment bankers.

"The divergence of Moody's and S&P's ratings in the post-Great Recession era has been startling," wrote analysts Tom Kozlik and Alan Schankel.

Investors applauded Moody's decision to join Emma but were unclear how the rating agency's arrival would affect the market.

"It's certainly good they added Moody's but I don't know how much it helps investors," said Allan Roth, founder of Colorado Springs-based Wealth Logic. "If I own a bond and it gets downgraded, it's too late to sell."

THE WALL STREET JOURNAL

By TIMOTHY W. MARTIN and AARON KURILOFF

Mar 2, 2015

[Republicans Skeptical of Puerto Rico Chapter 9 Bill.]()

WASHINGTON — Legislation that would amend the U.S. Bankruptcy Code to allow government-owned corporations in Puerto Rico to reorganize through Chapter 9 may face an uphill battle in Congress after drawing a lukewarm reception from Republicans on a House panel Thursday, despite strong support from Democrats.

Witnesses testifying before the House Judiciary Committee's subcommittee on regulatory reform, commercial and antitrust law, which has jurisdiction over bankruptcy law, mostly expressed strong support for the bill.

The Puerto Rico Chapter 9 Uniformity Act of 2015 is sponsored by Democrat Pedro Pierluisi and has bipartisan support on the island, but some major funds invested in Puerto Rico bonds oppose it. If enacted, the bill would allow issuers such as the cash-strapped Puerto Rico Electric Power Authority to formally reorganize under court supervision, something it cannot do under current law. Pierluisi introduced the bill last year but it went nowhere.

Rep. Tom Marino, R-Pa., said the potential ramifications of the legislation needed to be carefully considered because the relatively small island is a huge municipal issuer and the fate of its bonds could affect a diverse array of investors from hedge funds to small retail investors.

"Much is at stake for both Puerto Rico and investors in its debt," Marino said. "We need to be mindful of its potential broad and wide-ranging impact," he said.

Rep. Darrell Issa, R-Calif., said lawmakers would have to be mindful of whether it is their role to "retroactively" apply this change to billions of dollars of bonds that were issued and purchased under a different set of legal circumstances. He also questioned whether it is the role of Congress to grant this option to Puerto Rico when a federal court had already disallowed a local law that tried to do the same thing.

On Feb. 9 a federal court in Puerto Rico struck down the Puerto Rico Debt Enforcement and Recovery Act, a law that was enacted last year to give the island's public corporations a process to restructure their debts.

"While I've not made a decision about the bill in its current form, I have serious questions," said Issa.

The full Judiciary Committee chairman, Bob Goodlatte, R-Va., did not attend but submitted a statement expressing some of Issa's same skepticism.

"Chapter 9 of the Bankruptcy Code could provide predictability, transparency, and stability to a Puerto Rican municipal bankruptcy," Goodlatte said in his statement. "It also could serve as a framework within which parties could come to the negotiating table and reach a consensual restructuring. That said, bondholders purchased Puerto Rican bonds at a time when chapter 9 was not an option. Proposals to retroactively impact investors' rights should be reviewed with care and caution."

Democrats, outnumbered on the panel and unable to advance the legislation without Republican support, expressed strong backing for the law. Ranking subcommittee Democrat Hank Johnson, D-Ga., said he supports the bill because it will provide "a vital roadmap" for distressed Puerto Rico issuers. John Conyers, D-Mich., the full committee's top Democrat, called the current exclusion of Puerto Rico from Chapter 9 access "inexplicable."

"This is so important," said Conyers, who represents Detroit.

John Pottow, an attorney and professor at the University of Michigan, told the subcommittee that the bill is a "long overdue" technical correction that is narrowly-tailored to grant Puerto Rico the authority already given the states to determine under whether and what conditions its political subdivisions can declare bankruptcy. Pottow said that the federal court's decision to strike down the local Recovery Act served as "an invitation" to seek this exact remedy.

Robert Donahue, a managing director at Municipal Market Analytics, told the panel that the bill poses no systemic risk and reduces the likelihood Puerto Rico will ask for outside help to meet basic needs for its citizens.

"This is the best option among a limited set of unattractive options," Donahue said.

Thomas Mayer, a lawyer who represents funds managed by Franklin Municipal Bond Group and OppenheimerFunds, Inc. said the bill should be killed in favor of a receivership. Chapter 9 hurts bondholders because it is slow and unpredictable he said, and PREPA should handle the situation itself.

"PREPA itself does not need Chapter 9," he said. "It can fix itself. It can raise revenues in the same manner as nearly every other municipally owned utility in the United States. PREPA has not raised its 'base rate' – the rate that pays for everything other than fuel and purchased power – in nearly 26 years."

The Puerto Rican government has warned that without reorganization authority, bondholders could take actions that would impact PREPA's functionality such as suing to raise electric rates or asking a court to appoint a receiver who would take control of its operations. Pierluisi told Mayer he does not understand how that path could be an improvement over Chapter 9. Other debtors could also sue PREPA, Pierluisi said, providing bondholders with no certainty. But Mayer responded that events in Detroit's Chapter 9 proceeding, where pensioners got paid more than bondholders, makes his clients concerned.

The hearing was sparsely attended by lawmakers, with only three of the subcommittee's 13 members appearing. MMA partner Matt Fabian said that a poorly-attended hearing could indicate a dim outlook for the legislation.

THE BOND BUYER

BY KYLE GLAZIER

FEB 26, 2015 1:17pm ET

Yellen: Fed Working on Identifying Munis as HQLA.

WASHINGTON – The Federal Reserve is working to identify municipal securities that could be treated as high-quality liquid assets under rules requiring banks to maintain liquidity coverage ratios, Fed chairwoman Janet Yellen told members of a House committee.

"We're working very expeditiously on that, and hope to be able to identify some of those bonds that would qualify for … different LCR treatment," Yellen told members of the House Financial Services Committee at a hearing on Wednesday. "We're in discussions with the other banking agencies."

Yellen was asked about the Fed's progress by Rep. Gwen Moore, D-Wis., who along with other House members, sent at least two letters last year, urging the Fed to reconsider excluding munis as HQLA under rules that require large financial institutions to maintain minimum liquidity coverage ratios so they can better handle financial stress.

The liquidity rules apply to U.S. banks and other financial institutions with at least $250 billion of total assets or consolidated on-balance sheet foreign exposures of at least $10 billion.

An LCR is defined as the ratio of HQLA to total net cash outflows. Assets would qualify as HQLA if they could be easily and quickly convertible to cash with or no loss of value during a period of liquidity stress.

Bank regulators failed to include munis as HQLA in the rules, contending are not liquid or easily marketable. They also said banks don't hold munis for liquidity.

But muni market participants, Moore, Sen. Chuck Schumer, D-N.Y., and other lawmakers have fought the exclusion, arguing that investment-grade munis have lower default rates than corporate bonds and are very marketable. They also have warned that the exclusion will raise borrowing costs for issuers, as well as decrease liquidity and increase volatility in the muni market.

THE BOND BUYER

BY LYNN HUME

FEB 26, 2015 12:40pm ET

[FASB Won't Require Nonprofit Disclosure of Taxes on Investment: Tax Analysts]

The Financial Accounting Standards Board decided February 25 to not include its proposed guidance on nonprofit financial reporting a requirement that nonprofit organizations disclose the taxes assessed on income from their investment activity.

Continue Reading (subscription required).

FEBRUARY 27, 2015

Thomas Jaworski

MSRB: Trades Down, Disclosures Up.

WASHINGTON — Par volume traded for municipal securities was $2.77 trillion in 2014, the lowest in over a decade, according to the Municipal Securities Rulemaking Board fact book released Wednesday.

The dramatic drop in trade volume is 11% below the 2013 level and nearly 60% lower than the peak of $6.69 trillion traded in 2007. The 8.91 million of total trades in 2014 is 16% lower than 2013 and is the lowest level since 2006, when 8.47 million trades were executed.

Matt Posner, a managing director at Municipal Market Analytics, said banks and broker-dealers have analyzed the regulatory environment post-Dodd-Frank Act as well as the growing market for bank loans to issuers and are choosing to move away from the secondary muni market.

“I think a lot of them are deciding to put less capital into the market,” he said.

Marcelo Vieira, director of research at the MSRB, said the low trade volume is probably the result of a confluence of factors.

“You have a relatively low primary market supply. You have a low-interest environment,” he said. “Obviously the numbers are very low, historically speaking.”

The report also shows continuing disclosures increased nearly 19% in 2014, possibly the result of the Securities and Exchange Commission’s Municipalities Continuing Disclosure Cooperation initiative. That program, launched last spring, gave issuers and dealers the chance to get lenient settlement terms for voluntarily reporting instances where they misled investors about their compliance with continuing disclosure agreements. MCDC has vastly increased the focus on continuing disclosure over the past several months.

The MSRB collects data via its EMMA system, the sole required disclosure repository for the muni market.

THE BOND BUYER

BY KYLE GLAZIER

FEB 25, 2015 4:47pm ET

Conduit Issuers, Dealers Face Some MA Challenges.

WASHINGTON – Conduit issuers and dealers face challenges under the eight month-old municipal advisor registration rule, though most market participants say the new regime is running fairly smoothly.

The Securities and Exchange Commission's MA rule took final effect July 1 last year, codifying the Dodd-Frank Act's requirement that firms giving muni bond-related advice to a state or local government owe those issuers a fiduciary duty to put their interests first.

Initial industry panic about the rule's potential to put the deep freeze on mutually beneficial relationships between investment bankers and muni issuers has subsided, but practical issues involving the fiduciary duty and the use of certain exemptions from the rule continue to be problematic for issuers and dealers.

Robert Donovan, executive director of the Rhode Island Health and Educational Building Corporation, said the MA rule has badly complicated the RIHEBC's mission to provide capital access to its eligible borrowers. Donovan said the corporation engages an MA on every one of its deals, and makes that MA available to its borrowers.

But while the SEC rule says that the MA has a fiduciary duty to the RIHEBC as a conduit municipal issuer, there is no such explicit duty to a conduit borrower. The Municipal Securities Rulemaking Board has floated a proposed Rule G-42 on the core standards for MAs that would spell out the fiduciary duty in more detail. That proposal states that the fiduciary duty would not apply to borrowers, but it is not yet at the SEC for approval and could still be months away from taking effect.

"It has created some type of a rift," Donovan said of his relationship with borrowers, to whom he now sends letters asking that they acknowledge that the MA working on the transaction does not owe them a fiduciary duty and is actually RIHEBC's MA and not theirs.

"I think a lot of the borrowers don't have a great understanding of the rule," Donovan said. "It has created some confusion. It has caused some additional work for us."

Donovan said he fully understands the rule's motivation and thinks it does provide good benefits for many issuers, especially those issuing primarily straightforward general obligation bonds.

"For conduit issuers it just complicates it," he said. "I just have to send out a lot more letters than I used to accomplish the same thing."

Dave Sanchez, a California-based lawyer who worked on the MA rule as a lawyer in the SEC's muni office from 2010-2013 and now runs his own practice, said the presence of an MA advising both a conduit issuer and borrower is a conflict of interest that likely should be fully disclosed because the issuer and borrowers sit on opposite sides of the negotiating table.

Dealers, who have been extremely vocal about the potential negative impacts of the rule on their relationships with issuers, said they are having trouble getting the documentation they need in order to rely on the registration rule's independent registered municipal advisor, or IRMA exemption.

An investment banker who wants to give bond-related advice to a state or local government generally wants to avoid having to register as an MA because doing so saddles them with the fiduciary duty and bars them from underwriting any resulting deal. The IRMA exemption allows a dealer to give that advice without registering as an MA if the issuer retains its own MA that has no relationship to the dealer firm and certifies that it will rely on that that IRMA's advice.

Many market participants have said that the IRMA provision, which is one of several exemptions and exclusions in the rule, is generally the exemption of choice for underwriters because it offers the most wide-ranging MA rule immunity and because most medium to large issuers have their own MAs already.

But Jessica Giroux, general counsel and managing director for federal regulatory policy at the Bond Dealers of America, said verifying that an IRMA is in place and properly registered involves wading through sometimes hundreds of filings on the SEC's EDGAR system to find the IRMA's MA registration forms and make sure they are in order.

"Our firms don't want to rely on the IRMA exemption unless they can verify that everything is in place and as it should be," Giroux said.

Leslie Norwood, a managing director, associate general counsel, and co-head of municipal securities at The Securities Industry and Financial Markets Association, said firms want to use the IRMA exemption but that it can be cumbersome to find the documentation that makes them comfortable doing so.

"You have to keep digging," she said.

Most issuers said the rule, which does not directly regulate them, has not impacted their operations.

"It has kind of been a non-event," said Jonas Biery, debt manager for Portland, Ore.

Rodney Miller, finance director for Catawba County, N.C., said some of the financial institutions he invests with have reached out wanting to make sure that bond funds are not being comingled with tax revenues in a way that could make their accounts subject to the MA rule, but that the rule has not been disruptive.

Katherine Kardell, an administrator in the budget and finance office of Hennepin County, Minn., said the rule is not a big deal for her or other issuers to whom she has spoken. Kardell said she uses an IRMA and shows them most pitches the county receives from banks.

Giroux said that the SEC's muni office has been responsive and helpful in answering one-off questions about the rule, and that her group's member dealers are less concerned about it now than they were in the past.

"Operationally, I think firms are getting more comfortable with issuers' understanding of the rule," she said.

National Association of Municipal Advisors president Terri Heaton said regulators have done a good job with outreach on the rule but that her group remains concerned that there may still be rule breakers out there.

"We believe more municipal issuers are more aware of the roles of municipal securities transaction participants," Heaton said. " NAMA members have noted increased interest by issuers to engage municipal advisors in transactions, however such is not the case in all parts of the country."

“We note concern there may be entities which continue to provide MA services that are not in compliance with rules which are now in effect,” she continued. “We note concern there may be entities that are providing MA services which are registered with the MSRB and SEC, but may lack the core competencies and qualifications which may be deemed necessary by the SEC to achieve a fiduciary duty standard.”

Several MSRB MA rules have yet to be finalized, including one requiring a basic competency test. The MSRB has said finishing the MA rules is a top priority.

THE BOND BUYER

BY KYLE GLAZIER

FEB 25, 2015 2:14pm ET

S&P: California's $2 Billion GO Bonds Assigned 'A+' Rating.

We have assigned our ‘A+’ long-term rating, and stable outlook, to California’s estimated $2 billion of general obligation (GO) bonds, consisting of $790 million tax-exempt various purpose GO bonds and $1.11 billion tax-exempt various purpose GO refunding bonds. At the same time, Standard & Poor’s affirmed its ‘A+’ long-term ratings and underlying ratings on California’s $76.4 billion of GO debt outstanding, as of Feb. 1, 2015, not including double barreled GO bonds rated higher based on additional pledged revenue. The outlook on all ratings is stable.

Report: Local Government Strategies to Address Rising Health Care Costs.

Summary: Rising costs over the last decade have prompted many local governments to make changes to their health plans and strategies. Cost sharing, wellness program, and disease management initiatives are widely reported. Other changes cited include increased reliance on high-deductible plans, dependent eligibility audits, and altering retiree benefits.

Authors: Elizabeth Kellar, Christine Becker, Christina Barberot, Ellen Bayer, Enid Beaumont, Bonnie Faulk, Joshua Franzel, Mark Ossolinski, and Danielle Miller Wagner.

Publication date: 12/14

Key findings:

- The top cost drivers of local government health care increases were increased claim costs (64 percent); prescription drugs (57 percent); an aging workforce (46 percent); insurance company price increases (45 percent) and federal health care policy (45 percent).
- Fifty-seven (57) percent of respondents increased cost sharing of premiums paid by employees and nearly half of respondents reported that their local governments changed the way health insurance is provided.
- Nineteen (19) percent of those reporting health plan changes shifted employees to a high-deductible plan with a health savings account and 14 percent established a health reimbursement arrangement.

- Disease management programs, on-site clinics, dependent eligibility audits, and regular review and rebidding of health care vendor contracts have achieved significant savings.
- Respondents reported that providing easy access to health services at work sites not only supports employee wellness, but also reduces employee absenteeism and health care costs.

Download the Report.

Center for State and Local Government Excellence

IRS Private Letter Ruling "Shinin' Down Like Water" - Squire Patton Boggs

In 1971, Creedence Clearwater Revival (CCR) released the song, "Have You Ever Seen the Rain". One line in the song says "When it's over, so they say, it'll rain a sunny day, I know, shinin' down like water". We have to concede that when it comes to song lyrics, poetic license occasionally must trump the rules of grammar. Whatever John Fogerty (lead singer and song writer) and CCR were trying to convey, it probably had nothing to do with tax-exempt bonds.

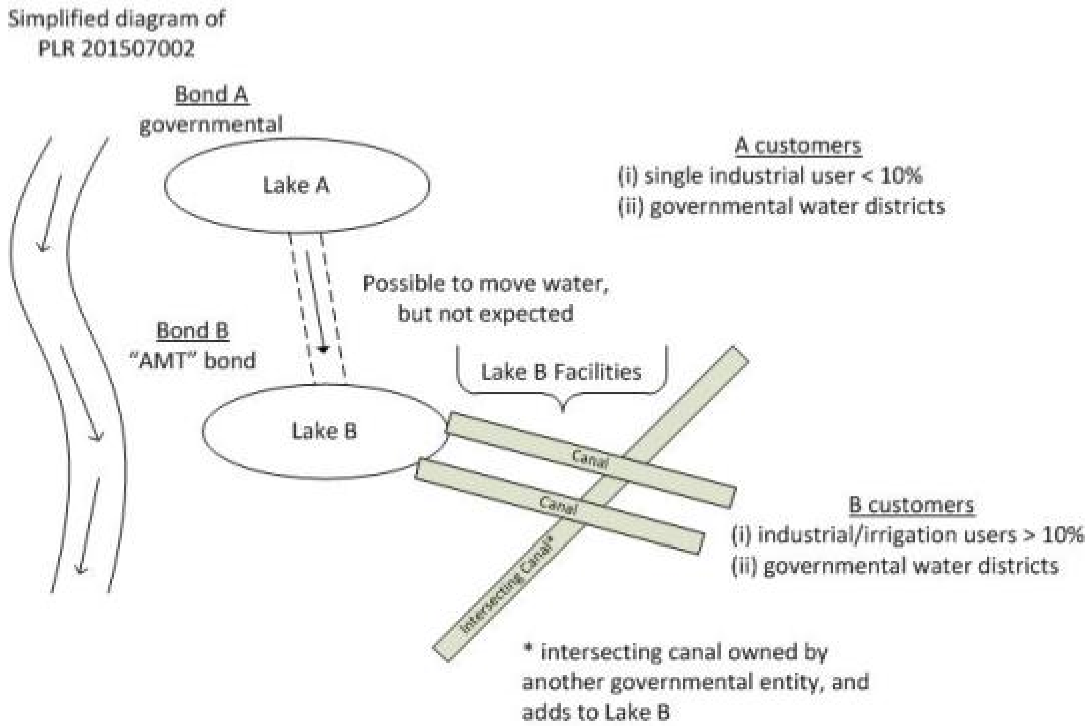
Nonetheless, on October 28, 2014, the IRS issued a private letter ruling, "shinin' down" about bonds for water projects. PLR 201507002, which was publicly released on February 13, 2015, was a favorable ruling for the issuer that requested it. Whether CCR had anything to do with the favorable treatment or it was a simple matter of the IRS correctly applying the law to the facts, we will never know. Perhaps it was a bit of both.

The ruling deals with two different types of water bonds. The first issue is a governmental bond (Bond A). A governmental bond is defined in Treas. Reg. §1.150-1(b) as an issue of tax-exempt bonds none of which are private activity bonds. The second issue is a type of permitted private activity bond, an exempt facility bond issued under Section 142(a)(4) of the Code to finance "facilities for the furnishing of water" (Bond B). Because it is a governmental bond, the interest on Bond A will not be subject to the alternative minimum tax imposed by Section 55 of the Code (AMT) for individual holders (a so-called "non-AMT" Bond) under the exception found in Section 57(a)(5) of the Code. Conversely, the interest on Bond B will be subject to the AMT (a so-called "AMT" bond). Because of the additional tax implications, AMT Bonds carry a higher interest rate than non-AMT bonds. Thus, as a proportion of the overall financing, the issuer would like Bond A to be as large as possible and Bond B to be as small as possible. One nice feature of the ruling is the recognition by the IRS that, while there is a physical connection between the fungible water supplies, they chose to treat each water supply separately.

FACTS

As is the case with all private letter rulings, the IRS begins with a recitation of the facts and representations made by the issuer.

The issuer of the bonds is a political subdivision of a state whose task is to develop, conserve and protect water resources in a river watershed. To accomplish that, the issuer operates facilities to collect, store and distribute raw water for industrial, municipal, and irrigation purposes, primarily relying on gravity. The storage facilities consist of two respective lakes (Lake A and Lake B) and related facilities. The water is distributed to different, respective sets of customers (A Customers and B Customers). The Lake B facilities include two canals that deliver the water to the B Customers. The river that is the source of the water for Lake B and the two canals intersects a third canal which is owned by another governmental entity and that governmental entity's water enters one of the Issuer's canals. The Lake B water is extracted downstream from Lake A and the issuer has the ability to move water from Lake A to Lake B, but the issuer does not expect this to occur in any significant amount based on recent history. The issuer represents that at least 95% of the proceeds of Bond B will be spent on Lake B facilities.



The issuer has entered into or will enter into "take or pay" contracts with both the A Customers and the B Customers. Because a water supply is dependent on the uncontrollable forces of nature, the supply may not always be fully available. A simple "take" contract is a contract where the purchaser agrees to pay for the output only if the facility is capable of producing that output. If the facility fails to meet the customer's needs, the customer does not have to pay. But a "take or pay" contract is defined in Treas. Reg. §1.141.-7(b)(4) as a contract under which the purchaser agrees to pay for the output from the financed facility regardless of whether the facility can actually deliver all of the expected output. This means the A Customers and the B Customers will pay for the output even if there is a drought and the output is less than expected. The A Customers and the B Customers cannot get out of the contract just because there is insufficient water to meet their needs. We note that the printed ruling has a glitch in its cite to Treas. Reg. §1.141-7(c)(4) (instead of (b)(4)) for the definition of a take or pay contract but the meaning is clear.

The A Customers consist of (i) a single industrial user and (ii) governmental water districts. The issuer has already entered into the take or pay contract with the industrial user and expects to enter into the take or pay contracts with the governmental water districts. The issuer expects that the industrial user will use less than 10% of the water supply and the remainder will be used by the governmental water districts.

The B Customers are (i) industrial and irrigation users and (ii) governmental water districts. The industrial and irrigation customers will take more than 10% of the supply funded with proceeds of Bond B. For this reason, Bond B cannot be a governmental, non-AMT bond and has to be issued as an exempt facility, AMT bond. The issuer represents that at least 25% of the Lake B supply will go to the municipal water districts.

LAW

Again, as is the case in every private letter ruling, the IRS then recites its view of the relevant law and applies it to the facts. It breaks that analysis into two parts, the rules for governmental bonds and the rules for exempt facility bonds.

Governmental Bonds. The IRS starts with the fundamental premise that a private activity bond cannot be a tax-exempt bond under Section 141(a)(1) of the Code. A private activity bond is a bond that meets both the private business use test and the private security or payment tests described in Section 141(b) of the Code. The IRS then turns to an analysis of the private business use test found in Section 141(b)(1) of the Code and the definition of private business use found in Section 141(b)(6) of the Code, which states that private business use is use in a trade or business by any person other than a governmental unit. Use as a member of the general public is not use in a trade or business.

The IRS then notes that the Treasury Regulations provide special rules for the application of the private business use test to the purchase of output from "output facilities". While most people are likely to think of electric generation facilities as output facilities, most people are not likely to have ever thought about whether water production facilities are output facilities. But Treas. Reg. 1.141-1(b) clearly defines an output facility to include water collection, storage, and distribution facilities. The IRS notes that Treas. Reg. §1.141-7(c)(1) provides that purchase of output by a nongovernmental person is taken into account under the private business use test if the contract providing for that purchase transfers the benefits and burdens of paying the debt service on the bonds to a non-governmental person. Treas. Reg. §1.141-7(c)(2) states that a take or pay contract does transfer the benefits and burdens to the purchaser of the output. Treas. Reg. §1.141-7(d) tells the reader that the amount of private business use will be based on the amount of output purchased. Treas. Reg. 1.141-7(h) instructs the reader to determine whether the output contract should be allocated to an issuer's entire system, a particular facility, or a portion of a financed facility based on all the facts and circumstances. This allocation can greatly affect the amount of private business use because the numerator, the amount of the purchase, remains unchanged but the denominator, the capacity against which that use is to be measured, can vary widely as between one unit of a facility versus the capacity of the issuer's entire system. On the other hand, the allocation to a more limited portion of a facility can restrict a contract that gives rise to private business use to a particular bond issue where its use is a more favorable percentage.

The IRS analyzes the facts in this matter and concludes that the A Customers will only receive Lake A supply funded by Bond A and the B Customers will only receive Lake B supply funded by Bond B and that there is no expected interaction between the two supply sources and so no expected interaction between the two bond issues. The IRS therefore concludes that Bond A is a good governmental bond because the one industrial customer of Lake A supply will take less than 10% of supply from Lake A.

Of course, if the facts change over the period of time Bond A is outstanding, the issuer may have to make adjustments. Three conceivable changes would be (i) an increase in the amount of Lake A supply going to the existing industrial user, (ii) the addition of more industrial or irrigation users, or (iii) a mixing of the Lake A and Lake B supply.

Exempt Facility Bonds. The IRS then turns its attention to an analysis of exempt facility bonds for the furnishing of water. A qualified exempt facility bond must (i) use at least 95% of the proceeds (ii) for the permitted purpose, in this case furnishing water.

Because the issuer represented that it will satisfy the 95% test, the IRS focuses on what constitutes furnishing water and determines that several factors are critical in making that determination. First, the IRS reaches the obvious conclusion that the issuer is supplying water and cites the conference report regarding the statute that enacted the furnishing of water category of exempt facility bonds, H.R. Conf. Rep. No. 95-1800, at page 237 (1978), (Vol. 1) C.B. 521, at 571, which states that a facility for the furnishing of water is a facility that must be a component of a system or project which furnishes water. That is not an earth shattering conclusion! The statute, the legislative history and the applicable regulations never require that the water be potable. Raw water is acceptable. Second, the IRS concludes that the facilities financed are for furnishing water. Treas. Reg. 1.103-8(h) defines water facilities to include "artesian wells, reservoirs, dams, related equipment and pipelines, and other facilities used to furnish water for domestic, industrial, irrigation and other purposes. Interestingly, the IRS never cites these regulations in the ruling. Third, Section 142(e) of the Code also requires that a facility for furnishing of water must be a facility that makes water available to the general public. The general public is defined for this purpose to include electric utilities, industrial, agricultural or commercial users. The Lake B supply will only go to governmental water districts, industrial and irrigation customers (agricultural users) and the issuer had represented that at least 25% was going to municipal water districts, so this test is clearly met. Fourth, Section 142(e) of the Code requires that the facility either be operated by a governmental unit or that the rates to be paid by customers are either established by state or political subdivision thereof, an agency or instrumentality of the United States, or a public service or public utility commission or similar body. In this case, the Lake B facilities will be operated by the issuer, a governmental unit, and so the IRS acknowledges that this requirement is also satisfied.

The IRS also recognizes that there is an interaction between the Lake B supply and another governmental authority where the canal operated by the other governmental authority intersects and adds supply to the Lake B supply. The IRS again reaches an obvious conclusion that the Lake B supply is operated by a governmental unit because the other source of water is operated by another governmental unit.

CONCLUSION

While the facts of this ruling make the legal analysis relatively straightforward, the IRS does a nice job of reciting the relevant law and reaching the foregone conclusion. We often are inclined to criticize the IRS when we disagree and perhaps more reluctant to congratulate them for a job well done. This is a job well done. So, to quote CCR, "Someone told me long ago, there's a calm before the storm". We should enjoy the calm this ruling provides as a storm will undoubtedly come along before we know it.

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TAX - IDAHO

North Idaho Bldg. Contractors Ass'n v. City of Hayden

Supreme Court of Idaho, Boise, January 2015 Term - February 26, 2015 - P.3d - 2015 WL 797524

Building contractors association filed action to have city's sewer connection fee declared unlawful because it was an impermissible tax rather than a fee for services. The District Court held fee was lawful and dismissed complaint. Association appealed.

The Supreme Court of Idaho held that:

- Fee was an impermissible tax, and
- Fee was not authorized under Idaho Revenue Bond Act.

Because there was nothing in the record showing that city's sewer capitalization fee was the actual cost of providing sewer service to a new customer connecting to the city sewer system, and also no showing that the amount of the fee was based upon any such calculation, the fee was not a lawful fee for services, but, was rather, an impermissible tax.

Because portion of connection fee charged by city for water and sewer service for new users was not based upon the sewer service rendered to the new user who connected to the city's sewer system, rather, it was based upon the estimated cost of new construction needed to extend the system to future users in other areas, including areas outside the city in its area of impact, in order to meet public needs, fee was not authorized under Idaho Revenue Bond Act.

Get the Facts on the Fiscal Condition of State and Local Governments.

How widespread are municipal bankruptcies? Are municipal defaults increasing? What about state and local pension funding?

State and local government revenues have been slowly improving, making it possible for many officials to take steps to address their fiscal challenges. ICMA and the national organizations representing the nation's governors, state legislatures, and state and local officials have released, "State and Local Fiscal Facts 2015"

This quick reference provides up-to-date facts, including:

- Forty-one states and the District of Columbia expect to meet or exceed their FY 2015 revenue projections.
- Since 2010, only 8 out of 37 bankruptcy filings have been by general purpose governments. And only 12 states authorize Chapter IX bankruptcy filings for their general-purpose local governments.
- From 1970 through 2014, there were 92 rated municipal bond defaults, of which only 6 were rated city or county governments. The majority of rated defaulted bonds were issued by not-for-profit hospitals or housing project financings.
- Between 2009 and 2014, every state made changes to pension benefit levels, contribution rate structures, or both. State and local retirement trusts hold $3.7 trillion in assets and had, on average, a funded level of 72 percent in 2013.

Gov. Chris Christie Panel Proposes Overhaul of New Jersey's Pension System.

Gov. Chris Christie's committee to study New Jersey's troubled pension system wants to overhaul the retirement program for public employees, freezing the current setup and replacing it with a "cash balance" plan.

The plan would spread out the current pension system's unfunded liability over many years, and would more closely reflect benefits in the private sector, according to members of the commission. Mr. Christie endorsed the report conclusions Tuesday in a speech to the Legislature.

The commission is also calling for a state constitutional amendment to require governors to make payments to the new plan.

"Although the proposed plans are likely to be less generous to long-tenured employees as compared with the current plans, a less generous plan that is funded is preferable to a more-generous plan that isn't," the report says.

Benefits in the new plan could swing based on fluctuations in the stock and bond markets, introducing an element of risk.

Workers in the system would have their current plan frozen, according to Tom Healey, the commission chairman, and new workers would be entered into the new plan. Employees would have individual accounts, he said.

"You can do lots of different things with a total mess," Mr. Healey said in an interview. "You can either say, let's try to fix it or you can move to Wisconsin. We're at the edge of the cliff here."

The proposal received pushback from some unions and Democrats. Mr. Healey said he had met with the state's main teachers union, and said its leaders were cooperative. Other meetings are scheduled in coming weeks.

Wendell Steinhauer, president of the New Jersey Education Association, said the union supports the proposal's recommendations to freeze benefits of the current pension system, create a newly managed one and adopt a guarantee of state funding in the state constitution.

But Mr. Steinhauer said that some of the pension proposal "unfairly burdens" workers and wouldn't be feasible.

"There will be many things that NJEA disagrees with, some of them very strongly," Mr. Steinhauer said in a statement. "This is a report. It is not a law, and it is not the final word on what will or must happen."

Other states such as Kentucky and Louisiana have recently introduced cash benefit plans, though Louisiana's plan was ruled unconstitutional.

Joshua Franzel, a vice president for research at the Center for State and Local Government Excellence, said cash benefit plans are a way for states to provide more predictability in their pension systems.

The plans tend to guarantee a certain rate of investment return, but unlike a defined benefit pension system the hybrid ones don't lock in a fixed allowance based just on the worker's salary. It shifts some of the risk of market fluctuations to the employee without fully doing so, Mr. Franzel said.

"It's a middle approach for managing risk and trying to control costs and control liabilities," said Mr. Franzel, whose center studies pensions. "We are seeing a trend to more states beginning to consider and implement hybrid plans."

New Jersey's pension system is underfunded by about $37 billion.

The commission's report said parts of its approach are likely to be unpopular at first but that "in time they will be viewed as the best way to move forward."

THE WALL STREET JOURNAL

By JOSH DAWSEY

Updated Feb. 24, 2015 8:37 p.m. ET

Orrick: New Clean Renewable Energy Bonds IRS Notice 2015-12 Application Submission and Requirements.

Orrick has published a Public Finance Alert entitled New Clean Renewable Energy Bonds IRS Notice 2015-12 Application Submission and Requirements.

Orrick Advises Goldman on Unique Bridge Financing to Propel Transbay Transit Center Project Down the Track.

A multi-practice Orrick team recently advised Goldman Sachs as lead arranger of an innovative, multi-lender $171 million term loan facility to provide bridge financing for Phase 1 of the Transbay Joint Powers Authority's ("TJPA") visionary Transbay Transit Center Project in San Francisco.

The ambitious $4.5 billion project will transform downtown San Francisco and the Bay Area's regional transportation system by creating what has been dubbed the "Grand Central Station of the West", replacing the former Transbay Terminal with a modern regional transit hub that will connect eight Bay Area counties and the State of California through 11 different transit providers. The project is at the center of a vibrant new neighborhood emerging in San Francisco's South of Market area, helping catalyze the development of thousands of new housing units and millions of square feet of new office space, as well as new parks, pedestrian areas and retail shops. Phase 1 of the project – scheduled to be completed in 2017 – entails construction of a new five-story Transit Center consisting of an above-ground bus level, a ground floor for general passenger circulation, a concourse level including retail space, and two floors of an underground "train box" – the core and shell of the rail facilities that, upon completion of those rail facilities during Phase 2 of the project, will serve as the terminal for the extension of Caltrain service to downtown San Francisco and, ultimately, California's future high-speed rail system.

The term loan arranged by Orrick's client Goldman provided an innovative solution to TJPA's interim financing needs for Phase 1. While TJPA had previously secured a $171 million commitment for long-term financing from the United States Department of Transportation under the Transportation

Infrastructure Finance and Innovation Act ("TIFIA") loan program, the TIFIA loan proceeds will only be available to TJPA after certain conditions are met, expected by TJPA to occur in late 2015 or early 2016. Goldman was able to help TJPA address this funding gap by structuring a financing that allows TJPA to optimize the timing of the sale to private developers of certain TJPA real estate assets in the greater project area while at the same time providing TJPA funds needed in the near term to move construction work ahead on schedule. In addition to a pledge of net tax increment revenue generated from escalating property values in and around the project area, the bridge financing is secured by certain real property interests. In addition to structuring and arranging the financing, Goldman Sachs funded just over half of the term loan, with Wells Fargo funding the remaining portion.

"This transaction is one of the first examples we've seen of a bank arranging a sizeable syndicated loan to a governmental borrower," said Justin Cooper, lead Public Finance partner on the transaction, noting that "we may see more of this structure in the future given the unique needs of certain governmental projects and issuers and the heightened interest in this type of transaction we have observed from banks and other market participants."

Zach Finley, the lead Banking & Finance partner on the deal, added, "This transaction played perfectly to Orrick's core strengths in the areas of public finance, syndicated lending and real estate. We are honored to have been involved in this landmark project for San Francisco and the greater Bay Area by advising Goldman Sachs on the legal aspects of such a tailored financing solution for TJPA."

The Orrick team, which combined lawyers from our Public Finance, Banking & Finance and Real Estate groups, was led by partners Justin Cooper and Zach Finley and included associates Julie Eum (Banking & Finance), Devin Brennan (Public Finance) and Dustin Calkins (Real Estate).

02-23-2015

About Orrick

Orrick is a leading global law firm focused on counseling companies in the Tech, Energy & Infrastructure and Finance sectors. Financial Times consistently recognizes Orrick among the 10 most innovative firms in North America. Law360 named Orrick among the "Practice Groups of the Year" in Technology, Intellectual Property and Restructuring for 2014. Recognizing Orrick's strong culture of client service excellence, mentoring, inclusion and community responsibility, The American Lawyer recently named the firm to its 10-Year A-List.

S&P's Public Finance Podcast (California's Financial Performance and Our Outlook on Louisiana).

On this week's Extra Credit, Managing Director Gabe Petek dispels the notion that temporary revenues are behind California's better operational financial performance, and Director Sussan Corson discusses our outlook on Louisiana.

Listen to the Podcast.

S&P: Runoff Election Could Delay Chicago's $600 Mil. Pension Funding.

CHICAGO (Standard & Poor's) Feb. 25, 2015–The surprise runoff election for mayor of Chicago could delay a crucial $600 million pension contribution plan for the police and fire departments in the city's upcoming 2016 budget. This temporary speed bump puts into question a plan the city has been working on for the past four years and will mean the next administration will need to determine how to fit this cost into its budget in less than a year, in the opinion of Standard & Poor's Ratings Services.

We will be monitoring how this short-term pension obligation will affect the city's A+/Negative general obligation rating as well as how the next administration will address long-term pension issues that have been weighing on the city's credit standing.

In the short term, whichever candidate is elected will need to devise a method to fund the additional annual contributions required for the city's police and fire plans in time for budget year 2016, and future budgets thereafter. The city will have less than a year to determine how to fit this cost into its budget, even if the amount is lowered to some extent through statutory amendments or identifying a revenue stream and implementing it. The uncertainty of how this issue will be addressed prevents the city's credit outlook from being stable at this point.

Under the current administration, the city has tried to address its longer term pension liabilities by restructuring two of its four existing pension plans for non-police and fire employees. These reforms are being challenged by some of the affected employee unions in court. Whether these challenges are successful or not, at this point the amount of increase that could occur from the municipal employees and laborers' plans has a place in the city's budgets, with an identified revenue stream. These costs will increase gradually over time and a credit factor will be whether the identified revenue stream can keep up with the costs.

In terms of magnitude, the city currently only contributes 26% of its annual required pension contribution (ARC) for its four plans. Not paying the full ARC leads to increases in the unfunded liability. The current payment represents 7% of its total governmental funds expenditures. If the city were paying down these liabilities with the full ARC payment today, the contributions would represent 27% of total governmental funds expenditures.

The four defined benefit plans had an overall unfunded liability of $20.1 billion as of 2013, and the plans altogether are 34% funded. Funding levels for each of the plans are as follows:

- The municipal employees plan: 37% funded, with an $8.7 billion unfunded liability;
- The laborers' plan: 57% funded, with a $1.03 billion unfunded liability;
- The police officers' plan: 30% funded, with a $7.2 billion unfunded liability; and
- The fire fighters' plan: 24% funded, with a $3.14 billion unfunded liability.

While pensions cloud the city's financial and debt profiles, the city offers a strong base from which revenues can be supported. It has a vibrant economy which supports the city's credit quality.

As the city awaits voters' final say on who will be the mayor, the city's credit awaits a longer term resolution to its pension troubles. One answer will be found in six weeks, the latter may take some more time.

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.

Standard & Poor's Ratings Services, part of McGraw Hill Financial (NYSE: MHFI), is the world's leading provider of independent credit risk research and benchmarks. We publish more than a million credit ratings on debt issued by sovereign, municipal, corporate and financial sector entities. With over 1,400 credit analysts in 23 countries, and more than 150 years' experience of assessing credit risk, we offer a unique combination of global coverage and local insight. Our research and opinions about relative credit risk provide market participants with information and independent benchmarks that help to support the growth of transparent, liquid debt markets worldwide.

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S&P: U.S. Public Finance Ratings Continued Their Positive 2014 Trend in the Fourth Quarter.

For the first time since 2007, U.S. public finance (USPF) nonhousing and housing bonds both recorded more upgrades than downgrades in every quarter of the year. Overall, this was due to a combination of an improving economy and criteria changes. Standard & Poor's Ratings Services upgraded 2,396 USPF ratings (2,265 nonhousing) and lowered 895 ratings (844 non-housing). For the year, Standard & Poor's Ratings Services raised 2.68 ratings for every downgrade for nonhousing bonds and raised 2.57 ratings for every housing downgrade. The fourth quarter of 2014 was the ninth consecutive quarter in which upgrades outnumbered downgrades for USPF nonhousing bonds, and upgrades outpaced downgrades in all USPF sectors except health care and higher education. Furthermore, the upgrade-to-downgrade ratio for USPF sectors increased after two quarters of declines.

Improving local economies were the leading cause of the higher overall ratio this quarter in nonhousing bonds, spurring more than 150 local government upgrades compared with about 50 downgrades. A second influence on the positive ratio was our upgrade of the general obligation (GO) rating on California, to 'A+' in November 2014, which affected ratings on bonds issued by the state, California State University, and California community college districts. Housing rating actions were a major improvement relative to 2013, as the ratio of upgrades to downgrades was 2.57 in 2014 and just 0.40 in 2013. The main contributor for the housing rating actions in the quarter was the implementation of new multifamily housing criteria.

Continue reading.

26-Feb-2015

MMA Issuer Brief: MMA Launches Drive for America.

Read the Brief.

Municipal Market Advisors | Feb. 24

Mixed Reviews on Disclosing Tax Incentives.

While most favor increasing transparency in tax incentives, some of the biggest players in state and local government have spoken out against the latest proposal.

Back in the last century, actors, playwrights and producers of Broadway shows would linger on opening night in the famous restaurant, Sardi's, awaiting the newspaper reviews. While there are minimal similarities between the board members of the Governmental Accounting Standards Board (GASB) and the cast of My Fair Lady, they do have one thing in common: When the board decides to move forward on a project and issues a draft for public comment, there's a great deal of anticipation awaiting the thoughts of a variety of individuals and organizations with strong opinions about GASB's proposals.

The organization has recently been through that process with its recent proposal for governments to share data about tax incentive programs. GASB is the rule-making body for local government public disclosure in America. Its pronouncements form the backbone of generally accepted accounting principles.

"This proposal is trying to fill a pretty important hole in terms of understanding governments' finances," said Dean Mead, GASB's research manager. "Tax abatements are very widespread and involve a tremendous amount of money. But they're not apparent on the face of the financial statements."

According to a recent brief by the Pew Charitable Trusts, GASB is seeking required disclosure of "the purpose of the incentive," "the amount of revenue forgone during the financial reporting period," "the total number of incentives in effect and awarded during the reporting period," and "provisions for recapturing abated taxes."

Given all the interest in recent years in the use of tax incentives to attract or retain business, it seemed to us, since the proposal was first released in October, that this was a winner. We anticipated some problems for smaller governments with tight budgets that might have difficulty complying, but that's the case with most GASB proposals.

Now, back to Sardi's. The period of time for comment letters has just ended, and we've gone through two hundred plus notes sent to GASB. The vast majority of them were in favor of the proposal — some even wanted more disclosure. Then there were the comments from some of the biggest and most respected membership organizations in state and local government. A note from five of them — the Government Finance Officers Association, the International City/County Management Association, the National League of Cities, the National Association of Counties and the U.S. Conference of Mayors — indicated support for the goals of the proposal but objected the proposal itself.

The major objection cited in the comment letter was that "including only a disclosure about the abated tax revenue, without any mention of the return on investment analysis that preceded it or a discussion of the benefits expected" would be troublesome and would only provide "part of the story and would mislead, rather than inform, the users of government financial statements."

It's an interesting point, but the "benefits expected" from tax abatements often turn out to be far more optimistic than the benefits actually achieved. It's not uncommon for a company to promise far more job creation than actually materializes, for example. There's a real danger that mixing real forgone revenues with hoped-for savings would leave users with the false impression that tax incentives are always a worthwhile investment. Perhaps the additional disclosure could come after the fact; when the returns the state gets for its abatements have been realized in reality — not just in plan.

GOVERNING.COM

BY KATHERINE BARRETT & RICHARD GREENE | FEBRUARY 19, 2015

S&P: Proposed Criteria Changes Will Bring Greater Transparency to U.S. Municipal Water and Sewer Systems.

Standard & Poor's Ratings Services is currently seeking comments on proposed changes in the criteria it uses to rate debt from publicly owned waterworks, sanitary sewer, and drainage utility systems. Our initial testing of the effects of these proposed changes—which will apply only to revenue-backed debt—indicate that roughly 75% of our more-than 1,500 ratings in this sector will remain the same if we adopt the criteria revisions. Of the remaining 25% of ratings, we are likely to see an even split between upgrades and downgrades, and nearly all will be no more than one notch. We don't expect any rating to shift to speculative-grade status from investment-grade status, or vice versa. We view this sector as relatively safe and stable, and most of our ratings are in the 'A+' and 'AA-' categories. Moreover, because several very large issuers dominate issuance in this sector, we expect the criteria changes to affect ratings on less than 25% of the par value of public water and sewer debt now in the market.

Standard & Poor's last revised the criteria for public water and sewer facilities in 2008, and before, that in, 2002. The changes we're considering now will increase the transparency and replicability of our criteria across the sector and more accurately reflect current and potential future risks associated with these debt issues, which are issued by cities, counties, or other public entities of widely divergent size and in all regions of the country. These new criteria will include some significant changes in how we assess water and sewer debt issues. (See "Request For Comment: U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Methodology And Assumptions", published Dec. 10, 2014.) We ask interested parties to send their comments on the proposed criteria revisions to http://www.standardandpoors.com/en_US/web/guest/ratings/rfc, or to CriteriaComments@standardandpoors.com by Feb. 28, 2015, and we will take them into consideration before issuing a definitive update to our criteria.

Here are answers to some frequently asked questions about the most significant changes we're proposing to our criteria for these ratings.

Frequently Asked Questions

Can you explain the new "operational management" assessment in the proposed criteria?
As proposed, this assessment will account for 10% of an issuer's total enterprise risk assessment and will take into account several factors pertaining to an entity's day-to-day operations that can have an impact on credit quality. One of these factors, for instance, would be a water utility's drought management plan—a factor that has taken on more importance in some states, such as California. Some questions to consider include "Does the issuer have a clear plan to address a prolonged decline in water availability?" and "Does the utility have the management expertise to fulfill its drought planning and to communicate effectively to its stakeholders?"

Another factor that we'll now explicitly and separately consider as part of the operational management assessment is the utility's rate-setting practices. Although municipal water and sewer systems tend to have wide latitude in their rate-setting ability, they must still comply with state and federal environmental regulations to ensure public health and safety, and doing so may sometimes require rate adjustments.

The operational management assessment is designed to not only assess the adequacy of the water supply or treatment capacity, but will also take a hard look at the physical integrity and capacity of a system's assets, its ability to meet peak demand in its service area, along with its compliance with all environmental regulations.

How will the proposed "financial management" assessment section of the criteria work?
The financial management assessment will account for 10% of an issuer's total financial risk assessment. This assessment will consider the robustness of a utility's financial policies and internal controls and evaluate whether its long-term planning is well-constructed and realistic, and will also look at the assumptions that go behind that planning. We will also, as part of this assessment, consider the quality, transparency, and timeliness of the utility's financial reports. The financial management assessment would be in line with a similar assessment that Standard & Poor's currently performs for local government general obligation (GO) ratings.

The financial management assessment analyzes how a utility makes financial decisions, including how it identifies and addresses both ordinary and extraordinary costs, its ability to fund them, and whether it transparently reviews and publicly reports those risks. We assume that financial results manifest themselves in other visible ways and address them elsewhere in the criteria, specifically in coverage and liquidity assessments.

What is the "market position" assessment in the proposed criteria?
The market position assessment will essentially look at the rate affordability within a utility's service area. It will account for 25% of the total enterprise risk assessment. Affordability has been an increasingly important factor in some localities, despite the long-held contention that because people can't live without water, they'll always find a way to pay for it. We've recently seen instances where a significant percentage of water bills are going unpaid and management is struggling with collections in light of public health concerns. Affordability has also been an issue for other systems facing consent decrees and rising capital costs. The affordability of water has also come under discussion by the U.S. Conference of Mayors and the Environmental Protection Agency.

This assessment will look at typical water usage in a utility's service area and its cost to consumers, both on an absolute basis and as a share of median household income in that area. And recognizing that there will be households living well below an area’s median income, the proposed criteria change will also take into consideration the poverty rate in the utility’s service area. These measures will allow us to assess affordability across an area’s income spectrum to give a more complete picture of overall affordability.

Will evaluating affordability be separate from looking at an area’s local economy?
Although household income is clearly related to an area’s economy, we will continue to use a separate assessment of economic fundamentals as the largest part of an issuer’s total enterprise risk assessment score, at 45%. The economic fundamentals will continue to include assessments of a utility’s customer base, the demographics of its service area, the major employers located there, and trends in the local economy.

Can you explain the changes to coverage metrics in the proposed criteria?
We will now evaluate the total financial capacity of water and sewer bonds using a single metric of “all-in” coverage, regardless of the specific nature of the debt or its lien position. That means we will include any debt or debt-like instruments that are ultimately supported by ongoing utility revenues, whether on- or off-balance-sheet, in our calculation of all-in debt service coverage. We propose to include any debt that receives regular support from surplus net operating revenues, whether specifically pledged or not. We would also include any net revenue transfers from the utility to other jurisdictions (which we now treat as an operating expense) as part of this calculation.

We thus define all-in coverage as: (Revenues-Expenses-Net Transfers + Fixed Costs)/ (All Revenue Bond Debt Service + Fixed Costs + Self-Supporting Debt).

The effect of this change could, in many cases, reduce the debt service coverage we calculate for a utility. For instance, the coverage of its senior debt might be 2x, but when all-in coverage is the measurement, the ratio might fall to 1.5x. The use of a single metric for all-in debt coverage is, under the proposed criteria, similar to Standard & Poor’s treatment of coverage for U.S. public power utilities.

Will other major rating factors in your criteria remain the same?
Yes. We will continue to heavily weight economic fundamentals when rating these issues, and a utility’s liquidity and reserves—both the number of days of cash on hand and actual cash in dollar terms—will remain significant rating factors. A utility’s total debt will also continue to be a major rating factor, including not just the dollar figure, but also the allocation of debt by lien and how quickly or slowly that debt matures. And we will still evaluate how aggressive management has been in the type of debt it has selected, and whether its choices have introduced any contingent risks for the utility.

Will ratings that come out of the proposed criteria be subject to the same caps as before?
We are introducing several specific ratings caps into the rating process. These generally relate to very weak management or exceptionally poor financial performance that threatens timely bond repayment. We will base these caps on the presence or absence of particular characteristics or events that pose extreme risks, which likely have already indicated extraordinary credit weakness.

Writer: Robert McNatt

24-Feb-2015

Committee action and should not be interpreted as a change to, or affirmation of, a Credit Rating or Rating Outlook.

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The ABCs of Cost Accountability.

There's an old adage: Politicians are all for efficiency, but only for programs they don't like. That's why asking if a program is cost-effective is usually a political nonstarter.

But sometimes what stuff costs becomes a hot political question. In fact, we've seen a predictable pattern since the mid-1980s: The economy starts to bounce back from the most recent recession; state and local leaders recall the dreadfully blunt ways in which they cut their budgets during that recession; and they vow that if they ever have to do it again, they'll get the right information to whittle down spending in a strategic, focused way. Around this time they start to hear about an accounting method known as activity-based costing (ABC) that can solve this problem.

We replay this cycle precisely because ABC has never really taken hold. But in the post-Great Recession world, the money, technology and, most important, the politics might have finally aligned for ABC.

To illustrate how ABC works, say a county health department runs a restaurant licensing program. Department staff visit restaurants, document any public health concerns, and report to appropriate state and local authorities. Let's assume the program's budget is organized around things the department must purchase to issue licenses, such as salaries, travel and office supplies. If the program spends $75,000 in a year, and if the department issues 150 licenses in a year, then traditional cost accounting suggests the cost per inspection is $500.

Activity-based costing shifts the focus from "what" the inspection program spent to "why" it spent it. To issue a license, the program carries out such activities as restaurant site visits and communications with restaurant owners. Each activity requires a bundle of salaries, commodities, overhead and other costs. Under ABC, the cost per license is the cost of the activities it demands. A routine case that involves a quick site visit and a few emails might cost $50. But a restaurant with health code violations and an uncooperative owner might cost up to $2,500 once the program accounts for all the expensive communication and coordination.

Here's what's really different: Activities can absorb costs from many different programs and services. For instance, a restaurant inspector concerned about an outbreak of foodborne illness might coordinate a response with the local disease prevention program and the public outreach staff. Under traditional cost accounting, the costs to these other programs don't really impact the cost per license. Under ABC, each agency involved would assign those costs to the "coordinated responses" activity.

Governments can use the information ABC produces to set fees that better reflect the true cost of the goods or services they provide, to better scrutinize bids for contracted services and to improve benchmarking. ABC also sheds light on the “hidden” costs of activities that don’t fall neatly into a single program or agency. Moreover, it’s easy to implement with advanced GPS and new HR management systems that can carefully track how employees spend their time.

ABC clearly has a lot going for it, and yet, only about a quarter of state and local governments report that they use it systematically. Why? Some critics say it’s too costly and that it’s invasive for employees to track the time they spend on activities. Others say it places too much emphasis on outputs and not enough on benefits you can’t directly observe, like preventing crime or reducing chronic disease.

But in the wake of the Great Recession, ABC can serve a different and new purpose. For the past few decades the central question in state and local finance was how to do “more with less.” Oddly enough, better cost information adds little to that debate, mostly because efficiency has no natural political constituency.

But today many jurisdictions want to know how to do “less with less.” To that end, ABC has great promise. It can show whether a program pays for itself. It can facilitate meaningful comparisons of different service delivery models. It can help leaders argue for programs that don’t operate at maximum efficiency. In short, it can be the connective tissue between cost analysis and priority setting. That’s why it might enjoy a bright future.

GOVERNING.COM

BY JUSTIN MARLOWE | FEBRUARY 2015

SLGE Report: Success Strategies for Well-Funded Pension Plans.

The Center for State and Local Government Excellence (SLGE) released a report this week entitled Success Strategies for Well-Funded Pension Plans that detailed common strategies employed by well-funded pension plans. Not shockingly, the plans all shared a commitment to fund the actuarially determined contribution in both good and bad financial times; conservative, realistic assumptions that are adjusted based on experience; and changes to benefit levels and contribution rates as needed. SLGE looked at four plans: the Delaware Public Employees’ Retirement System, the Illinois Municipal Retirement Fund (this one is under different management than the state’s troubled systems), the Iowa Public Employees’ Retirement System and the North Carolina Retirement Systems.

Why Cities Hit the Brakes on Red Light Cameras.

Cities have been hitting the brakes on red light cameras, and no wonder. Outrage over the devices is no longer limited to angry motorists facing hefty fines. Judges have now tossed tens of thousands of tickets. Newspapers and government inspectors have exposed deep flaws in many cities’ equipment and enforcement methods. And the former CEO of one of the two major camera manufacturers was indicted on bribery and other charges related to Chicago’s red light cameras.

The backlash began in 2013. After peaking at an all-time high in 2012, when 540 U.S. jurisdictions used red light cameras, the number dropped to 503, according to the nonprofit Insurance Institute for Highway Safety. Last year the numbers dropped even further. In December, New Jersey ended a five-year pilot program that had allowed 25 municipalities to use red light cameras. The same month, Ohio Gov. John Kasich signed a law that essentially blocks the use of traffic cameras in the state.

On the legal front, a California appeals court threw out a $500 ticket in January because drivers weren't reliably given a 3.6-second yellow light as required by law. The decision sets a legal precedent for challenging red light camera violations, but it came after the city of Riverside — which had issued the ticket in question — scrapped its cameras last summer. Meanwhile, lawyers are working on a settlement in a class-action lawsuit against 20 Missouri cities and a camera manufacturer that could lead to refunds across the state.

What's behind the red light reversals? For one thing, there's growing skepticism that the cameras lead to a decrease in automobile accidents. The Chicago Tribune, for example, recently commissioned a study that showed Chicago's red light camera program did not lead to an overall reduction in crashes. Many citizens, meanwhile, see the cameras as nothing more than a way for cities to make easy money by slapping fines on drivers. Now state lawmakers, city council members and citizen activists around the country are pushing measures to curb or outright ban the cameras.

But ditching the cameras can play havoc with city budgets. When New Jersey ended its pilot program, Moody's, the credit rating agency, warned of the impact the development could have on the two dozen municipalities that had the devices. "These developments are credit-negative," Moody's analysts wrote, "because they further constrain governments' ability to implement new revenue streams at a time when these governments are facing property tax limits, uneven sales tax growth and anti-tax sentiment."

Proponents of red light cameras insist there's also a cost in terms of public safety. "There's no question that lives will be lost because some communities have ended their programs," says Russ Rader of the Insurance Institute for Highway Safety, which backs red light cameras.

One of the problems he sees is that some cities implemented red light cameras not as a safety measure, but as a revenue source. If red light cameras are set up properly, Rader argues, they may not bring in much money because motorists stop rather than run a red light. "Some communities have shot themselves in the foot. If the public believes that red light cameras are more about revenue than safety, then communities have a problem."

Backers of red light cameras say they can be used effectively, if the cities using them base their decisions on safety and explain the benefits to their residents. Cities should place the cameras at dangerous intersections, and then monitor safety data to make sure an improvement occurs, says Michael Green of AAA, the motorists group. He says cities should post signs alerting drivers to where red light cameras are in operation. "This shouldn't be a surprise: The goal is not to ticket a motorist," Green says. "The goal should be to get them to stop at the red light."

GOVERNING.COM

BY DANIEL C. VOCK | MARCH 2015

New York Cuts Pension IOUs for First Time Since '11: Muni Credit

(Bloomberg) — For the first time in four years, New York and its localities are borrowing less to cover retirement contributions as rallying investments ease the strain of pension costs.

The state and its communities are poised to borrow at least $952 million from New York's $176.8 billion pension fund in 2015 to make required payments into the system, marking a drop of about 30 percent from last year's record, according to preliminary data from Comptroller Thomas DiNapoli and some localities. Among suburban counties such as Westchester, some declines are even steeper, at 40 percent or greater.

The IOUs are part of programs that let the governments defer pension expenses for as long as 12 years with interest. DiNapoli implemented the system starting in 2011 to offset rising contribution rates, which almost tripled for state and local workers by 2014. With stock indexes reaching record highs, assets in the state retirement fund have swelled, requiring smaller contributions from localities.

"If you're amortizing pension payments, your budget is structurally imbalanced," said Valentina Gomez, a Moody's Investors Service analyst in New York. "So if you're amortizing less, that's a good thing."

Rating Divergence

From California to New York, pledges to retirees have stressed municipal budgets. State and local retirement plans are short at least $1.3 trillion because of investment losses triggered by the recession that ended in 2009 and inadequate contributions, according to Federal Reserve data.

Even as Standard & Poor's raised New York's grade to its highest since 1972 in July, rating companies have reduced the marks of New York City's suburbs, citing the pension loans as a sign budgets aren't balanced. The deferrals are also inflating the state's unfunded retirement liability, the companies say.

This year's drop in borrowing to meet those obligations signals that the pressure is ebbing, said Thomas Nitido, deputy comptroller for the New York State and Local Retirement System, the third-largest U.S. public fund.

"As the economy improves and pension contribution rates have begun to decline, fewer employers are opting to participate in the program," Nitido said via e-mail.

Record Assets

The comptroller, the fund's sole trustee, sets contribution rates annually based on actuarial assumptions that move the system toward full funding. The rate for 2015 for state and local workers is 20.1 percent of payroll, after peaking last year at 20.9 percent, the highest since 1974.

Assets in the system set a record in the fiscal year through March, led by a 22.3 percent return on domestic equities. As of 2013, only seven states had stronger pensions than New York. New York had 87.3 percent of assets needed to meet obligations, down from 105.9 percent in 2008, data compiled by Bloomberg show.

New York's pension bill is set to fall to $2.4 billion in 2015 from $2.7 billion in 2014, according to budget documents. The state still needs to defer payments because the contribution rates remain elevated, said Morris Peters, a spokesman for Governor Andrew Cuomo's budget division.

Exit Plan

Cuomo had planned to exit the borrowing program in 2016, then decided not to after DiNapoli adopted longer life expectancies for retirees, increasing the fund's liabilities.

The state's IOU is falling 24 percent to $713 million, according to budget documents.

Suburban Westchester, with almost a million residents north of Manhattan, entered the program in 2013 when it faced the possibility of firing 420 workers so it could pay its full obligation, said Ned McCormack, a spokesman for County Executive Rob Astorino.

Moody's lowered Westchester's rating to one step below the top in November 2013, citing the borrowing for retirement bills.

The county is deferring 27 percent of its $97.2 million bill, down from 42 percent in 2014, when its tab was $104.3 million, according to data from DiNapoli's office.

"We always want to amortize as little as possible," McCormack said by phone.

Suffolk County, home to the Hamptons beach towns, plans to reduce pension borrowing by 31 percent in 2015, according to Justin Meyers, a spokesman for County Executive Steve Bellone.

Tax Bump

Nassau, which borders New York City on Long Island and is under a state financial control board, is using a projected extra $50 million in sales-tax collections for 2015 to lower its borrowing by about 14 percent to $60.8 million.

The county's total bill declined 2.4 percent to about $209 million, according to DiNapoli's data.

Rockland County, northwest of Manhattan, is spending a $5 million surplus from sales-tax collections on its pension bill, further reducing borrowing, said Stephen DeGroat, the finance commissioner.

Its IOU for 2015 fell by more than half to about $6 million, DeGroat said. Next year, the county may forgo the deferral altogether, he said.

"It'd be a good thing to get out of," he said.

by Freeman Klopott

February 22, 2015

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Philadelphia Schools Find Charters Costly to Budget: Muni Credit

(Bloomberg) — Philadelphia's school district, the nation's eighth-largest, wants to get more children into high-achieving schools. Doing so threatens its finances.

The panel that runs the district accepted five of 39 applications on Feb. 18 for new charter schools, which are publicly funded and privately run. The vote agitated both sides of the debate — parents and unions who say charters divert funds from the traditional system, and an opposing group of parents and advocates who wanted more approvals to help students stranded in failing schools.

The debate in Philadelphia echoes those in other urban districts, such as in New Jersey, Ohio and Michigan, that also face fiscal stress from charters. Philadelphia school officials next month plan to sell debt for the first time since 2011 that isn't deficit financing. The rejection of most of the charter candidates boosts the junk-rated district because adding the schools would strain its budget, Moody's Investors Service said this week.

"From an educational point of view, from a social point of view, they are a positive, especially for really dedicated students," said Ted Molin, a senior credit analyst at Wilmington Trust Co. in Delaware. "But from a pure fiscal or credit point of view, I would have to say, unfortunately, they're a negative."

Budget Gap

While Philadelphia's rating and finances have strengthened over the past several years, the district, run by a board of mostly state appointees, has deteriorated. Officials closed schools and sold about $300 million of debt to fill a budget gap in 2012. They've lobbied state and local lawmakers for more funds, including a $2-a-pack cigarette tax in Philadelphia and a portion of city sales-tax receipts.

Costs still outstrip revenue, as the district faces an $80 million deficit for the year beginning in July. In the next five years, 86 percent of the $282 million increase in expenses results from higher charter-school and retirement costs and debt service, according to the district's plan.

Officials are requesting more state aid to educate students, 81 percent of whom qualify for free or subsidized meals. They're also appealing a court decision that stopped them from implementing labor changes, such as health-care contributions from teachers, that would have saved $200 million over four years.

Charter Costs

About 30 percent of the system's 204,000 students attend charters, up from about 14 percent a decade ago. The district estimates each charter student adds a net $7,000 of expenses. Charter costs next year may tally $769 million in a $2.7 billion district budget, the five-year plan shows.

The district in March plans to sell about $46 million of bonds for capital projects and $270 million to refinance older securities, said Fernando Gallard, a spokesman. The refunding may save $23.4 million, or 8.1 percent of par, according to a Moody's estimate. The schools, which have $3.2 billion in debt, sell securities under a program that diverts state aid to bond payments, boosting security for investors.

Moody's ranks the school system Ba3, three levels below investment grade, while it grades the bonds A1, eight levels higher, because of the state program.

Molin at Wilmington Trust, which handles $4 billion of munis, said the company probably wouldn't add to its district holdings with the new deal because "underlying credit characteristics seem to be deteriorating."

Negative Loop

Philadelphia's district is the only one in Pennsylvania, and one of few in the U.S., without authority to levy taxes, said Dan Seymour, assistant vice president at Moody's.

Efforts to balance the books with cuts to staff and services "have hurt the educational product," he said from New York. That in turn has led more students to leave traditional schools, creating stranded costs. "It's a negative feedback loop."

The addition of five charter schools would cost the district $6.8 million by 2019, Gallard said. The rejected schools can appeal.

Gallard said even when the system was stronger financially, students didn't perform as well as officials would have liked.

"There is a fiscal impact, but overall our goal is to improve the access to high-achieving schools for our students," he said.

Plowing more money into the same system won't improve outcomes, said Mark Gleason, executive director of the Philadelphia School Partnership, a nonprofit that provides grants to city schools and wanted more charters approved.

Less than half of students in traditional public schools showed proficiency in reading and math in last year's state tests, according to Gleason's group. For charter students, the rates rise to 55 percent for math and 52 percent for reading, it says.

"The district is in a precarious financial situation, but the disadvantaged kids in Philadelphia are in a more precarious situation," Gleason said. "These are kids who are not getting a fair shot at life."

by Romy Varghese

February 26, 2015

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Muni Refinancing Gains Momentum Even as Yields Reach 2015 Highs.

(Bloomberg) — School districts in Nevada and South Carolina are leading about $6 billion of refinancing sales this week, showing that municipalities can still reap savings from refunding even as yields soar to 2015 highs.

The district of Clark County, home to Las Vegas, is selling about $399 million on Tuesday to refinance higher-cost borrowings, according to data compiled by Bloomberg. In South Carolina, Pickens School District in the northwest part of the state is offering $255 million through a local agency, for anticipated savings of about $21 million, according to Brian Nurick, its bond counsel.

The projected savings, which will go toward maintaining infrastructure, were "slightly higher when we started the process," Nurick said in an interview. "But we're still in what we would consider the sweet spot to move forward."

Refinancings are set to make up about 68 percent of issuance this week, up from 50 percent last week, Bloomberg data show. The sales are gaining momentum even as yields are climbing. The $3.5 trillion municipal market has lost 1.2 percent this month, leaving it poised to break a record 13-month rally.

Benchmark 10-year notes yield 2.14 percent, the highest since December, after rising three straight weeks for the first time since June. Yet this week's calendar shows states and localities can still expect to save.

Sarasota County on Florida's Gulf Coast plans to issue about $33 million in refunding securities. The municipality seeks savings of at least 5 percent and this offering should deliver 5.3 percent, said Regina Foss, who helps oversee the county's finances.

"We expected to get a little bit higher savings," Foss said in an interview. "But it's still within our threshold."

Next month, Maryland may sell about $400 million for refunding, Bloomberg data show.

by Meenal Vamburkar

February 23, 2015

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[Christie's Downsized Pension Payment Cuts Gap by 2%: Muni Credit]()

(Bloomberg) — Governor Chris Christie's proposal for a record contribution to New Jersey's pensions would erase less than 2 percent of an $83 billion funding deficit.

In his 2016 budget address Tuesday, Christie said the $1.3 billion infusion would stabilize benefits for 402,000 teachers, firefighters and other public employees and retirees. Yet the 52-year-old Republican, a potential White House aspirant, has a history of breaking promises on the contributions.

His decision in 2014 to shortchange the system for two fiscal years precipitated the eighth credit downgrade under his tenure, a record for a New Jersey governor. His latest pledge would cover less than half the $3.1 billion he was scheduled to pay, raising the specter of further rating cuts.

"That is essentially a deferral, and one of the chief causes of the rating pressure has been the growing pension liability," said Paul Brennan, a money manager in Chicago at Nuveen Asset Management, which oversees about $100 billion of municipal debt. "Continuing to defer that is probably not going to be well received" by rating companies and investors, he said.

The governor joins municipal leaders nationwide balancing the rising expense of retirement and health-care costs with spending on infrastructure and other government services. Kansas and Kentucky are considering selling debt to replenish their pensions, even after a group of state and local-government finance officials advised against the practice.

Freeze Plan

Because of new accounting standards, New Jersey's unfunded pension obligation grew from $37 billion in 2013, according to a report released Tuesday by a panel that Christie appointed to recommend ways to bolster the system.

Christie praised the report, released during the budget address, and said he had an agreement on one of its recommendations: to freeze the 245,000-member teachers pension fund, cede control to a trust and retire debt over 40 years.

Yet Wendell Steinhauer, president of the New Jersey Education Association, the state's largest teachers union, said no final deal had been reached. Democrats, who control the legislature, said after the budget address that they won't accept pension changes on top of those made during Christie's first term until the governor makes full payments.

'Big Negative'

Forgoing a full payment "is a big negative for New Jersey," said Tom Metzold, co-director of munis in Boston at Eaton Vance Management, which oversees about $25 billion of state and local debt. "I appreciate the fact that Christie is trying to make more changes to the pension plan, but that doesn't solve the problem of what the state needs to pay today."

Investors have been demanding extra yield to buy New Jersey debt rather than benchmark munis. Yields on 10-year New Jersey bonds last week reached 0.64 percentage point above top-rated munis, the biggest gap since at least January 2013, according to data compiled by Bloomberg.

Moody's Investors Service grades New Jersey A1, four steps below top-rated debt. Standard & Poor's and Fitch Ratings score it one level lower at A. Illinois is the only state with lower ratings.

Christie faces the added burden this fiscal year of a state Superior Court decision, issued Feb. 23, to make good on a $1.6 billion pension payment he skipped as revenue missed targets. The $2.25 billion that Christie had promised was to be a state record; instead, he committed to just the actuarially required $681 million.

While crediting New Jersey for releasing the larger pension-funding deficit under the new accounting standards, Alan Schankel at Janney Capital Markets said insufficient pension payments are a concern.

"The historic amount is not necessarily relevant if the gap widens," said Schankel, a managing director of fixed-income strategy in Philadelphia. "Any amount that makes the state fall further behind in their pension funding is unfortunate."

by Elise Young & Michelle Kaske

February 24, 2015

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Lure of Wall Street Cash Said to Skew Credit Ratings.

(Bloomberg) — Michelle Choi, an analyst for Moody’s Investors Service, gave a credit rating to bonds issued by a New Jersey town in September. In October, she switched sides and started working for the town’s underwriter, Morgan Stanley.

Choi is one of hundreds of employees at Moody’s and other credit-rating companies, including Standard & Poor’s and Fitch Ratings, who’ve gone to work for Wall Street since the 2008 financial crisis exposed the conflicts at the heart of the ratings business.

While there’s no evidence that Choi’s job-hunting influenced the grade she gave Evesham Township’s debt, and the town chose Morgan Stanley after Choi rated its bond, the rising number of job changes in the industry raises a question: can credit analysts be impartial about grading bonds while looking for employment at banks that underwrite them?

The ratings companies say the answer is yes. An academic study by longtime industry observers suggests otherwise.

“The fact that analysts can get employed by the issuers is a problem and the SEC should be doing something about it,” said Marcus Stanley, policy director at Americans for Financial Reform, a Washington-based coalition of 200 advocacy groups. Ratings analysts can work for issuers immediately because there’s no rule about a waiting period like there is in other industries. Accountants, in some cases, must wait one year before working for a company they audited.

Choi’s new job at Morgan Stanley is “an internal risk function and is not part of the underwriting group,” said Mary Claire Delaney, a Morgan Stanley spokeswoman. Choi declined to comment, Delaney said.

Credit Bust

Since 2008, more than 300 analysts have left the major ratings companies for jobs at banks and other debt issuers, according to U.S. Securities and Exchange Commission data. Last year alone, more than 80 people made the switch, the most since the SEC began compiling such data in 2006. That’s out of a total of about 4,000 analysts employed by the ratings firms, according to SEC data.

The migration shows that the credit graders and Wall Street banks are as close as ever. Their symbiotic relationship first came to widespread attention in the aftermath of the 2008 credit bust, when Moody’s and S&P were accused of inflating the rankings of mortgage bonds in order to win and keep business from underwriters.

The U.S. Justice Department has been investigating the role the two played in the fiasco, and this month S&P agreed to pay $1.5 billion, without admitting guilt, to settle cases with state and federal authorities. The investigation into Moody’s continues.

By Committee

“Moody’s ratings are determined by ratings committees, not by individual analysts, and we have robust policies in place to safeguard the independence and integrity of the ratings process, including ‘look-back’ reviews for analysts who have left the company,” said Thomas J. Lemmon, a Moody’s spokesman. The company declined to comment about the Justice Department probe.

Buyers of the Evesham Township bonds weren't told about Choi's change of employer, and Moody's hasn't disclosed the possible conflict of interest, nor is it required to.

Higher ratings, if inaccurate, can understate a security's risk and cost bond buyers money.

The working paper, "Revolving Doors on Wall Street," found that money is the biggest factor causing ratings inflation. The more an analyst gets paid at her new job, the higher her ratings relative to those of other analysts, the study said.

Largest Discrepancies

Analysts hired by the biggest Wall Street banks were the ones responsible for the largest discrepancies with other raters of the same bonds, according to authors Jess Cornaggia of Georgetown University and Kimberly Cornaggia of American University, both in Washington, and Han Xia of the University of Texas at Dallas.
"Even if there is no quid-pro-quo dynamic, if I have the ability to affect the performance of my future employer, it's in my own interest to think positively about it," Kimberly Cornaggia said in a phone interview.

The authors quantified the difference. If an analyst is hired by one of the top 20 banks, rankings rise by 0.35 level on average compared with an average 0.18 grade increase for all analysts switching positions.
If that bump-up elevates the bond to investment grade from a speculative, or junk, rating, the borrower would save $85 million in interest over the life of a $1 billion 10-year bond, according to data compiled by Bloomberg.

In September, while Choi was a Moody's analyst, she assigned an Aa3 grade, the fourth-highest, to a $13.2 million general obligation bond issued by Evesham Township, a 30-square-mile (77-squar- -kilometer) municipality with a population of 45,500 east of Philadelphia.

It's not possible to compare Choi's rating because Moody's was the only company hired to offer an opinion.

New Rules

In new rules slated to take effect in June, the SEC is trying to reduce possible conflicts of interest by directing ratings companies to use their discretion to determine if a grade needs to be re-evaluated after an analyst or manager leaves the company.

John Nester, an SEC spokesman, declined to comment.

Ratings companies should inform bond buyers any time an analyst leaves to work for an issuer, said Jeffrey Manns, an associate professor of law at George Washington University in Washington.

"It would be simpler and more transparent if there was a disclosure system," Manns said.

Waiting Period

The biggest banks are the largest employers of former credit analysts. Since 2006, New York-based Morgan Stanley has hired the most, 16, followed by Frankfurt-based Deutsche Bank AG with 14, according to SEC data compiled by Bloomberg.

The job hunt is international. Oliver Issl worked as an analyst at Fitch in Frankfurt for more than five years evaluating securitized debt. He took that experience to Dutch bank NIBC Bank NV in October to help create the same type of securities he was grading for the Hague-based lender.

Spokesman Diederik Heinink declined to comment on behalf of NIBC or Issl.

"Fitch has very robust policies and procedures in place to ensure the objectivity of our ratings, including policies around the credit work of any analyst who leaves Fitch for employment with a rated entity," Rebecca O'Neill, a Fitch spokeswoman, said in a statement.

In London, Roneil Thadani joined the rating advisory team at Credit Agricole SA in November, helping guide underwriters through the ratings process. He worked at S&P for eight years grading structured finance securities and infrastructure bonds.

Spokeswoman Maryse Dournes declined to comment on behalf of Montrouge, France-based Credit Agricole and Thadani.

"If an analyst participates in rating an entity and then leaves our employment and goes to work for the rated entity, we review the analyst's rating on the entity to determine if it was appropriate," said Catherine Mathis, a spokeswoman for New York-based S&P.

by Matthew Robinson

February 24, 2015

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[Rauner's Tax-Free Illinois Budget Fix Has Skeptics.]

(Bloomberg) — Illinois Governor Bruce Rauner has a recipe for plugging the state's $6.2 billion deficit that relies on cuts and avoids new taxes. The approach is breeding skepticism at debtholders BlackRock Inc. and U.S. Bank Wealth Management.

The first Republican elected to lead the state in 16 years, Rauner inherited $111 billion of unfunded pension liabilities and a budget that is set to run out of money by June 30 after lawmakers let a higher levy on income expire.

Illinois's debt investors, whom Rauner may wind up tapping to finance roads or other capital projects, say the lowest-rated U.S. state doesn't have the flexibility to lean so heavily on spending reductions.

"I'm very skeptical that his budget will be able to achieve balance by doing what he's doing," said Jim Schwartz, head of the municipal credit research team at New York-based BlackRock, which oversees $116 billion in munis. "The best way from his view is let's cut spending, and I just look at it as very aggressive."

Governors in about 10 states, including some led by Republicans, are proposing tax increases, according to the National Association of State Budget Officers in Washington. Illinois faces greater fiscal challenges than most: It has $6.4 billion in unpaid bills and the worst-funded state pension system.

Tax Rollback

A temporary tax increase, which raised personal and corporate income-tax levies by as much as two-thirds, expired Jan. 1. Its rollback will cost the state an estimated $1.8 billion this fiscal year and $4 billion in the year that starts July 1, according to the University of Illinois.

“I don’t think they’re going to be able to get to the level that they need to with budget cuts alone,” said Dan Heckman, a senior fixed-income strategist in Kansas City at U.S. Bank Wealth Management, which oversees $126 billion.

“There’s going to have to be some balance between revenue enhancements and cutbacks on spending,” said Heckman, whose firm holds less Illinois debt than indicated in its benchmark.

Neighbors’ Levies

Residents of the fifth-most-populous state will pay a 3.75 percent income tax in 2015, down from 5 percent last year, according to a report this month from the Federation of Tax Administrators. By comparison, the top rates in Iowa, Kentucky, Missouri and Wisconsin range from 6 percent to 8.98 percent. Indiana’s rate is 3.3 percent for all residents.

Rauner, 59, a former venture capitalist, wants to cut $2.9 billion in employee benefits, $1.3 billion in subsidies to localities and $1.2 billion in health-care reimbursements.

“Asking for more of the taxpayers’ hard-earned money without fundamentally reforming the structure of state government would further erode public confidence and accelerate our decline,” Rauner said in his Feb. 18 budget address in Springfield.

“Illinois taxpayers are currently not getting value for their tax dollars,” Catherine Kelly, a Rauner spokeswoman, said via e-mail Feb. 24.

House Speaker Michael Madigan, a Chicago Democrat who controls much of the legislative agenda, has said he wants revenue to be part of the deficit fix. Even Senate Republican leader Christine Radogno called the budget address “the opening shot” in negotiations. Lawmakers have until the end of May to approve the budget with a simple majority. After that, a three-fifths vote is required.

Campaign Talk

Moody’s Investors Service said in a Feb. 24 report that the state’s political landscape will make it tough to enact the governor’s proposals without raising revenue.

During his campaign, Rauner promoted an expanded sales tax. He also called for tax changes during his budget speech, without providing specifics, and blamed the state’s woes on years of poor decisions and budgeting gimmicks, rather than the expiration of the higher taxes.

Restructuring pensions is part of his plan. His budget includes anticipated savings of $2.2 billion in fiscal 2016 by giving some public employees less generous retirement benefits.

The state Supreme Court is set to hear arguments next month on the legality of a 2013 law overhauling the pension system. Illinois’s attorney general appealed after a judge in November said the legislation violated the state constitution’s protection of public-worker retirement benefits.

Negative Outlooks

Illinois is paying for its financial struggles. Standard & Poor’s, Moody’s and Fitch have negative outlooks on its debt, signaling they could lower its credit standing. The companies already rank the state four levels above junk.

Its borrowing costs are the highest among the 20 states tracked by Bloomberg. Investors demand 1.3 percentage points of extra yield to own 10-year Illinois bonds instead of benchmark municipal debt, according to data compiled by Bloomberg.

Illinois plans to sell about $1.5 billion of bonds, mostly in the year that starts July 1, as part of existing capital programs, according to Kelly, Rauner’s spokeswoman.

As bondholders assess the state, they’re waiting to see the fiscal solution its leaders produce. “The feeling out there is that they have a lot of room to raise taxes, and theoretically they could,” said Peter Hayes, head of munis at BlackRock. “Eventually there will be some moment, some day of reckoning which makes everybody wake up and say we really need to pass something.”

by Elizabeth Campbell & Brian Chappatta

February 25, 2015

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Super Bowl Host Glendale Digs Out From Debt Load for Pro Sports.

(Bloomberg) — Glendale, Arizona, which hosted the Super Bowl this month, is trying to reel in debt-service costs after selling almost $600 million of bonds to build facilities for professional sports teams.
The Phoenix suburb of 235,000 refinanced four bond deals this year, shaving $47 million off debt expenses and reducing long-term obligations by 5 percent to $915.6 million, said Tom Duensing, the city’s finance and technology director.

The former farming community has attempted to define itself as a sports hub, borrowing more than $580 million to finance projects, including a spring training facility for Major League Baseball’s Los Angeles Dodgers and Chicago White Sox. Savings from the bond deals will bolster the municipality’s finances as it deals with deficits triggered in part by the burden of keeping up with debt payments.

“It only bought us time; we’re not going to be able to add a bunch of new services or anything like that,” Duensing said in an interview. “It took the pressure off for the next few years when a majority of the savings are realized.”

Glendale is home to the University of Phoenix Stadium, the venue for the Feb. 1 Super Bowl. The National Football League’s Arizona Cardinals have played at the site since 2006.

The city sold tax-exempt debt in 2007 for a parking facility for the Cardinals; in 2008 for the shared spring training facility; and in 2013 for an arena for the National Hockey League's Arizona Coyotes, according to financial statements. The securities were backed by revenue such as excise taxes.

Refunding Moves

With interest rates close to five-decade lows in January and this month, Glendale refinanced the deals from 2007 and 2008, as well as water-system debt and general-obligation borrowings, and is considering more refunding, according to Duensing.

Glendale has struggled to balance its budget and service its debt, depleting reserves, according to data compiled by Bloomberg.

City leaders are considering a plan to sell one of Glendale's three library branches, including some books and DVDs, for an estimated $4.7 million, the Arizona Republic reported this month. City Council members have discussed putting proceeds toward reserves, Duensing said.

'Big If'

"If that happens, and it's a big if, it will be up to the City Council's discretion as to where it's allocated," Duensing said. "There aren't any restrictions on it."

City council members didn't respond to requests for comment through Joe Hengemuehler, a Glendale spokesman.
Moody's Investors Service and Standard & Poor's have recognized Glendale's attempts to trim debt. Since September, both removed negative outlooks on the general-obligation rating. Moody's has Glendale at A3, four steps above speculative grade, while S&P rates it BBB+, one step lower.

Moody's cited "improved financial management despite ongoing challenges stemming from high fixed costs driven largely by a high debt burden and net operating costs associated with professional sports facilities" as reason for the improved outlook.

"That was a big step for us and we can come back to them with these new policies and have more positive improvement," Duensing said.

by Kate Smith

February 26, 2015

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Chicago Credit Rating Cut by Moody's to Two Steps Above Junk.

(Bloomberg) — Chicago had its credit rating cut to within two steps of junk by Moody's Investors Service because of mounting pension liabilities, underscoring the city's fiscal stress as Mayor Rahm Emanuel faces an unprecedented runoff election.

The one-step reduction to Baa2 affects $8.3 billion of general-obligation bonds, which were already the lowest-rated among the 90 biggest U.S. cities, excluding Detroit. The outlook remains negative, signaling more cuts are possible, New York-based Moody's said Friday in a report.

"The city's credit quality could weaken as unfunded pension liabilities grow and exert increased pressure on the city's operating budget," Moody's analysts Matthew Butler and Rachel Cortez wrote. "We expect substantial growth in unfunded pension liabilities even if the city's recent pension reforms survive an ongoing legal challenge."

Chicago is obligated to pay $600 million into four pension funds in next year's budget, though Standard & Poor's said the contribution may be delayed after Feb. 24 elections led to an unexpected runoff vote between Emanuel and Jesus "Chuy" Garcia. The former White House chief of staff failed to capture more than 50 percent of the vote.

"Moody's has been consistently and substantially out of step with the other rating agencies, ignoring the progress that has been achieved," Kelley Quinn, an Emanuel spokeswoman, said in an e-mailed statement.

Difficulties Ahead

Quinn noted that two other major credit raters affirmed the city's grade this week, recognizing the progress made under Emanuel.

"What we can agree with Moody's about is that the city continues to face serious fiscal challenges and that difficult work remains to continue strengthening the city's finances and securing our city's future," Quinn said.

While Illinois is the lowest-rated state, credit raters differ on Chicago's standing. S&P affirmed its A+ rating on the city today, citing its broad and diverse economy. That's the fifth-highest rank and four levels above Moody's. S&P may cut its rating if Chicago doesn't implement a plan by the end of 2015 to sustainably fund its pensions, analyst Helen Samuelson said in a report. Fitch Ratings ranks Chicago two steps higher than Moody's.

State Action

The third-most-populous U.S. city has $20 billion in unfunded pension obligations that it can't address without the approval of the state legislature. Lawmakers in June restructured two city pension plans with about $9.4 billion in underfunded liabilities for about 60,000 municipal workers and retirees by making them pay more and reducing benefits. The changes didn't apply to the police and fire systems.

Labor unions in Chicago sued to block the law in December, and the litigation was put on hold pending the outcome of an Illinois Supreme Court ruling on a state pension overhaul.

The April 7 runoff is the first for the city of 2.7 million since it went to nonpartisan elections in 1999. Garcia's campaign called the downgrade another sign that the city needs new leadership.

"The downgrade is an objective verdict on Emanuel's lack of fiscal stewardship," Andrew Sharp, Garcia's campaign manager, said in an e-mailed statement.

by Brian Chappatta and Elizabeth Campbell

February 27, 2015

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Moody's: Credit Impact Mostly Positive for U.S. Public Finance as Oil Prices Remain Low.

New York, February 24, 2015 — The credit effects of lower oil prices for US public finance will vary broadly depending on each issuer's reliance on oil-related revenues, Moody's Investor Service says in a new report. However, it will have a mostly positive impact on most public finance sectors, with exceptions being states and local governments that rely on oil and gas revenues for a large percentage of their budgets.

Most states and municipalities will generally benefit from the drop in oil prices as consumer spending ramps up, owing to an increase in disposable income. States such as Florida (Aa1 stable) or Nevada (Aa2 stable) which rely on sales tax as a primary source of revenue will see a moderately positive credit influence.

But the State of Alaska's (Aaa negative) reliance on oil revenues for almost 90% of its budgetary needs leaves it vulnerable to sharp price swings. Local governments that also benefit directly from oil extraction revenues like Midland, TX (Aa1) are also vulnerable.

"The more dependent a sector is on oil revenue and consumer spending, the more negative the credit implications. These sectors will experience more pressure to budgets and debt coverage the longer and lower oil prices fall," says Marcia Van Wagner, Vice President — Senior Credit Officer and lead author of "Low Oil Prices Hit a Few US Municipal Sectors Hard, but Most Face Mildly Positive Effects."

Non-oil producing states and some local governments will experience moderate support from sales tax growth to their mass transit agencies, such as Dallas Area Rapid Transit (Aa2 stable) and the Metropolitan Atlanta Regional Transit Authority (Aa2 stable). Mass transit funded by enterprise revenues will see a mildly negative impact as commuters opt to drive.

Low gas prices should cause traffic to grow on US toll roads, with growing urban areas like San Francisco, and Denver benefiting the most. US airports will also benefit; Moody's says 2015 passenger boarding will increase between 3% and 4%, up from 2% in 2014.

The drop in oil prices is also positive for US seaports, which garner support from the reduction in fuel costs. The 2015 ports outlook changed to stable from negative amid cost reductions and lower fuel costs.

Water and sewer utilities will be positively affected by more flexibility to raise rates created by easing household budgets. However, the impact to public power and cooperative electric utilities is minimal since oil is an insignificant percentage of the fuel used to generate electricity, says Moody's.

The impact on public and private colleges will be mixed. While some colleges and universities will see reduced heating costs, public colleges located in oil-producing states like Louisiana may see reduced funding as state budgets tighten. State housing finance agencies will see a positive impact as HFA families will apply savings from lower heating and transportation to mortgages.

Not-for-profit healthcare will not see any effect from declining oil and gas prices since they purchase fuel through group purchasing organizations or suppliers through long-dated contracts.

The report is available to subscribers at

https://www.moodys.com/research/US-Public-Finance-Low-Oil-Prices-Hit-a-Few-US–PBC_1002874.

Pipeline Safety Grant Opportunity and New Resources for Counties.

The U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) is now accepting applications for the 2015 Technical Assistance Grants (TAG) for communities or impacted stakeholders seeking engineering, or other scientific analysis of issues relating to pipeline infrastructure. Governmental entities or non-profit groups may qualify for a grant of up to $100,000 per year. Applicants must be local communities or groups of individuals relating to the safety of pipeline facilities in local communities. 'Communities' are defined as cities, towns, villages, counties, parishes, townships, and similar governmental subdivisions or consortia of such subdivisions. For-profit entities are not eligible.

The announcement can be found by using the "SEARCH GRANTS" tab at Grants.gov.

Search by Funding Opportunity Number DTPH5615SN0002.

The closing date for applications is April 22, 2015.

For more information, or to apply for a grant, please contact Karen Lynch at karen.lynch@dot.gov.

WSJ: Stockton, Calif., to Exit Bankruptcy Protection on Wednesday.

The city of Stockton, Calif., will leave bankruptcy protection on Wednesday, bringing to close years of cost-cutting efforts that affected bondholders, taxpayers and its retired employees.

Stockton leaders said the 300,000-resident city will leave so-called Chapter 9 protection—the type of bankruptcy procedure used by struggling municipalities—on sturdier financial ground.

City manager Kurt Wilson said the milestone will enable the city, which was hit hard by the housing crash, to move forward toward recovery. "We emerge from bankruptcy a renewed city, perhaps better prepared for our future than any other city in the state, with a new value system, a thorough understanding of our operations and finances and the tools to maintain solvency and adjust to economic conditions for decades into the future."

The city, located about 80 miles inland from San Francisco, is getting out of bankruptcy after more than two years. During the case, voters approved a new 3/4-cent sales tax increase to pay for more police officers, while more than 1,000 workers and retirees who had $538 million in claims against the city agreed to accept one-time payments worth $5.1 million instead.

U.S. Bankruptcy Judge Christopher Klein approved the city's reorganization plan in October.

Stockton filed for bankruptcy protection in June 2012, with more than $700 million of debt, making it the largest city to seek bankruptcy protection under Chapter 9 until Detroit's filing about a year later. Aside from the housing downturn, Judge Klein also blamed the city's financial woes on former leaders who offered overly generous pay to city workers and took on debt for new projects that the city couldn't afford.

One place where Stockton leaders didn't try to cut costs was with its pension fund contributions. The city promised to continue making full payments into a pension plan administered by the California Public Employees' Retirement System, the largest public pension in the U.S., even though Judge Klein decided that a California city's pensions could indeed be cut using bankruptcy's power.

A judge overseeing Detroit's bankruptcy case has also ruled payments into pension funds could be reduced while a city is insolvent.

Stockton is emerging from bankruptcy proceedings despite the protests of one bondholder group. Mutual-fund giant Franklin Templeton Investments is appealing Judge Klein's approval of the city's reorganization plan, which proposed to pay Franklin-managed funds about $4 million on a roughly $37 million debt. Lawyers for the fund have argued that the city can afford to pay more than that amount.

Judge Klein said that the Franklin-managed funds aren't likely to win the appeal. He agreed to let the city leave bankruptcy, despite the appeal, in part to give certainty about Stockton to the roughly $3.6 trillion bond market that extends money to municipalities.

The Franklin-managed funds are the only creditors to continue to challenge the city's bankruptcy-exit plan.

THE WALL STREET JOURNAL

By KATY STECH

Feb. 24, 2015 4:58 p.m. ET

Write to Katy Stech at katherine.stech@wsj.com

WSJ: Puerto Rico Bankruptcy Bill Could Offer Roadmap for Creditors.

A bill that would give Puerto Rico's government agencies access to the same bankruptcy protections provided to cities such as Detroit would provide a road map for investors if one or more runs out of money, a senior government official told a U.S. House committee Thursday.

Melba Acosta, president of the island's Government Development Bank, told the panel of the House Judiciary Committee that a bill permitting the island to let its so-called public corporations seek protection under Chapter 9 of the U.S. Bankruptcy Code would help protect public services and plans for long-term growth. Puerto Rico is currently barred from allowing its government entities to use Chapter 9.

A recent decision by a federal judge to block a local law that would have provided a pathway for the power, water and highway agencies to restructure about $20 billion in debt leaves Puerto Rico in a legal void, creating an uncertain environment that threatens the island's economic future, she said. That lack of clarity reduces investor demand for Puerto Rico debt, affecting the government's strained cash flow, and undermines the administration’s goal of making the agencies self-sufficient.

Without a legal process in place, defaults could prompt “a race to the courthouse,” which could “trigger years of litigation, exacerbate liquidity pressures at these public entities and have adverse consequences on economic growth, which only exacerbates Puerto Rico’s overall fiscal situation,” she said in written testimony. “Creditors would be in a worse position than they would be under an orderly, consensual process.”

The House bill would allow the agencies to follow the same path as Detroit, which emerged from a record municipal bankruptcy last year, and aims to reassure investors who are already familiar with the Chapter 9 process, according to Pedro Pierluisi, Puerto Rico’s nonvoting congressional representative, who sponsored it. Puerto Rico isn’t asking for a bailout or special favors, he said.

The U.S. commonwealth is struggling with a weak economy and a declining population. It has about $73 billion in debt, which is widely held by individuals and mutual funds nationwide because of its tax advantages. Moody’s Investors Service said in a report last week that there is high probability of default on central government obligations within two years.

Robert Donahue, managing director at Concord, Mass.-based research firm Municipal Market Analytics, called the bill a “technical fix” that may help avert chaotic defaults, receivership, years of lawsuits and even social unrest if agencies such as the Puerto Rico Electric Power Authority run out of cash to provide services. The utility, which has about $9 billion in municipal bonds and notes outstanding, is in talks with creditors, and Moody’s expects a default some time this year.

“Among investors, many believe this is the lesser of two evils,” Mr. Donahue, who also testified, said in an interview. “This is not a bailout bill. It doesn’t require any congressional resources. So for Congress it seems like a straightforward, simple way to keep Puerto Rico and the capital markets from negative consequences.”

The bill’s opponents include Thomas Mayer, partner and co-chairman of the corporate restructuring and bankruptcy group at Kramer Levin Naftalis & Frankel LLP, who told the committee that the use of Chapter 9 by Puerto Rico agencies would cause more harm than good. Mayer represents funds managed by Franklin Templeton Investments and OppenheimerFunds Inc., which hold about $1.6 billion in bonds from the Puerto Rico Electric Power Authority and sued in federal court to block the island’s local restructuring law.

Mr. Mayer said Chapter 9 harms bondholders, takes years, costs millions and has no established body of case law. Puerto Rico isn’t a state, and its law already provides for a receivership if an agency can’t pay its debts. And the power authority, known as Prepa, doesn’t need the law—it could raise rates, which have declined with fuel prices, he said.

“Chapter 9 itself does not offer ’certainty,’” he said in prepared remarks. “Chapter 9 is the Wild West.”

University of Michigan law professor John Pottow, however, said the bill was an overdue correction to the bankruptcy code. It faces little opposition in the academic community where it’s not even clear why Puerto Rico was excluded from Chapter 9 in the first place, he said.

Chairman Bob Goodlatte (R. Va.) said in a statement that Chapter 9 could “provide predictability, transparency and stability” to a Puerto Rico agency bankruptcy, which would rank among the largest in U.S. history. He also cautioned that proposals to retroactively impact bondholders’ rights deserve cautious analysis.

Some investors remained skeptical about the bill's chances this week. Even if it advances beyond the committee, "it is highly unlikely to be passed by either chamber of Congress, certainly the Senate," according to a report by Bank of America Merrill Lynch.

THE WALL STREET JOURNAL

By AARON KURILOFF

Feb. 26, 2015 2:10 p.m. ET

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

F.C.C. Moves to Free Up Community Broadband Services.

At the Federal Communications Commission Thursday, the Klieg light of public attention beamed on the net neutrality vote. But there was an earlier vote on another matter, and that was the one that held Harold DePriest's attention.

Mr. DePriest is the chief executive of the Electric Power Board, a community supplier of ultrahigh-speed Internet service in Chattanooga, Tenn. E.P.B. and the city of Wilson, N.C., another municipal broadband provider, last year petitioned the F.C.C. to preempt state laws that limit the build-out of community broadband services. The commission voted 3-2, along political party lines, in favor of using its federal power to override the restrictive laws in those two states.

In the Tennessee case, the result of the restriction, Mr. DePriest said, is that "a tenth of a mile from where my fiber system ends are people who have no Internet service." He wants to extend his fiber-optic cable network to those nearby rural neighborhoods, but the state legal restraints had prevented him.

The law, Mr. DePriest explained, essentially prohibits the power board from offering its broadband service beyond the area the utility traditionally served with electric service. But that often doesn't sync with government jurisdictions or logic. Because of the law, he said, there are two schools in the county without its high-speed broadband service. And E.P.B.'s fiber-optic cable into homes, businesses and schools offers the gold standard of broadband speed — 1 gigabit a second data transfer speeds. That is 40 times faster than the new standard, established by the F.C.C., for high-speed broadband of 25 megabits per second downloads.

The commission action is expected to be challenged in court. And comments from the two Republican commissioners Thursday were a preview of the legal argument. Ajit Pai said he did not believe the agency has the legal right to preempt state laws. Michael O'Rielly, the other Republican commissioner, agreed, saying the F.C.C. move showed "arrogance."

To Mr. DePriest, the goal of the states' rights ideology is to champion local control. "Why is it states' rights to tell local communities what to do?" he asked, and added, "these laws prohibit communities from controlling their own destiny."

Definitions vary, but the F.C.C. says that about 20 states have laws or rules that place restrictions on the freedom of community broadband providers to expand and offer competition to private Internet service providers, mainly cable and telecommunications companies. So while the preemption order only applies to two states, the ruling has wider implications.

Tom Wheeler, chairman of the F.C.C., said the state laws were anti-competitive because they “raise barriers to the deployment of and investment in new broadband networks and infrastructure.”

The F.C.C. asserts that it has the power to override the state laws under Section 706 of the Telecommunications Act of 1996, which directs the commission to remove barriers to broadband investment and competition.

There are cities across the country pursuing ultrahigh-speed networks either by building them on their own or in collaboration with companies. So far, the experience has been mixed in terms of offering a high-speed service that is economically viable.

Chattanooga was an early entrant, starting to lay fiber for its gigabit-speed network in 2009. The rationale, Mr. DePriest said, was that cutting-edge broadband service was a crucial tool of economic development. Good intentions, however, hardly guarantee success.

There were struggles, Mr. DePriest said, both with the technology and with generating sufficient demand to support a sustainable business. At the outset, he said, the EPB crews strained to wire one or two houses a day. Recently, they have wired up to 200 new customers in a day. Today, the .E.P.B. broadband network has 9,000 miles of fiber and serves just under 71,000 homes and businesses. The gigabit Internet service costs $70 a month, and $57 a month if it is part of a bundle of Internet, video and phone service.

“We’ve gone from nothing to a $100 million a year enterprise that pays for itself,” Mr. DePriest said.

Asked about the net neutrality rules the F.C.C. adopted Thursday, Mr. DePriest said he was a regulatory minimalist by instinct. But regulation, he added, has a role to play and that the key will be whether the new rules will as light-touch as Mr. Wheeler insists they will be. Still, Mr. DePriest has no trouble with utility-style regulation of Internet service.

“I’ve spent the last 10 years,” he said, “arguing that high-speed Internet service is a utility in the modern world.”

THE NEW YORK TIMES

By STEVE LOHR FEBRUARY 27, 2015

Chapter 9 a 'Wild West' Solution for Puerto Rico Agencies: Adviser

NEW YORK — A proposed bill to give Puerto Rico’s ailing public agencies a way to restructure debts under U.S. bankruptcy law is a “Wild West” solution that would likely hurt bondholders, an adviser for major investors argued in written testimony ahead of a key congressional committee.

The bill to give Puerto Rico’s agencies the ability to file under Chapter 9 of the U.S. bankruptcy code – used by cities such as Detroit, Michigan, and Stockton, California – was proposed by the U.S. territory’s representative to Congress, Democrat Pedro Pierluisi. It will be heard on Thursday.

“Use of Chapter 9 by any of Puerto Rico’s public corporations will cause more harm than good, for both millions of Americans who invested in Puerto Rico bonds and for the Commonwealth,” according to testimony from Thomas Mayer, a partner at Kramer Levin.

Mayer represents funds managed by Franklin Municipal Bond Group and OppenheimerFunds Inc in respect to their investment in $1.6 billion of bonds issued by Puerto Rico's electric utility, PREPA. PREPA is in dire shape, laden with about $9 billion in debt and already deep in restructuring negotiations with bondholders.

Using Chapter 9 would force bondholders to shoulder the burden of PREPA's operational failures and Puerto Rico's fiscal irresponsibility, Mayer said.

"Chapter 9 is the Wild West," Mayer's testimony said. "The only certainty is that Chapter 9 takes a long time – at least 18 months to three years – and is very expensive."

Pierluisi has argued that the bill empowers the Puerto Rico government to authorize its insolvent public corporations to use a "tried-and-true legal procedure" and would be in the best interests of all stakeholders, including creditors.

Discussion about the bill was reignited when a federal court on Feb. 6 struck down a local law enacted by the Caribbean island granting agencies similar debt-restructuring authority.

Puerto Rico's Government Development Bank, which finances many of the territory's official functions, said Chapter 9 would be a "useful tool for Puerto Rico's long-term economic success, whether or not it is actually invoked," according to testimony from GDB President Melba Acosta.

Acosta said Chapter 9 provides a legal regime already understood by the markets, creditors, prospective lenders and suppliers.

By REUTERS

FEB. 25, 2015, 6:17 P.M. E.S.T.

(Reporting by Nick Brown and Megan Davies)

[Traditional Pension Plans Cost Less than Defined Contribution, Study Shows.]()

A misperception persists among some that defined contribution plans save money, when compared with traditional pensions, but several states that switched to DC plans have experienced a much different reality over time, according to a recent study from the National Institute on Retirement Security. Pensions deliver the same amount of lifetime income for about half of the cost of providing the lifetime income from a typical DC plan, according to the study, titled [Case Studies of State Pension Plans that Switched to Defined Contribution Plans](). The paper summarizes the switch from DB to DC in West Virginia, Michigan, and Alaska, which found that changing from a DB plan to a DC plan did not help an existing underfunding problem, and, in fact, increased pension plan costs. Each state found that workers under the DC plan also face increased levels of retirement insecurity, and that the best way to address a pension underfunding problem is to implement a responsible funding policy of making the full annual required contribution each year and to evaluate and adjust assumptions and funding over time.

Friday, February 20, 2015

GFOA Issues Survey on SEC MCDC Initiative.

This week the GFOA is circulating a member survey to inquire about your experiences with the SEC's Municipalities Continuing Disclosure Cooperation initiative. The MCDC initiative was launched by the SEC last March and invited issuers and underwriters to self-report instances of material misstatements in bond offering documents regarding the issuer's prior compliance with its continuing disclosure obligations. The initiative created an incentive for underwriters to self-report, which in turn caused many issuers to be questioned about their prior continuing disclosure compliance. Issuers could report instances of material misstatements up to December 1, 2014. The brief, multiple choice, 19-question GFOA survey is designed to gather information that will allow us to estimate the time and costs incurred by issuers in responding to the MCDC initiative.

The survey will close on March 17, 2015.

Friday, February 20, 2015

GFOA Advanced Government Finance Institute.

Each year since 1986, GFOA has conducted the Advanced Government Finance Institute, an intensive week-long program that provides GFOA members from across the United States and Canada an opportunity to enhance their leadership skills and focus on emerging trends within the public finance community.

The five-day program, in partnership with the University of Wisconsin-Madison□s School of Business, gathers top academic instructors along with government officials and private-sector specialists to provide 50 qualified attendees with a unique opportunity to address big picture issues facing public finance today, including:

- strategic planning
- global and national economic trends
- relationships with the media
- technology trends
- organizational leadership

The Institute also offers personal and team-building leadership training. The week-long program affords participants many networking opportunities with their peers, an element that enhances the program experience, both professionally and personally.

Next AGFI: July 26-31, 2015 at the University of Wisconsin – Madison

Please submit the application by April 17, 2015.

Application Information

Only 50 qualified candidates are selected based on their professional experience. GFOA membership is required.

Location and Cost

Program and lodging are on the University of Wisconsin-Madisons campus. A program fee of $1,940 includes tuition, housing, meals, classroom materials, and sponsored activities.

For more information, please contact Susan Gaffney.

MSRB Publishes New Fact Book of Municipal Market Data and Invites User Feedback.

Alexandria, VA – The Municipal Securities Rulemaking Board (MSRB) today published its annual Fact Book, the only online sourcebook that analyzes trading data, continuing disclosure documents and other statistics for the $3.6 trillion municipal bond market. The new edition provides monthly, quarterly and yearly aggregate market information from 2010 to 2014, and covers different types of municipal issues, trades and interest rate resets.

The 2014 data collected by the MSRB show a decrease of 16 percent in the number of municipal securities trades compared to the previous year, while submissions of continuing disclosures increased nearly 19 percent in 2014.

Other highlights from the 2014 Fact Book:

- Par volume traded for municipal securities reached $2.77 trillion in 2014, the lowest volume in over a decade. That is a decrease of 11 percent over 2013 and nearly 60 percent lower than the peak of $6.69 trillion traded in 2007.
- The 8.91 million total number of trades in 2014 is 16 percent lower than 2013 and is the lowest level since 2006, when 8.47 million trades were executed.
- Nearly 11,000 annual and audited disclosures were submitted in December 2014, the most in a single month since the MSRB became the official repository for continuing disclosures.
- The number of interest rate resets for variable rate demand obligations and auction rate securities decreased 12 and 23 percent, respectively.

The MSRB periodically considers ways to improve its market research and statistical reports based on market participants' input. For example, the 2014 Fact Book includes a new section on yield and coupon distributions by par amount and number of trades for tax-exempt, fixed-rate municipal securities. Additionally, the most actively traded securities section will now include the coupon for each security for better identification.

The MSRB invites Fact Book users to share their feedback on how they use this reference tool and how it might be further improved. Click here to take a short user survey.

The MSRB promotes market transparency and access to real-time, municipal market bond information by collecting and disseminating information through its Electronic Municipal Market Access (EMMA®) website and other transparency systems. Daily and historical summaries of trade data based on security type, size, sector, maturity, source of repayment and coupon type are housed in EMMA's Market Statistics section.

Past editions of the MSRB's Fact Book can be found on the MSRB's website.

Date: February 25, 2015

Contact: Jennifer A. Galloway, Chief Communications Officer

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WSJ Opinion: Tom Wheeler's Other Web Takeover.

This week Federal Communications Commission chairman Tom Wheeler plans to seize regulatory control over the Internet by declaring private broadband carriers to be public utilities. Less well known is that he also wants to usurp state authority to regulate municipal broadband networks.

Local governments are forever seeking opportunities to diversify their, er, investments in sports stadiums, convention centers and such. Many lately have been getting into broadband. Municipalities have built some 180 fiber-optic networks in addition to about 75 cable services. Most operate as de facto public utilities with an implicit, if not explicit, taxpayer backstop.

President Obama last month hailed the municipal gigabit fiber optic network in Cedar Falls, Iowa, as an exemplar of public broadband's potential to increase connectivity, spur competition and drive economic growth. Yet his laments of market failure are overwrought, and his anecdote of government success comes with caveats.

According to a report last year by New York Law School, the number of high-speed broadband lines more than doubled between June 2009 and December 2012, while the percentage of Census districts with one or fewer fixed broadband providers fell to 1.2% from 3.5%. Broadband cable prices plunged to $1.10 per megabit per second in 2013 from $19 in 1998.

Google 's gigabit fiber-optic network is already available in Kansas City, Austin, and Provo, Utah, and is expanding into Atlanta, Nashville, Raleigh-Durham and Charlotte. With gigabit speed, a user can download a song in less than a tenth of a second. Most Internet users don't require more than 10 megabits for downloads, and consumers don't want to pay more for speeds they don't need.

Rather than driving competition, municipal broadband can undercut the private market. Because they benefit from public financing and right-of-way, munis can price services below private carriers. Like other cities, Cedar Falls financed its broadband via tax-exempt municipal bonds, loans from the public electric utility and federal grants.

This puts taxpayers and in some cases electric-utility ratepayers on the hook if the ventures go belly up. Taxpayers in Monticello, Minnesota, had to bail out their government-run FiberNet after it defaulted on municipal bonds. The publicly financed network in Groton, Connecticut, was sold to private investors at a $30 million loss. Google paid $1 for the failed municipal broadband enterprise in Provo, which cost taxpayers $60 million. Largely because of these risks, 21 states impose restrictions on municipal broadband, which range from requiring public hearings to outright bans.

Enter the FCC's Mr. Wheeler. Last summer, Wilson, North Carolina, and Chattanooga, Tennessee, petitioned the FCC to override state limits on expanding their networks to outlying communities under Section 706 of the 1996 Telecommunications Act.

Section 706's boilerplate text instructs the FCC and states to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience and necessity . . . measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."

Mr. Wheeler has interpreted this vague language as a federal mandate to pre-empt state laws restricting government broadband. He asserts that public broadband is necessary and in the public interest because “commercial broadband providers can pick and choose who to serve based on whether there is an economic case for it.”

Yet under the federalist system and the Constitution’s Tenth Amendment, states have sovereign authority to regulate their municipalities. The Supreme Court has affirmed that “if Congress intends to alter the ‘usual constitutional balance between the States and the Federal Government,’ it must make its intention to do so ‘unmistakably clear in the language of the statute.’”

Yet nowhere in Section 706 is the FCC explicitly authorized to pre-empt state laws regulating municipal broadband. In Nixon v. Missouri Municipal League (2004), the Supreme Court rejected federal pre-emption of a state ban on municipal telecom services.

Mr. Wheeler is trying to end-run this ruling by appealing to the FCC’s mandate to “promote competition” and “remove barriers to infrastructure investment.” But if the Labor Department construed its mandate to “foster, promote, and develop the welfare” of workers as broadly, the feds could nullify state laws that forbid cities from raising their minimum wage or restrict collective bargaining for local government workers.

Mr. Wheeler may figure that liberal ends justify illiberal means, but he is threatening serious damage to the federal system and local self-government.

THE WALL STREET JOURNAL

Feb. 24, 2015 6:50 p.m. ET

SEC Closes Investigation into Bell, Calif. Bond Debt.

Feb 24 (Reuters) – The Securities and Exchange Commission has closed its investigation into bonds issued by the scandal-plagued city of Bell, California, and plans no enforcement action, according to filings posted on Monday.

Federal securities regulators opened an investigation into Bell’s bond debt in October 2010 after large scale fraud by the city’s former administration surfaced.

In a letter to the city’s attorneys dated Feb. 18, Robert H. Conrad, the SEC’s assistant regional director, wrote: “We have concluded the investigation into the City of Bell. Based on the information we have as of this date, we do not intend to recommend an enforcement action by the Commission against the City of Bell.”

Conrad added, however, that the letter “must in no way be construed … that no action may ultimately result from the staff’s investigation.”

Five former officials from Bell, a working class municipality near Los Angeles with a population of roughly 40,000, were convicted in 2013 of corruption charges. They had stolen nearly $11 million from taxpayers, in part through awarding themselves lavish salaries, often for work they did not do.

The SEC investigated $184 million in debt issued by Bell between 2004 and 2007. The bond debt in question, and the conclusion letter from the SEC, were posted by the city on the Municipal

Rulemaking Board's EMMA website, a repository for information relating to municipal bonds.

Bell is now run by an entirely new administration. The SEC did not immediately return emailed requests for comment.

BY TIM REID
LOS ANGELES Tue Feb 24, 2015

(Reporting by Tim Reid; Editing by Alan Crosby)

NYT: Cracks Starting to Appear in Public Pensions' Armor.

First in Detroit, then in Stockton, Calif., and now in New Jersey, judges and other top officials are challenging the widespread belief that public pensions are untouchable.

Gov. Chris Christie of New Jersey delivered the latest blow on Tuesday, when he proposed to freeze that state's public pension plans and move workers into new ones intended not to overwhelm future budgets or impose open-ended demands on taxpayers.

The first crack came in Detroit, where a judge ruled that public pensions could, in fact, be reduced, at least in bankruptcy. Then, just a few weeks ago, an opinion by the bankruptcy judge for Stockton, which emerged from Chapter 9 on Wednesday, called California's mighty public pension system, Calpers, a bully for insisting in court that pension cuts were wholly out of the question.

Such dogma "encourages dysfunctional strategies," wrote the judge, Christopher Klein, chief judge of the United States Bankruptcy Court for the Eastern District of California. He said Calpers's legal arguments were invalid, and he concluded that it lacked standing to dominate the courtroom discussion the way it had. Stockton did not even seek permission to freeze its pension plans, but the judge nevertheless wrote that it was entitled to do so and went on to cite steps that struggling cities in general should take to trim their pension costs legally.

For starters, he recommended negotiating with their unions.

It may be sheer coincidence, but New Jersey seems have taken Judge Klein's instructions to heart, even though states cannot file for bankruptcy and thus lack that particular leverage. For months, a pension commission formed by Governor Christie has been working quietly with the New Jersey Education Association, normally one of the state's most litigious pension adversaries. By talking to each other instead of battling in court again, the two groups managed to find enough common ground to issue what they called a "road map" toward solving New Jersey's daunting pension problems.

Many details remain in flux, and the union took pains on Tuesday to say it was not endorsing Mr. Christie's full proposal and might never do so. But the road map identifies certain issues that are so important to New Jersey's teachers that the union is willing to consider a pension freeze if that is what it takes to fully protect its members from the state's looming pension collapse.

To appreciate how unusual it is for a state to propose a pension freeze, it helps to understand the "vested rights doctrine," the legal argument that public pension plans cannot be frozen or reduced. Most states uphold some form of this doctrine, though in some it is a matter of statute, in others it is enshrined in the constitution and in still others it stems from court precedent. Often, the provisions have been in place for decades and attracted little notice until recently, when baby boomers began to retire in large numbers, placing unexpected pressure on public pension funds and the state and local budgets that support them.

People have sometimes suggested freezing public pension plans to keep the hole from getting deeper. But officials usually say that is impossible, and few want to mount a costly test of the doctrine, especially because the judges who would decide such a case usually participate in public pension systems themselves.

Companies, by contrast, can legally freeze their pension plans and have been doing so for years. Since 1974, companies with pension plans have been governed by a single federal law, the Employee Retirement Income Security Act, or Erisa, which details how freezes must take place to pass legal muster. One basic requirement is that workers midway through their careers are entitled to keep whatever portion of a pension they managed to earn until the date of the freeze.

The states have long argued that because they are legal sovereigns, federal pension law does not apply to them. When states, cities and other local governments try to rein in pension costs, they often create new “tiers” of much smaller benefits for workers they expect to hire in the future, and call it a reform. But there is no freeze for existing workers, who keep accruing the same benefits as before.

In some places, it is increasingly clear that reducing benefits only for future hires does not save enough money to preserve overstretched pension plans, especially in places where retirees outnumber current workers.

The clearest solution is to curb benefit accruals, but that runs directly into the vested rights doctrine. Seeing no other way out, officials often resort to issuing bonds to obtain cash for their pension funds, a risky strategy that has failed in Detroit, Stockton and other places.

Detroit issued such debt in 2005, responding to what seemed a particularly strong rule against tampering with public pension plans: an explicit constitutional provision to that effect.

But Detroit’s bankruptcy judge, Steven W. Rhodes, ruled that the state constitutional protection was not in force while the city sought a fresh start under Chapter 9 of the bankruptcy code. In addition to cutting part of the retirees’ pensions, Detroit froze its existing pension plan and shifted its workers into a new plan that is supposed to have limited ability to tap taxpayers for any investment losses.

Judge Rhodes’s ruling was groundbreaking and so unnerved Calpers over 2,000 miles away that it immediately issued a statement that it had no bearing in California. Unlike Detroit, which operated its own pension fund, many cities and other local governments in California participate in big pooled pension systems, the largest of which is Calpers. Once they join, Calpers makes it extremely difficult to withdraw, demanding a huge termination payment. It also claims to have an enforceable lien it would use to seize the assets of any city that tried to leave without paying.

In his legal analysis in the Stockton case, Judge Klein dissected Calpers’s lien and found that it was flawed and unenforceable in any municipal bankruptcy.

“The bully may have an iron fist, but it also turns out to have a glass jaw,” he wrote.

His opinion seems likely to play a role in other fiscal hot spots. Already, two creditors have referred to it in the continuing bankruptcy case of San Bernardino, Calif. The creditors, a European bank known as E.E.P.K. and the bond insurer Ambac Assurance, are arguing that the city is playing favorites, something not allowed in bankruptcy, where sacrifices are supposed to be roughly equal.

Specifically, San Bernardino has been paying its bills to Calpers while leaving E.E.P.K. and Ambac in the lurch.

And while bankruptcy is limited to cities, the ruling may also inform a pension battle in Illinois, where in November a county judge found that a state-led effort to restructure its ailing pension system was illegal because of a constitutional provision that says: "Membership in any pension or retirement system of the state" or its instrumentalities "shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

The state's attorney general, Lisa Madigan, is appealing that decision, arguing in essence that public pensions can in fact be reduced in Illinois, despite what the constitution says, if that is what it takes "to protect the general public welfare."

"This is one of those things where there's a learning curve," said Karol K. Denniston, a bankruptcy lawyer with Squire Patton Boggs in San Francisco who represented a local taxpayer group in Stockton's case. "People will try things that don't work quite right at first, then build on them. We've added to the municipalities' tool kit."

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

FEB. 25, 2015

- Municipal Legal News – February 2015 – Volume 1, Number 1: Dickinson Wright
- SEC Officials Pushing Harsher Penalties, Streamlined Disclosure.
- Municipal Advisors Concerned About IRMA Exemption.
- March 6 is the Comment Deadline on the GASB'S Proposals on Fiduciary Responsibilities and Lease Accounting.
- Swimming with the Sharks: Goldman Sachs, School Districts, and Capital Appreciation Bonds.
- Draft Accounting Standards Raise Thorny Questions About Accounting for P3 Risks.
- IRS to Allocate Nearly $1.4 Billion in New CREBs Volume Cap: McGuireWoods
- *In re City of Stockton, California* – Bankruptcy Court confirms the City of Stockton's chapter 9 plan of adjustment of debts, holding that pension contracts entered into by the City, including its pension administration contract with CalPERS, may be rejected pursuant to Bankruptcy Code § 365. 11 U.S.C. § 365; bankruptcy practitioners will want to read this interesting, well-written opinion in its entirety.
- *In re Woodham* – Supreme Court of Georgia holds that attorney's conduct in asking developers to pay him 1%($1.3 million!) of the bond amount to dismiss complaints in intervention in bond validation proceedings did not violate rule of professional conduct forbidding an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; Court seems to be letting him off the hook because he was completely honest about the fact that this was a shakedown.
- *In re City of Detroit* – In this Amended Opinion and Order Regarding the Reasonableness of Fees Under 11 U.S.C. § 943(b)(3), Bankruptcy Court finds that the fees billed to the Detroit by the professionals engaged in the City's bankruptcy and restructuring were reasonable; Court extremely complimentary of the lawyers involved in this case; worth a skim.
- *In re City of Detroit* – Previously-published Detroit bankruptcy opinion now with Westlaw Headnotes, making it much easier to navigate this monster.

- And finally, in its opinion confirming the fees charged by the professionals in the Detroit kerfuffle, the Bankruptcy Court noted that, among others, Jones Day, Debevoise & Plimpton, Lazard, and Pepper Hamilton had filed briefs supporting confirmation. In opposition? A Ms. Angles (sic?) Hunt. The occasional David notwithstanding, the smart money remains on the big guy.

BANKRUPTCY - CALIFORNIA

In re City of Stockton, California

United States Bankruptcy Court, E.D. California - February 4, 2015 - B.R. - 60 Bankr.Ct.Dec. 164

The City of Stockton sought the Bankruptcy Court's confirmation of its chapter 9 plan of adjustment of debts.

The City of Stockton plan achieved significant net reductions in total compensation (including lower pensions for new employees and elimination of up to $550 million in unfunded health benefits) that employees accepted in exchange for preserving existing pensions.

All capital markets creditors, except Franklin Templeton – which had issued $36 million in bonds – accepted a package of restructured bond debt in impairments reflecting their relative rights in collateral. Franklin did not fare as well because it took collateral worth only about $4 million to support its loan.

Franklin objected to confirmation, contending that the City's failure to modify pensions meant that the plan was not proposed in good faith.

The California Public Employees' Retirement System (CalPERS), which by contract administered the City-sponsored pensions, attempted to interject itself into the case, arguing that California law insulated its contract from rejection and that the pensions themselves could not be adjusted.

So the fundamental issue in this case was whether, as matters of law and fact, the City's chapter 9 plan should be confirmed even though the plan did not directly impair the City-sponsored pensions.

The Bankruptcy Court confirmed the City's plan, holding that:

- As a matter of law, pension contracts entered into by the City, including the pension administration contract with CalPERS, may be rejected pursuant to Bankruptcy Code § 365. 11 U.S.C. § 365;
- The California statute forbidding rejection of a contract with CalPERS in a chapter 9 case is constitutionally infirm in the face of the exclusive power of Congress to enact uniform laws on the subject of bankruptcy;
- The $1.6 billion lien granted to CalPERS by state statute in the event of termination of a pension administration contract is vulnerable to avoidance in bankruptcy as a statutory lien;
- The Contracts Clauses of the Federal and State Constitutions, as implemented by California's judge-made "Vested Rights Doctrine," did not preclude contract rejection or modification in bankruptcy; and
- Considerations of sovereignty and sovereign immunity did not dictate a different result.

The Court also noted that the authority of CalPERS to interject itself into the potential modification of a municipal pension in California under the Federal Bankruptcy Code is doubtful. As CalPERS does not guaranty payment of municipal pensions and has a connection with a municipality only if that municipality elects to contract with CalPERS to service its pensions, its standing to object to a municipal pension modification through chapter 9 appears to be lacking.

MUNICIPAL CONTRACTS - CALIFORNIA

Torres v. City of Montebello

Court of Appeal, Second District, Division 3, California - February 13, 2015 - Cal.Rptr.3d - 2015 WL 632149

In 2008, a candidate for the Montebello City Council approached the City's exclusive residential waste hauling franchisee about becoming the City's exclusive commercial waste hauling franchisee as well. The candidate won election to the Montebello City Council and, with his vote, the City Council approved a contract granting disposal company an exclusive residential and commercial waste hauling franchise.

In the weeks that followed, the Mayor of Montebello, who had voted against the exclusive franchise, refused to sign the contract. The City Attorney advised the Mayor that he had a ministerial duty to execute contracts passed by the City Council under Government Code section 40602. If the Mayor refused to do so, the City Attorney warned, he would be deemed "absent" under Government Code section 40601 and the Mayor Pro Tempore would be directed to execute the contract in his stead. More weeks passed without the Mayor signing the contract, until, at the apparent direction of the City Attorney, the Mayor Pro Tempore signed it.

Plaintiff filed a complaint against the City seeking a writ of mandate to invalidate the contract. The trial court entered judgment for plaintiff and issued the requested writ, ruling the contract void *ab initio* because it had not been executed by the Mayor as required by Government Code section 40602.

On appeal from the judgment as a real party in interest, disposal company principally contended that the Mayor was appropriately deemed "absent" based on his refusal to carry out his ministerial duty, and the Mayor Pro Tem was therefore authorized to execute the contract under Government Code section 40601.1

The Court of Appeal held that neither the City Attorney nor the Mayor Pro Tem had the authority to deem the Mayor "absent" under the Government Code, as the definition of "absent" was restricted to physical absence and did not include the refusal to perform a ministerial duty. Accordingly, the Mayor Pro Tem's signature was ineffective to enter the contract on the City's behalf, affirming the trial court's judgment on that basis.

IMMUNITY - GEORGIA

Primas v. City of Milledgeville

Supreme Court of Georgia - February 16, 2015 - S.E.2d - 2015 WL 659598

Corrections officer who allegedly was injured in accident after brake line on city transport bus that he was driving ruptured sued city for negligence. The Superior Court denied city's motion for summary judgment on ground of sovereign immunity. City sought interlocutory appeal, which was granted.

On a petition for a writ of certiorari, the Supreme Court held that remand to the Court of Appeals was required for that court to address the issue of whether city was immune from liability for corrections officer's injuries based on sovereign immunity, rather than official immunity.

In addressing the immunity issue before them as one involving official immunity, the Court of Appeals applied inapplicable legal principles, definitions, and precedent and failed to make any determination regarding whether the alleged negligence arose out of the performance, or non-performance of a governmental function.

IMMUNITY - GEORGIA

City of Atlanta v. Mitcham

Supreme Court of Georgia - February 16, 2015 - S.E.2d - 2015 WL 659597

Diabetic inmate in city's custody brought negligence action against city and city's police chief, alleging that defendants' negligent failure to monitor and regulate inmate's insulin levels resulted in permanent injuries. Defendants filed motion to dismiss on grounds of governmental immunity. The State Court denied motion. Defendants appealed.

The Supreme Court of Georgia held that city and police chief were entitled to governmental immunity.

Provision of medical services by city and city's police chief to inmates confined in city's custody was "governmental," rather than "ministerial," function, such that city and police chief were entitled to governmental immunity in negligence action by diabetic inmate alleging that defendants' failure to properly monitor and regulate his insulin levels resulted in permanent injuries. City's duty to furnish inmates necessary medical care and to bear the costs of such care was imposed by statute, and such provision of medical care was to be performed for the benefit of the general public, for which the city derived no special benefit.

BOND VALIDATION - GEORGIA

In re Woodham

Supreme Court of Georgia - February 16, 2015 - S.E.2d - 2015 WL 662294

This disciplinary matter arose from bond validation proceedings in which attorney intervened on behalf of himself and Citizens for Ethics in Government, LLC, filed objections to the validation of the bonds, and later offered to withdraw the objections if developers concerned in the bonds paid a substantial amount of money.

State Bar filed formal complaint against attorney after attorney's petition for voluntary discipline was rejected. Following a hearing, Special Master, found attorney violated rules of professional conduct and recommended that attorney be suspended for three months and receive a public reprimand. Attorney and State Bar sought further review, and the Review Panel found only violation of one rule of professional conduct, but recommended six-month suspension and reprimand. Attorney appealed.

The Supreme Court of Georgia held that:

- Attorney did not violate rule of professional conduct prohibiting unauthorized contact with

represented party, and
- Attorney’s filing of intervention complaint did not violate rule prohibiting him from engaging in conduct involving misrepresentation.

Attorney’s conduct in contacting developers without consent of their bond counsel to discuss settlement of intervention complaints in bond validation proceedings did not violate rule of professional conduct prohibiting attorney from contacting a represented party unless authorized to do so. Attorney first attempted to make contact with developers’ in-house counsel, attorney discontinued communications when he learned that developers had no such counsel, attorney declined to discuss anything of substance with chief executive officer (CEO) without presence of lawyer for developers, and developers’ litigation counsel represented CEO in further discussions, even though she did not enter an appearance in the underlying bond matter.

Attorney’s conduct in asking developers to pay him 1% of the bond amount to dismiss complaints in intervention in bond validation proceedings did not violate rule of professional conduct forbidding an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Attorney’s standing to intervene in bond validation proceedings did not depend on his reasons for intervention, and attorney may have acted badly, may have attempted to misuse a legal process, and may have attempted to get money to which he had no legal claim, but there was no evidence that he misled or attempted to mislead developers about the filing of the complaints in intervention or the legal remedies to which the intervenors might be entitled in the bond validation proceeding.

EMINENT DOMAIN - IDAHO

State, Dept. of Transp. v. Grathol

Supreme Court of Idaho, Boise, November 2014 Term - February 11, 2015 - P.3d - 2015 WL 543197

Transportation Department brought eminent domain action against landowner. The District Court awarded landowner $675,000 in just compensation, and awarded Department costs as the prevailing party. Landowner appealed and Department cross-appealed.

The Supreme Court of Idaho held that:

- Evidence supported district court’s holding that all 56.8 acres of owner’s land had unity of use, rather than just the western 30 acres;
- Landowner suffered no severance damages;
- Expert’s testimony regarding whether proposed frontage road would have impacted his opinion was irrelevant;
- Remand was required for district court to determine whether eminent domain case was extreme and unlikely so as to permit award of attorney fees;
- Costs may properly be awarded to condemnor in eminent domain proceeding, even if it is not an extreme and unlikely situation, overruling *Ada Cty. Highway Dist. v. Acarrequi*, 673 P.2d 1067;
- Trial court did not abuse its discretion in awarding costs for Transportation Department’s expert; and
- Department was entitled to award of attorney fees on appeal.

PENSIONS - LOUISIANA

New Orleans Fire Fighters Pension and Relief Fund v. City of New Orleans

Supreme Court of Louisiana - February 13, 2015 - So.3d - 2014-2224 (La. 2/13/15)

Trustees of the New Orleans Firefighters' Pension and Relief Fund brought mandamus action to compel city to make certain statutory contributions owed to the fund. City filed reconventional demand, alleging mismanagement of the Fund by trustees. The District Court granted fund's exceptions of no right of action and no cause of action to the reconventional demand. City appealed. The Court of Appeal affirmed. City petitioned for writ of mandamus.

The Supreme Court of Louisiana held that city financial officer and director had right and cause of action against Fund to cure co-fiduciary's breach of duty.

Chief financial officer and director of finance was statutorily-named member of the Board and had statutory duty, as fiduciary of Fund, to remedy any known breach of co-fiduciary's duty.

BANKRUPTCY - DETROIT

In re City of Detroit

United States Bankruptcy Court, E.D. Michigan, Southern Division - February 12, 2015 - Slip Copy2015 WL 603888

In this Amended Opinion and Order Regarding the Reasonableness of Fees Under 11 U.S.C. § 943(b)(3), the Bankruptcy Court found that the fees were reasonable. This finding was based primarily on the number and complexity of the issues in the case, the City's extreme financial challenges, the results obtained, the substantial reductions to which many professionals have agreed, and the lack of objections or negative comments regarding fees filed with this Court.

The Order concluded with the following:

"In its oral opinion confirming the plan on November 7, 2014, the Court stated:

'Profound thanks to the attorneys and other professionals in the case. You conducted yourselves with the highest degree of civility, respect, and professionalism, both to each other and to the Court. At the same time, you demonstrated zealous advocacy as well as loyalty to your oaths and to your clients. Your work in this case is a model of the public service role that lawyers and the legal profession perform in our society. It has made me proud to be a part of the judicial process and of the legal profession and each of you should share in that pride.'

In its eligibility opinion near the beginning of the case, the Court made detailed and, frankly, depressing findings about the City's fiscal and service delivery insolvency. Those findings reflected the awesome challenges that the professionals in the case faced, embraced, met and overcame. They understood from the beginning the profound personal stake that each of the 700,000 residents of the City of Detroit had in the outcome of their work.

It is perhaps too easy now to fast-forward through the play-back that is necessary to comprehend the magnitude of the accomplishments of the professionals in this case. But now is the time to appreciate and credit that accomplishment and all of the effort and skill of those professionals in achieving it. The City is now on a path to success precisely because of the expertise, skill, commitment, endurance, personal sacrifice, civility and proficiency of all of the professionals in the case, including most certainly those whose fees are subject to review in this opinion.

In utter contrast to the community sense when the case was filed, the residents of the City as well as its community and political leaders now justly feel and express a strong and genuine sense of enthusiasm, optimism and confidence about the City's future. They should also feel and express a strong and genuine sense of appreciation for these professionals and their service.

The Court, and for that matter the City itself, must acknowledge that the City's own professionals bore the burden of the many challenges in this case. It is therefore proper now to recognize in particular the contribution of the City's advisors, Ernst & Young, Conway MacKenzie, and Miller Buckfire. It is also proper now to specially recognize the singular and extraordinary contribution of the City's attorneys, Jones Day."

BANKRUPTCY - DETROIT

In re City of Detroit

United States Bankruptcy Court, E.D. Michigan, Southern Division - December 31, 2014 - 524 B.R. 14760 Bankr.Ct.Dec. 124

Chapter 9 debtor-city sought confirmation of eighth amended plan of adjustment, and approval of settlements with creditors.

The Bankruptcy Court held that:

- Proposed settlement was fair and equitable, warranting its approval;
- Plan was in the best interests of creditors, as required for confirmation;
- Plan was feasible, as required for confirmation;
- Plan was proposed in good faith, as required for confirmation;
- Plan did not discriminate unfairly in favor of pension classes, as required for confirmation;
- Impairing and discharging § 1983 claims against city would not violate Fourteenth Amendment; and
- Takings Clause claims against city would be excepted from discharge.

MUNICIPAL ORDINANCE - NEW YORK

People v. Diack

Court of Appeals of New York - February 17, 2015 - N.E.3d - 2015 N.Y. Slip Op. 01376

Defendant charged with violating local law prohibiting registered sex offenders from residing within 1,000 feet of a school moved to dismiss the information. The Nassau County District Court granted the motion. The People appealed. The Supreme Court, Appellate Term, reversed and remitted. Defendant appealed.

The Court of Appeals of New York held that:

- Design and purpose of state's enactment of series of laws regulating registered sex offenders was to preempt subject of sex offender residency restriction legislation, and
- County was preempted by state regulatory framework from enacting law prohibiting registered sex offenders from residing within 1,000 feet of a school.

EMPLOYMENT - NEW YORK

Margerum v. City of Buffalo

Court of Appeals of New York - February 17, 2015 - N.E.3d - 2015 N.Y. Slip Op. 01378

Firefighters brought discrimination claims against city, alleging that city allowed promotional eligibility lists created pursuant to Civil Service Law to expire solely on ground that plaintiffs, who were next in line for promotion, were Caucasian. The Supreme Court, Erie County, granted partial summary judgment to firefighters as to liability. City appealed. The Supreme Court, Appellate Division, affirmed as modified, concluding that trial court erred in granting partial summary judgment. Thereafter, the Supreme Court granted partial summary judgment to firefighters as to liability. City appealed. The Supreme Court, Appellate Division, affirmed. After nonjury trial, the Supreme Court awarded a total of $2,510,170 in economic damages and $255,000 in emotional distress damages to remaining plaintiffs. The Supreme Court, Appellate Division, reduced economic damages, yielding final judgment of $1,621,007. Leave to appeal was granted.

The Court of Appeals held that:

- Claims under the Human Rights Law are not subject to the General Municipal Law provisions requiring service of a notice of claim prior to the filing of certain types of claims against a municipality, but
- Issue of whether city had strong basis in evidence to believe it would be subject to disparate-impact liability at the time it allowed promotional eligibility lists for firefighters to expire raised issues of fact that could not be determined on motions for summary judgment.

MUNICIPAL ORDINANCE - OHIO

State ex rel. Morrison v. Beck Energy Corp.

Supreme Court of Ohio - February 17, 2015 - N.E.3d - 2015 -Ohio- 485

City filed complaint seeking injunctive relief against energy company, which had obtained permit from Department of Natural Resources (DNR) to drill oil and gas well within city, alleging that company violated multiple city ordinances. The Court of Common Pleas granted injunctive relief prohibiting company from drilling until it complied with all local ordinances. Company appealed. The Court of Appeals reversed and remanded. City appealed, and the Supreme Court accepted jurisdiction.

The Supreme Court of Ohio held that:

- Ordinances violated Home Rule Amendment;
- Ordinances were an exercise of police power;
- Statewide oil and gas drilling statute was general law; and
- Ordinances conflicted with statute.

INVERSE CONDEMNATION - TEXAS

City of Highland Haven, Texas v. Taylor

Court of Appeals of Texas, Austin - February 12, 2015 - Not Reported in S.W.3d - 2015 WL 655278

Homeowners filed cause of action against City and County, arguing that the sedimentation allegedly resulting from their construction of a bridge constituted inverse condemnation of their waterfront properties because they were no longer able to use the water in the channel as access to and from their property to adjoining lake.

In response, City and County filed pleas to the jurisdiction, arguing that Homeowners' claims were barred by governmental immunity because their pleading did not support a claim for inverse condemnation. The District Court denied the pleas. City and County appealed.

The Court of Appeals reversed the District Court's denial of the pleas to the jurisdiction and rendered judgment dismissing Homeowners' claims, finding that the Homeowners' had no property interest sufficient to support a takings claims and, thus, that the District Court lacked jurisdiction over those claims due to the fact that properties located on a man-made waterway cannot be vested with common-law riparian rights.

TAX - NEW JERSEY

Borough of Hamburg v. Trustees of Presbytery of Newton

Tax Court of New Jersey - February 11, 2015 - 2015 WL 604073

Borough's tax assessor issued a letter denying the Presbytery of Newton's request for tax-exempt status of the Subject Property – a storage building adjacent to a Church – for tax year 2013. The Presbytery thereafter filed an appeal to the County Board, challenging the tax assessor's denial of tax-exempt status. The County Board granted tax-exempt status to the Subject Property, finding that the Presbytery satisfied the requirements of the religious use exemption pursuant to N.J.S.A. 54:4–3.6. The Borough appealed to the Tax Court.

The Tax Court affirmed the County Board's judgment granting tax-exempt status to the Subject Property pursuant to N.J.S.A. 54:4–3.6.

The court found that the testimony during trial adequately established that a substantial quantity of religious artefacts were stored in the Subject Property. Based on the size and quantity of these artefacts, no reasonable storage alternative was available to the Church. Further, the use of the Church to store goods in connection with the Foundation for Peace was a valid charitable purpose that advanced the religious mission of the Presbytery. Accordingly, the court concluded that the Church was reasonably necessary for the Presbytery's religious purpose, and therefore satisfied the actual use requirement of the use test.

As for worship services, there is no requirement in N.J.S.A. 54:4–3.6 that worship services must be offered in order to qualify for exemption. After reviewing the evidence presented during trial regarding the use of the Subject Property, the court found that the Church and Subject Property were an "integral part of the operations of the active parishes" and therefore "reasonably necessary" for the Presbytery's religious purpose. The court found that the Presbytery actually used the Subject Property for its religious purpose, thus satisfying the requirements for exemption under N.J.S.A. 54:4–3.6.

Stanford Examines How Best to Fund Water Projects in Times of Financial

Uncertainty.

A new analysis produced by Stanford's Water in the West Program provides a blueprint for overhauling the way California funds water infrastructure and innovation projects.

The paper offers straightforward prescriptions, including a relatively small per-usage fee on customer utility bills. The fee, known as a public goods charge (PGC), could be a powerful tool for funding water needs despite obstacles such as the state's restrictive fiscal regulations and a lack of dedicated funding for "orphan" water projects such as household efficiency initiatives and new technology investments.

"There is considerable confusion, uncertainty and misinformation about what a water PGC would mean for ratepayers," said blueprint co-author Newsha Ajami, director of urban water policy at Water in the West. "Our research is intended to clarify some of these ambiguities."

Currently, water projects in California are partly funded with municipal bonds, some of which must be approved by voters. A recent, dramatic example is Proposition 1, which authorizes $7.12 billion in general obligation bonds to be used for water-related purposes, in addition to reallocating $425 million of unused bond money from prior water bonds. Voters approved Proposition 1 in 2014.

While a good start, Proposition 1 is not nearly enough to provide sustainable funding for projects such as monitoring and evaluation of water resources. In fact, bonds can be problematic in general because they are often expensive, unreliable and unfairly distributed, according to the report.

In contrast, a public goods charge could be implemented at local, regional or state levels. The revenue it produced could be shared among local and broader-scale projects, not only for public projects such as customer rebates for water-efficient appliances, but also for increasing water innovation state-wide through investment in new technology research, for example.

Public goods charges have a record of success. From 1998 to 2012, California's electricity sector used the mechanism to raise billions of dollars for innovation projects. In some regions, the fee amounted to only 1 percent to 2 percent of an average customer's energy bill. Lessons learned from the electricity sector could be used to structure more effective public goods charge programs for the water sector, the report suggests.

Funding for this report was provided by the California Water Foundation, the National Science Foundation, the National Science Foundation Engineering Research Center for Reinventing the Nation's Urban Water Infrastructure, and Stanford University.

BY ROB JORDAN

Stanford Report, February 18, 2015

- Media Contact

Newsha Ajami, Stanford's Water in the West Program: cell (949) 466-1929, office (650) 724-8162, newsha@stanford.edu

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EO Update: e-News for Charities & Nonprofits - February 17, 2015

1. Register for IRS phone forum: Employment Taxes for Exempt Organizations

Thursday, Feb. 19
2 p.m., ET

Topics include:

- What are employment taxes?
- Independent contractors vs. employees
- Voluntary Classification Settlement Program
- Church and the clergy
- Electronic filing and payment options for employment tax returns
- Small Business Health Care Tax Credit
- Additional Employment Tax Resources

Register for this phone forum.

2. Review recent EO published guidance

- TD 9708 Final regulations under section 501(r) of the Code providing guidance regarding the requirements for charitable hospital organizations added by the Patient Protection and Affordable Care Act of 2010.
- Revenue Procedure 2015-17 sets forth procedures for issuing determination letters and rulings on the exempt status of qualified nonprofit health insurance issuers.

Go to the Recent EO Published Guidance page for more information.

GASB Outlook E-Newsletter, Q1 2015

FROM THE CHAIRMAN'S DESK

GASB Chair Dave Vaudt looks ahead to major project goals for 2015, including finalizing proposed standards on retiree health care benefits, a potential re-examination of the financial reporting model, and the new project on external investment pools. More.

WHAT YOU NEED TO KNOW ABOUT

Fair Value

Fair value refers to the measurement of assets and liabilities—primarily investments—at the estimated price they would bring in the current market. The GASB soon will issue guidance that harmonizes terms with the FASB and brings clarity to areas of uncertainty. More.

ON THE HORIZON

This issue's On the Horizon focuses on the Board's efforts to educate and assist stakeholders in understanding its new pension standards and forthcoming guidance on retiree health care benefits.

More.

RESEARCH UPDATE: THE FINANCIAL REPORTING MODEL

In 2015, the GASB expects to conclude its most important pre-agenda research project: a potential re-examination of the financial reporting model. This article will bring you up to speed on where things stand and what's coming up. More.

ADDED TO AGENDA: EXTERNAL INVESTMENT POOLS

The GASB recently added a project on external investment pools to its current agenda. This effort will consider and address potential impacts of changes recently adopted by the Securities and Exchange Commission in this area.

SEC Officials Pushing Harsher Penalties, Streamlined Disclosure.

WASHINGTON — Securities and Exchange Commission officials are seeking improved disclosure practices in the municipal market and more stringent enforcement of rules protecting investors.

SEC Commissioners and other officials made those comments at the Practicing Law Institute's SEC Speaks 2015 conference Friday. The annual two-day event brings together officials and staff from nearly every arm of the commission. Commissioner Luis Aguilar spoke about enforcement matters, calling on the commission to seek more industry bars for financial professionals caught committing egregious fraudulent conduct.

"These bars, not only serve to punish the wrongdoer, but also protect investors from future misconduct by such person, Aguilar said. "These bars send a clear message to the next potential fraudster."

Industry bars have recently become a highly controversial topic in the muni market with simultaneous settlements last month barring public officials in Harvey, Ill. and Allen Park, Mich., from participating in future offerings of municipal bonds. Aguilar said he has witnessed defendants fight hard to avoid industry bar punishments, but added that the high resistance of wrongdoers to accept bans from the industry is proof of bars' effectiveness.

"Defendants' vigor to avoid being barred is to be expected, as those bars and suspensions take fraudsters out of the industry, and often have a far more lasting impact than the imposition of a monetary fine," Aguilar said.

SEC Investor Advocate Rick Fleming also spoke about the need to bring securities disclosure into the 21st century. Fleming is the first head of the Office of the Investor Advocate, which was established by the Dodd-Frank Act. He assumed his role about a year ago. He reports directly to SEC chair Mary Jo White and his job is to promote the interests of investors by analyzing the impact of proposals by the SEC and self-regulators and finding ways the commission and the SROs can improve investor protection.

Fleming told those attending the conference that the next generation of Americans will be used to information that is presented in an engaging and digestible way, and that old-fashioned methods of providing investor information will not cut it going forward.

After his speech, Fleming told The Bond Buyer that he wants to be active in improving disclosure in the municipal market. He recently submitted a comment letter to the Municipal Securities Rulemaking Board in support of a joint MSRB/Financial Industry Regulatory Authority proposal that would require dealers acting as principals to disclose to customers on their confirmations a "reference price" of the same security traded that same day.

Nearly every SEC commissioner has been pounding the drum for more muni disclosure in recent months, something Fleming said he also wants to lend his voice to.

"I'm pounding that same drum," Fleming said, explaining that the high concentration of retail investors in the fixed income market makes the space important to him. While there will be more work to do, the principal disclosure proposal and other recent MSRB initiatives aimed at improving market transparency are moves in the right direction, Fleming said.

"They don't solve everything, but they're positive steps," Fleming said.

Fleming said he expects his office to continue to be involved in muni market issues and submit comment letters on MSRB proposals.

THE BOND BUYER

BY KYLE GLAZIER

FEB 20, 2015 2:26pm ET

March 6 is the Comment Deadline on the GASB'S Proposals on Fiduciary Responsibilities and Lease Accounting.

Parties interested in submitting written comments or participating in public hearings on the Governmental Accounting Standards Board (GASB) Preliminary Views, Financial Reporting for Fiduciary Responsibilities and/or its Preliminary Views, Leases, should file comment letters or register to participate at the hearings by Friday, March 6, 2015.

The Preliminary Views on fiduciary responsibilities, which was issued November 20, 2014, presents the Board's current thinking on fundamental issues associated with the reporting of activities in which a government has a fiduciary responsibility. In this context, fiduciary responsibility generally relates to a government controlling assets belonging to others in a trustee or custodial capacity. The primary objective is to enhance the consistency and comparability of when and how governments report their fiduciary activities.

The Preliminary Views on leases, also issued November 20, 2014, addresses these transactions from both a lessee and lessor perspective. The document presents the Board's current thinking on the associated issues—which are based on the foundational principle that all leases are financings of the right to use an underlying asset. It includes proposals on how leases would be presented in the financial statements and the information related to leases that governments would disclose in the notes.

Submit Comment Letters

Individuals and organizations are urged to review these Preliminary Views documents and provide written comments by March 6, 2015. Comments should be addressed to the Director of Research and Technical Activities, Project No. 3-13P (for fiduciary responsibilities) and Project No. 3-24P (for leases), and emailed to director@gasb.org or mailed to the following address:

Governmental Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Public Hearings

The GASB will also host a series of concurrent public hearings on both projects to obtain feedback on the Preliminary Views from interested individuals and organizations:

- April 8, 2015, 8:30 a.m. EDT, at the Sheraton LaGuardia East Hotel, Flushing, NY
- April 9, 2015, 8:30 a.m. CDT at the Sheraton DFW Airport Hotel, Irving, TX
- April 10, 2015, 8:30 a.m. PDT, at the Westin Los Angeles Airport Hotel, Los Angeles, CA

The deadline for written notice of intent to participate in the public hearings is also March 6, 2015. Instruction for registering to participate in the hearings can be found in the front of the:

- Preliminary Views on fiduciary responsibilities
- Preliminary Views on leases.

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Financial Accounting Foundation
401 Merritt 7
Norwalk, CT 06856

SLGS Window Likely to Close.

The federal debt limit, which has been suspended for more than a year, will be reinstated on Sunday, March 15. The limit will be set at the amount of debt outstanding, meaning that the federal government will be immediately at the limit. Unless Congress acts to raise or suspend the debt limit before March 15 (a highly unlikely event), the federal government will begin the “extraordinary measures” necessary to avoid default.

The first extraordinary measure typically undertaken is suspending SLGS subscriptions. If the Treasury follows its recent practice, it is likely to announce sometime in the week of March 9 that it will not accept SLGS subscriptions after noon ET, Friday, March 13. In the past, the Treasury Department has fulfilled all requests for SLGS filed before the deadline.

It is unclear how long the SLGS window will remain closed, but it quite likely could be several months. The window will not reopen until the debt limit is raised or suspended again. The Congress and President will have to negotiate the terms of suspending or raising the debt limit and, if the recent past is any guide, they may not come to an agreement until the country is close to a default. The extraordinary measures, together with cash receipts, provide the Treasury with the ability to pay the government's obligations in full for an uncertain period of time depending on the pattern of receipts and expenditures. The period of late March and early April is one where the federal government's receipts are fairly high, so many observers believe that the Treasury can avoid default until sometime in the summer.

NABL will send another alert when we have an announcement from the Treasury Department.

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House Panel to Hold Feb. 26 Hearing on Puerto Rico Bankruptcy Bill.

WASHINGTON — A House subcommittee will hold a hearing Feb. 26 on legislation that would allow Puerto Rico government-owned corporations to restructure their debts under Chapter 9 of the federal Bankruptcy Code.

The U.S. House Judiciary Committee's subcommittee on regulatory reform, commercial and antitrust law, which has jurisdiction over bankruptcy law, will hold the proceeding. The bill, the Puerto Rico Chapter 9 Uniformity Act of 2015, is sponsored by Democrat Pedro Pierluisi, Puerto Rico's non-voting representative to the House. Pierluisi introduced the bill last session, but it failed to gain any traction.

Puerto Rico isn't currently eligible to use Chapter 9 to adjust the debt of its municipalities and public corporations. On Feb. 9 a federal court in Puerto Rico struck down the Puerto Rico Debt Enforcement and Recovery Act, a Puerto Rico law that was enacted last year to give the island's public corporations a process to restructure their debts. Pierluisi was critical of that law, and has said repeatedly that Chapter 9 would be a better approach.

In a statement Thursday, Pierluisi thanked the leaders of the committee as well as the subcommittee, which is chaired by Rep. Tom Marino, R-PA, and consists of eight Republicans and five Democrats.

"It is my hope and expectation that the hearing next Thursday will be productive," Pierluisi said. "Many stakeholders support this bill, and this hearing will provide them with the opportunity to memorialize and explain their support. Although no objections to the bill have been registered with me up until now, if there are any concerns about the legislation, those concerns can be raised and addressed at the hearing. The point of the hearing is to create a comprehensive record that will help the committee's leadership determine whether to take the next step in the legislative process, which would be to hold a vote on the bill."

The fate of the bill could be key for investors holding the bonds of financially distressed government corporations on the island. The Puerto Rico Electric Power Authority had to draw on its debt service reserves to make a July 1 interest payment. PREPA, which has more than $8 billion of bonds outstanding, is now in discussions with its creditors, and there had been speculation that it might ultimately use the Recovery Act.

The Puerto Rican government has said that while it supports amending Chapter 9, it felt it had to move quickly with local legislation rather than wait for Congress to take action.

THE BOND BUYER

BY KYLE GLAZIER

FEB 19, 2015 1:30pm ET

Municipal Legal News - February 2015 - Volume 1, Number 1: Dickinson Wright

DICKINSON WRIGHT WELCOMES EMILY RYSBERG AND ERIC MCGLOTHLIN

Emily Rysberg joins Dickinson Wright's Municipal Law & Finance group with experience in the areas of municipal law and litigation. Emily has experience with municipal litigation, including extensive experience with ordinance enforcement, and has successfully argued a wide range of motion practice. Emily has successfully conducted evidentiary hearings, motions to dismiss and suppress, and has a demonstrated track record of success in her trial practice, obtaining guilty verdicts in numerous jury and bench trials for local municipalities. Emily also has extensive experience assisting municipalities with ordinance drafting and amendment, contract negotiations, employment matters, Freedom of Information Act requests, and has worked to successfully uphold the ordinances of local municipalities against constitutional challenges both at the trial court and appellate level. Emily also enjoys fishing, traveling, and participating on the planning committee for the annual Women vs. Lawyers Charity Softball game benefitting the YWCA of West Michigan.

Eric McGlothlin also joins Dickinson Wright's Municipal Law & Finance group focusing his practice in the areas of public finance, municipal law and education law. Eric has particular expertise in advising governmental entities, underwriters and 501(c)(3) borrowers on complex financial transactions involving the issuance of tax-exempt and taxable debt and on related tax and securities law matters. In addition, Eric advises governmental entities on all matters affecting daily operations including open meetings and public records, procurement law, elections and utility matters. Eric is a member of the National Association of Bond Lawyers and is recognized as a "Rising Star" by Southwest Super Lawyers®.

MAJOR FREEDOM OF INFORMATION ACT ("FOIA") AMENDMENTS

Public Act 563 of 2014 ("Act 563") amends the FOIA to impose a number of new regulations on public bodies. All municipalities will need to review their FOIA practices and procedures to ensure compliance with Act 563 before it takes effect on July 1, 2015. This article summarizes some of the more significant changes to current law.

Act 563 requires public bodies to itemize FOIA fees on a written invoice, detailing why each fee is reasonable and within one of following authorized categories: (1) labor costs for finding records; (2) labor costs for redacting exempt material; (3) costs for transferring material to electronic media; (4) costs of paper copying; (5) labor costs for copying; and 6) mailing costs. Act 563 also limits the amount of fees charged for contract labor involving the separation and exclusion of exempt material (including attorney review of exemptions) to six times the state minimum hourly rate. It further requires that fees be charged in increments of 15 minutes or more with partial increments rounded down.

There are also new regulations regarding government websites. Any public body that maintains a website must post a summary of its FOIA procedures and guidelines online. Further, if a FOIA requester asks for a record that is accessible on the website, the public body is required to inform the requester of that fact and is prohibited from charging a fee pertaining to the record.

Other notable features include:

A maximum fee of 10 cents per page for copying costs.

A requirement that any communication that conveys a request for information and includes a legal citation to the FOIA or the words “information,” “FOIA,” or “copy” must be construed as a FOIA request.

An expansion of the $20 fee waiver (which currently applies only to indigent individuals) to organizations designated by the state to assist persons with disabilities and mental illnesses.

A requirement that a municipality reduce the amount of fees charged if it does not timely respond to a request.

An increase in the fine for arbitrary denials from $500 to $1,000, and a new fine of $500 for excessive fees.

RETHINKING TEXT MESSAGING BETWEEN GOVERNMENT EMPLOYEES

Local governments need to be aware that all forms of social media and digital communication (for example, text messaging, Twitter, and Facebook) used in the performance of official duties may be viewed as correspondence subject to public records retention and FOIA requirements under state law. Before using, or authorizing the use of text messaging or other similar communications, local government agencies should first consider the retention period and disclosure requirements for their particular agency, whether or not compliance with the required retention period is practical, and ensure that these types of communications are properly retained and stored if the municipality elects to use social media and other forms of digital communication.

The applicable retention period varies according to numerous factors, including the type of communication, the substantive content, and the persons communicating. For example, general correspondence between government employees typically has a minimum retention period of 2 years or more. Similarly, government employees should be wary of using their personal phones to send work-related text messages. Doing so likely makes all of the contents of the phone subject to subpoena or examination by a department’s FOIA coordinator.

Unfortunately, despite widespread use of social media and digital communication, the proper interpretation of the state’s retention policies remains somewhat unclear. Until more guidance is provided, government agencies may want to avoid the use of social media and text messaging, or implement other policies to ensure compliance.

ENCROACHMENTS ONTO PUBLIC STREETS: IS THE “RACE TO THE COURTHOUSE” OVER?

Haynes v Village of Beulah,1 a recent decision from the Michigan Court of Appeals, protects municipalities from losing certain public rights-of-ways to claims of adverse possession and acquiescence. There are a number of statutes that protect municipalities from these claims, and it was once thought that all municipal property was immune from them. That changed in 2009, when Mason v City of Menominee2 held that the protection in MCL 600.5821 only applies if the municipality files a lawsuit to reclaim its interest in property before the party-in-use files a lawsuit of its own. The Mason decision — which was based on odd wording in the statute — meant that a municipality could jeopardize its property rights by attempting to negotiate with the party-in-use rather than "racing to the courthouse."

The Haynes decision makes clear that a separate statute (MCL 247.190) protects public highways from adverse possession and acquiescence claims regardless of which party files suit first. It also specifically holds that the term "highway" is broad enough to include platted village streets, rather than being limited to state trunk-line highways. This ruling restores significant protections that were undermined by Mason, but it is too early to tell exactly how far the scope of the "highway" protection extends.

WINDFARMS, ZONING, AND THE POLICE POWER

The Court of Appeals' recent decision in Forest Hill Energy-Fowler Farms, LLC v Township of Bengal3 makes clear that municipalities cannot evade the procedural requirements in the Zoning Enabling Act by exercising the zoning power under the guise of the general police power. The case involved a situation where a county had issued zoning permits for wind farm development in townships that lacked their own zoning ordinances. While the applications for those permits were pending, the townships enacted ordinances under their general police power that imposed stricter height, setback, noise, and shadow-flicker requirements than the county zoning ordinance. The Court of Appeals held that the townships' ordinances were preempted by the county's, because they constituted procedurally improper uses of the zoning power. The Court specifically explained that a zoning ordinance is "one that regulates the use of land and buildings according to districts, locations, or areas." Because the construction of energy facilities is a permanent use of land, and is explicitly listed in the Zoning Enabling Act as being a subject of zoning, it can only be regulated through validly enacted zoning ordinances.

CHANGES IMPACTING RIGHTS OF AN ADDITIONAL NAMED INSURED

Municipalities will no longer be able to rely on their "Additional Named Insured Status" as a means to ensure they receive notification of cancellation of an insurance policy and will instead need to obtain an endorsement setting forth their rights (including notice of cancellation) in the underlying insurance policy. This change comes as a result of Public Act 271 of 2014 amending the Michigan Insurance Code to prohibit insurance carriers from issuing certificates of insurance that purport to modify or expand the policy coverage. Specifically, the amendment provides that an "additional named insured" can no longer require a notice of cancellation provision in a certificate of insurance because the provision would modify or expand the terms of the policy without the insurer's authorization.

OTHER NOTEWORTHY LEGISLATIVE AND REGULATORY DEVELOPMENTS

Attachment of Liens for Township Special Assessments, 2014 PA 561. Provides that when a township levies a special assessment under Public Act 188 of 1954 ("PA 188") to be paid in installments, the lien for each individual installment does not attach until it comes due.

Delinquent Property Tax Installment Plans, 2014 PA 499. Allows a foreclosing governmental unit to create a delinquent property tax installment payment plan for financially distressed persons in danger of losing their homes to tax foreclosure.

Extended Sunset for OPEB bonding, 2014 PA 297. Extends until December 31, 2015, the time period for communities assigned credit ratings within the category of AA or higher to issue bonds to pay the costs of unfunded pension liability or unfunded accrued health care liability.

Firefighter Employment at Multiple Departments, 2014 PA 323. Allows firefighters to volunteer or work for multiple fire departments if doing so does not conflict with the firefighters' original employment. The ability to work for multiple fire departments cannot be limited by local regulation and is a prohibited subject of collective bargaining.

Limitations on Tax Foreclosure Bidders, 2014 PA 501. Prohibits an individual from bidding on property at a foreclosure sale if the individual previously owned the property within a certain time period or has unpaid fines for blight or nuisance violations.

Next Michigan Development Act, 2014 PA 446-447. Authorizes the Michigan Strategic Fund to create new Next Michigan Development Corporations, and requires it to give preference to certain areas in the Upper Peninsula and Detroit-metro area when doing so.

Tax Collecting Agreements with County Treasurers, 2014 PA 568. Authorizes a city, village, or township to contract with the county to have tax collection services performed by the county treasurer.

Uncapping of Taxable Value, 2014 PA 310. Provides that the taxable value of a parcel is not uncapped during certain family-to-family transfers involving trusts.

Zoning Regulation of Amateur Radio Equipment, 2014 PA 556. Prohibits local governments from precluding amateur radio antenna structures erected at certain minimal heights and dimensions.

Footnotes

1.Haynes v Vill of Beulah, No. 317391, 2014 WL 5364190 (Mich Ct App Oct. 21, 2014) (approved for publication).

2.Mason v City of Menominee, 282 Mich App 525 (2009).

3.Forest Hill Energy-Fowler Farms, LLC v Twp of Bengal, No. 319134, 2014 WL 6861254, at *1 (Mich. Ct. App. Dec. 4, 2014).

Last Updated: February 18 2015

Article by Dickinson Wright

Dickinson Wright PLLC

R. Ray Kljajic, a Citi Fixture in Chicago, Moves On.

CHICAGO — Public finance banker R. Ray Kljajic, a staple of Chicago's municipal bond community, is leaving Citi after a 25-year career there.

Kljajic said he was “very pleased yet saddened” to announce his impending departure, according to an email obtained by The Bond Buyer.

The firm announced Kljajic’s resignation internally on Tuesday in a memorandum distributed by Howard “Ward” Marsh, head of the broker-dealer’s municipal securities division.

The email said Kljajic was leaving to pursue other areas of interest involving U.S. infrastructure investment and tax policy. That includes work with investment funds, sources said.

“There is no doubt Ray will pursue these activities with the same passion, hard work, creativity and professional dedication that he brought to his work for so long as a leading senior banker here at Citi,” Marsh wrote. “Ray not only led the Midwest Region with distinction for many years, he has played key roles in several of Citi’s more prominent convention center, hotel, P3 and urban Infrastructure partnership initiatives.”

Marsh called Kljajic a “trusted confidant” for many of the firm’s long-time clients and noted his contributions to the national dialogue on public-private partnerships, infrastructure investment and related tax policies.

Kljajic and Marsh did not return calls to further comment. The firm declined to comment.

Sources said it was Kljajic’s choice to leave and he would be wrapping up work by the end of the month.

Citi finished off 2014 in the third slot among senior managers in the Midwest, credited by Thomson Reuters with leading $1.3 billion of deals.

Kljajic started at Citi, then Smith Barney, in 1989.

He was a general government banker who built a specialty in transportation and then in asset privatization and public-private partnerships.

The firm worked on the financing for the winning bidder on the groundbreaking lease of the Chicago Skyway toll bridge in 2005 and served in the same role in the subsequent lease of the Indiana toll road.

In past conversations, Kljajic said highlights of his career included project financings at O’Hare International Airport including the International Terminal, McCormick Place Convention Center financings, including the groundbreaking convention center hotel financing.

Citi currently is working on a short-term loan financing for a new hotel at the convention center that would eventually be rolled into long-term debt.

Kljajic, a Chicago native who grew up in nearby Gary, Indiana, previously worked at the former Drexel Burnham Lambert from 1988 to 1989.

He started his career at the former Continental Illinois National Bank and Trust as an analyst in 1978 and worked his way up to banking until his departure in 1987.

It was in 1984 while Kljajic was at Continental that he brought a short-term financing idea to Walter Knorr, then comptroller for the administration of Chicago Mayor Harold Washington.

Knorr, who went on to serve as chief financial officer to former Mayor Richard Daley, remembered calling Kljajic a “fine prospect” when asked by the Smith Barney team before the firm hired him.

Knorr, now chief financial officer for the University of Illinois, said he came to rely on Kljajic and the Citi team on transportation financing while at the city.

“You could tell Ray knew his stuff” from the beginning, Knorr said.

“Ray has just the right balance of understanding the financing needs of an issuer and the salesmanship of a banker. Some bankers come in with the product du jour. Ray brought in what an issuer needs,” Knorr said.

Kljajic recruited Knorr as he eyed a private sector job. Knorr joined the Citi team in 2002 to serve as a co-head of the Midwest group with Kljajic.

Illinois’ former debt manager John Sinsheimer, who recently resigned, praised Kljajic as a client’s banker.

“He always had the client’s interests foremost in mind and worked hard to get the best deal for the client,” Sinsheimer said.

During periods of his tenure at Citi, Kljajic led the firm’s Midwest group or served as a co-head.

More recently he had shifted his focus to the firm’s infrastructure finance and P3 group.

Thomas Coomes had been leading the Midwest public finance banking region until the summer of 2014 when Samantha Costanzo, previously of Jefferies, was hired. Coomes and Costanzo serve as co-heads of the region.

Sources said Kljajic had butted heads with Costanzo, who had previously worked for the firm and was cut during a round of layoffs in 2008.

Sources also said Kljajic had long been eyeing other opportunities more focused in the infrastructure field and felt with some recent top-level public finance changes it was good time to make the leap.

THE BOND BUYER

BY YVETTE SHIELDS

FEB 19, 2015 3:51pm ET

[Employee or Independent Contractor - Free IRS Webcast]

What: Free Webcast – 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

If you have a technical or procedural question relating to government entities, please visit the IRS.gov Web site.

If you have a specific question about exempt organizations, call FSLG Customer Account Services at 1-877-829-5500.

IRS to Allocate Nearly $1.4 Billion in New CREBs Volume Cap: McGuireWoods

With close to $1.4 billion in volume cap for New Clean Renewable Energy Bonds (New CREBs) remaining, Notice 2015-12 (the 2015 Notice) announces the March 5 opening of the rolling volume-cap application window for governmental bodies (governments) and cooperative electric companies (co-ops), as well as a closed-end application period for public power providers.1 This Client Alert summarizes the volume-cap application process under the 2015 Notice, including certain new monitoring and filing requirements that require vigilance. For information on New CREBs, including pertinent pronouncements of the Internal Revenue Service (IRS), please see our prior Client Alerts.

Allocation Summary

The amounts, methods and limits of volume cap, as well as application periods and reallocation procedures, for each category are as follows:

Qualified Owners	**Governmental Bodies**	**Cooperative Electric Companies**	**Public Power Providers**
Volume Cap Available	$597,134,963.60	$280,778,469.00	$516,565,691.35
Allocation Method	First-come, first-served	First-come, first-served	Pro rata if oversubscribed
Allocation Limit (per applicant) to be updated periodically	Greater of: (i) 20% of available volume cap, or (ii) $40 million	Greater of: (i) 20% of available volume cap, or (ii) $40 million	Amount requested in application, subject to ratable allocation if oversubscribed
Application Period	Accepting on and after March 5, 2015	Accepting on and after March 5, 2015	Filed by June 3, 2015
Awarded and Forfeited Allocation	Reallocable under the 2015 Notice	Reallocable under the 2015 Notice	Not reallocable under the 2015 Notice; will be subject to future guidance

Application Requirements; Optional Disclosure

Applicants must be qualified issuers and use a form of application substantially similar to the form included in the 2015 Notice as Appendix A. Among other requirements, the application must:

1. be signed by an authorized official of the applicant;
2. designate a person with knowledge of the project and with whom the IRS may communicate;
3. describe the project in reasonable detail, including applicable acquisition, commencement and completion dates, as well as location, expected costs and amount of requested allocation;

4. certify that the project is a qualified facility;2
5. include an engineer's certification of the facility's qualification under applicable provisions of the Internal Revenue Code and expectation of electricity production upon project completion;
6. specify the project owner and certify that such owner is a qualified owner, although (a) for governmentally or co-op owned projects, the application must state that the owner is not a public power provider, (b) if the project may satisfy more than one qualified owner category, the application must identify only one such category, and (c) projects owned by public power providers are ineligible for governmental or co-op volume cap;
7. certify that none of the costs were the subject of a prior application, and if they were, (a) the IRS has been notified that the application has been withdrawn or (b) applicable awarded allocation has reverted to the IRS, plus address any situations of awarded and either expired or forfeited allocation under the 2015 Notice;
8. state that all necessary federal, state and local regulatory and issuance approvals have been received, identify any approvals that have not been received, including the plan and timeframe for securing such approvals and certify that the applicant expects to receive such outstanding approvals to permit the issuance;
9. provide a plan of financing that details use of the proceeds of the New CREBs, other sources of financing, and marketability of the New CREBs prior to the allocation expiration date; and
10. certify reasonably expected compliance with applicable requirements of the Internal Revenue Code and engagement of bond counsel to opine to such compliance.

As with prior awards, the IRS desires to disclose information about the awards, such as the project owner, type, location and amount of awarded volume cap, and it needs the applicant's consent for such disclosure. Such consent is optional and not a condition to receiving volume cap. The form of that disclosure consent is provided in Appendix B of the 2015 Notice.

Application Process; "Accept or Decline" Feature; Allocation Options

Beginning March 5, 2015, the IRS will accept applications for volume cap to governments and co-ops on a first-come, first-served basis, and any applications received before that date will be treated as received on that date. If any government or co-op submits an application requesting an amount exceeding the volume cap available on a particular date, each applicant will be offered a ratable portion of the available volume cap. Each applicant will have 30 days to (i) accept the reduced amount (using Appendix C to the 2015 Notice), or (ii) delay allocation for up to 90 days from its application date in the event additional volume cap becomes available (using Appendix D to the 2015 Notice). If no additional volume cap becomes available, the IRS will notify the applicant, who will have 30 days to accept the reduced allocation or to withdraw its application.

For public power providers, the IRS will accept their applications up to and including June 3, 2015, and in the event of oversubscription, will then offer allocations of volume cap on a pro rata basis relative to the amount of allocation available and the amounts requested. The IRS will notify each applicant of the reduced amount available, and each applicant will have 30 days to accept or decline the reduced amount.

An application will be treated as received either on the date of its receipt or upon the receipt of any supplemental information the IRS requests.

Substantial Deviations

Similar to the prior New CREBs Notice 2009-33, the 2015 Notice contains the "insubstantial deviation" concept; however, unlike the prior notice, an allocation of volume cap under the 2015 Notice will become invalid if, prior to the issuance of the New CREBs, there is a change to, among other things, the New CREB project that substantially deviates from the New CREB project noted in the allocation application. If there is such a change, the 2015 Notice allows the applicant to forfeit its allocation and to submit a new application correcting the deviation.

Additionally, if there is a substantial deviation after the issuance of the New CREBs, the allocation will remain valid if, and only if, the deviation does not change the category of qualified owner and the applicant submits a supplemental notice of issuance to the IRS. The supplemental notice requires the applicant to certify that it reasonably expected, at the time of issuance of the New CREBs, that the use of New CREB proceeds would not substantially deviate from the proposed New CREB project. The supplemental notice further requires a certification that the applicant has obtained an opinion of bond counsel that the change will not cause the New CREBs to fail to meet the applicable requirements of the Internal Revenue Code.

180-Day Expiration Date; Notice of Issuance

Under the 2015 Notice, New CREBs must be issued within 180 days of the allocation date. After 180 days, any unissued allocation will revert to the IRS and be available for reallocation.

Moreover, upon issuance the issuer must file IRS Form 8038-TC as well as a notice of issuance. Such notice must be filed no later than 15 days after the issuance. Such notice shall provide, among other things, the issue price and the issue date of the New CREBs and a project description. If an applicant fails to file such notice within 15 days of the expiration of the 180-day period, the IRS will request such applicant either to submit such notice or to confirm that the allocation has been forfeited. If the applicant fails either to submit the notice within 15 days of the IRS request or to confirm that the allocation was forfeited, the IRS, in its discretion, may treat the allocation as forfeited and as having reverted back to the IRS and available for reallocation.

Footnotes

1, 2. New CREBs may be used for capital expenditures incurred by governments, public power providers or co-ops for one or more qualified renewable energy facilities. Such facilities include certain wind, closed- and open-loop biomass, geothermal or solar energy, small irrigation power, landfill gas, trash, qualified hydropower and marine and hydrokinetic renewable energy facilities.

February 12 2015

Article by Douglas E. Lamb, Michael Dow, John J. Semeniak and James E. Gross

McGuireWoods LLP

Swimming with the Sharks: Goldman Sachs, School Districts, and Capital Appreciation Bonds.

Remember when Goldman Sachs – dubbed by Matt Taibbi the Vampire Squid – sold derivatives to Greece so the government could conceal its debt, then bet against that debt, driving it up? It seems that the ubiquitous investment bank has also put the squeeze on California and its school districts. Not that Goldman was alone in this; but the unscrupulous practices of the bank once called the undisputed king of the municipal bond business epitomize the culture of greed that has ensnared students and future generations in unrepayable debt.

In 2008, after collecting millions of dollars in fees to help California sell its bonds, Goldman urged its bigger clients to place investment bets against those bonds, in order to profit from a financial crisis that was sparked in the first place by irresponsible Wall Street speculation. Alarmed California officials warned that these short sales would jeopardize the state's bond rating and drive up interest rates. But that result also served Goldman, which had sold credit default swaps on the bonds, since the price of the swaps rose along with the risk of default.

In 2009, the lenders' lobbying group than proposed and promoted AB1388, a California bill eliminating the debt ceiling requirement on long-term debt for school districts. After it passed, bankers traveled all over the state pushing something called "capital appreciation bonds" (CABs) as a tool to vault over legal debt limits. (Think Greece again.) Also called payday loans for school districts, CABs have now been issued by more than 400 California districts, some with repayment obligations of up to 20 times the principal advanced (or 2000%).

The controversial bonds came under increased scrutiny in August 2012, following a report that San Diego County's Poway Unified would have to pay $982 million for a $105 million CAB it issued. Goldman Sachs made $1.6 million on a single capital appreciation deal with the San Diego Unified School District.

Green Light to Exploit

In a September 2013 op-ed in SFGate.com called "School Bonds Are a Wall Street Scam," attorney Nanci Nishimura wrote:

". . . AB1388, signed by then-Gov. Arnold Schwarzenegger in 2009, [gave] banks the green light to lure California school boards into issuing bonds to raise quick money to build schools.

Unlike conventional bonds that have to be paid off on a regular basis, the bonds approved in AB1388 relaxed regulatory safeguards and allowed them to be paid back 25 to 40 years in the future. The problem is that from the time the bonds are issued until payment is due, interest accrues and compounds at exorbitant rates, requiring a balloon payment in the millions of dollars. . . .

Wall Street exploited the school boards' lack of business acumen and proposed the bonds as blank checks written against taxpayers' pocketbooks. One school administrator described a Wall Street meeting to discuss the system as like "swimming with the big sharks."

Wall Street has preyed on these school boards because of the millions of dollars in commissions. Banks, financial advisers and credit rating firms have billed California public entities almost $400 million since 2007. [State Treasurer] Lockyer described this as "part of the 'new' Wall Street," which "has done this kind of thing on the private investor side for years, then the housing market and now its public entities."

Gullible school districts agreed to these payday-like loans because they needed the facilities, the voters would not agree to higher taxes, and state educational funding was exhausted. School districts wound up sporting shiny new gymnasiums and auditoriums while they were cutting back on teachers and increasing classroom sizes. (AB1388 covers only long-term capital improvements, not daily operating expenses.) The folly of the bonds was reminiscent of those boondoggles pushed on Third World countries by the World Bank and IMF, trapping them under a mountain of debt that continued to compound decades later.

The Federal Reserve could have made virtually-interest-free loans available to local governments, as it did for banks. But the Fed (whose twelve branches are 100% owned by private banks) declined. As noted by Cate Long on Reuters:

The Fed has said that it will not buy muni bonds or lend directly to states or municipal issuers. But be sure if yields rise high enough Merrill Lynch, Goldman Sachs and JP Morgan will be standing ready to "save" these issuers. There is no "lender of last resort" for muniland.

Debt for the Next Generation

Among the hundreds of California school districts signing up for CABs were fifteen in Orange County. The Anaheim-based Savanna School District took on the costliest of these bonds, issuing $239,721 in CABs in 2009 for which it will have to repay $3.6 million by the final maturity date in 2034. That works out to $15 for every $1 borrowed.

Santa Ana Unified issued $34.8 million in CABs in 2011. It will have to repay $305.5 million by the maturity date in 2047, or $9.76 for every dollar borrowed.

Placentia-Yorba Linda Unified issued $22.1 million in capital appreciation bonds in 2011. It will have to repay $281 million by the maturity date in 2049, or $12.73 for every dollar borrowed.

In 2013, California finally passed a law limiting debt service on CABs to four times principal, and limiting their maturity to a maximum of 25 years. But the bill is not retroactive. In several decades, the 400 cities that have been drawn into these shark-infested waters could be facing municipal bankruptcy – for capital "improvements" that will by then be obsolete and need to be replaced.

Then-State Treasurer Bill Lockyer called the bonds "debt for the next generation." But some economists argue that it is a transfer of wealth, not between generations, but between classes – from the poor to the rich. Capital investments were once funded with property taxes, particularly those paid by wealthy homeowners and corporations. But California's property tax receipts were slashed by Proposition 13 and the housing crisis, forcing school costs to be borne by middle-class households and the students themselves.

The same kind of funding shift has occurred in college education nationally. Tuition at public universities and colleges was at one time free. But in successive economic downturns, states have made up for shortfalls in educational budgets by raising tuition. By 2012, tuition was covering 44% of the operating expenses of public higher education. According to a March 2014 report by Demos, 7 out of 10 college seniors now borrow, and their average debt on graduation is over $29,000. The result nationally is a student debt that has grown to $1.5 trillion.

The State that Escaped: North Dakota

According to Demos, per-student funding has been slashed since 2008 in every state but one – the indomitable North Dakota. What is so different about that state? Some commentators credit the oil boom, but other states with oil have not fared so well. And the boom did not actually hit in North Dakota until 2010. The budget of every state but North Dakota had already slipped into the red by the spring of 2009.

One thing that does single the state out is that North Dakota alone has its own depository bank. The state-owned Bank of North Dakota (BND) was making 1% loans to school districts even in December 2014, when global oil prices had dropped by half. That month, the BND granted a $10 million construction loan to McKenzie County Public School No. 1, at an interest rate of 1% payable over 20 years. Over the life of the loan, that works out to $.20 in simple interest or $.22 in compound interest for every $1 borrowed. Compare that to the $15 owed for every dollar borrowed by Anaheim's Savanna School District or the $10 owed for every dollar borrowed by Santa Ana Unified.

How can the BND afford to make these very low interest loans and still turn a profit? The answer is that its costs are very low. It has no exorbitantly-paid executives; pays no bonuses, fees, or commissions; pays no dividends to private shareholders; and has low borrowing costs. It does not need to advertise for depositors (it has a captive deposit base in the state itself) or for borrowers (it is a wholesale bank that partners with local banks, which find the borrowers). The BND also has no losses from derivative trades gone wrong. It engages in old-fashioned conservative banking and does not speculate in derivatives. Unlike the vampire squids of Wall Street, it is not motivated to maximize its bottom line in a predatory way. Its mandate is simply to serve the public interest.

North Dakota currently has a population of about 740,000, or the size of Santa Ana and Anaheim combined. If a coalition of several such cities were to form a municipally-owned bank, they too could have their own low-cost capital funding mechanism, allowing them to escape the budget-sucking tentacles of Wall Street's vampire squids.

By Ellen Brown

Global Research, February 21, 2015

Ellen Brown is an attorney, founder of the Public Banking Institute, and author of twelve books including the best-selling Web of Debt. Her latest book, The Public Bank Solution, explores successful public banking models historically and globally. Her blog articles (nearly 300) are at EllenBrown.com.

Raising $1.7 Billion for Carson Stadium is no Small Task, Experts Say.

At $1.7 billion, the stadium being proposed in Carson by the San Diego Chargers and Oakland Raiders would be the costliest ever built in the National Football League.

And, the teams pledge, no new taxes or money from the city budget will be used to finance it.

So how do they plan to pay for the thing?

Look north, to Santa Clara, said Tim Romer, a managing director for municipal finance at Goldman Sachs and advisor to the Chargers on the deal.

That's where the San Francisco 49ers and city officials created a new public agency that owns the $1.2-billion stadium that opened last year. The Santa Clara Stadium Authority, which is made up of City Council members, took out $621 million in construction loans — to be paid back with tax revenue generated by the stadium and naming rights — and raised $312 million selling personal seat licenses to season ticket holders. Other funds came from the team and NFL, Santa Clara's redevelopment agency and a new hotel tax.

Goldman Sachs worked on that deal and led an investment group on the loans, and at Friday's press conference Romer said a similar structure could work here.

"We've concluded that financing of a stadium here in Carson is very viable and doable," he said. "Taxpayers and the general fund will be isolated and protected. It'll be financed soley by revenues generated by the stadium."

But observers have their doubts.

Neil deMause, editor of Field of Schemes, a website that tracks stadium subsidies, said that while he's skeptical of St. Louis Rams owner Stan Kroenke's ability to finance a stadium in Inglewood, he's even more skeptical that the Chargers and Raiders will be able to find $1.7 billion for one in Carson.

"This seems extremely dubious," he said. "That's a crazy amount of money."

He estimated the two teams could raise $400 million to $500 million selling personal seat licenses, and that while two teams might get more than one on naming rights and other in-stadium revenue, they wouldn't get double. And league bylaws say teams can't tap the NFL's G4 stadium loan program – which could provide $200 million – if they're relocating. That could change, but a majority of owners would have to agree.

"It makes way more sense that this is a bluff," he said.

And while the NFL says it wants an L.A. stadium capable of hosting two teams, putting two teams in the same market – let alone the same building – doesn't necessarily make economic sense, said John Vrooman, a Vanderbilt University economist who studies the league.

"The two teams may split the stadium cost 50/50 but their mutual competition will shrink the total [Southern California] revenue pie regardless of their relative market share," he wrote. "The Raiders and Bolts are worth more as separate monopolies in separate markets than combined in L.A."

And, deMause notes, no one's saying what happens to the shared stadium plan if one of the teams decides to stay put. Neither franchise, he said, could finance this on their own.

"The whole thing is completely screwy," he said.

THE L.A. TIMES

By TIM LOGAN

FEB 20, 2015

[Former Municipal Finance Director in CT Admits Stealing $800,000 from Town.]

In a case with similarities to that of Sharon Scanlon in Shelton, the finance director of Plymouth has pleaded guilty to stealing more than $800,000 from that Litchfield County town.

David J. Bertnagel, 41, of Thomaston, waived his right to indictment on Feb. 20 in Bridgeport federal court and admitted to theft and tax charges stemming from his embezzlement scheme.

Bertnagel pleaded guilty to one count of theft from a local government receiving federal funds, which carries a maximum term of imprisonment of 10 years, and one count making and subscribing a false tax return, which carries a maximum term of imprisonment of three years.

He is scheduled to be sentenced on May 15. He was arrested on Jan. 20.

Sharon Scanlon, Shelton's former assistant finance director, is now in prison after being charged with stealing $914,000 from the city. She was prosecuted at the state — not the federal — level, and also pleaded guilty.

Three years as finance director

According to the criminal complaint, Bertnagel was employed as the finance director for the town of Plymouth from October 2011 to October 2014. He previously worked as a part-time employee in the town's Finance Department.

Plymouth is a town of about 12,000 people in northwestern Connecticut, slightly north of Waterbury and off Route 8.

Feds: Issued checks to himself

From about October 2011 through October 2014, it is alleged that Bertnagel issued 207 checks totaling approximately $808,030 from the town's payroll account to himself.

Prosecutors said Bertnagel used the embezzled funds to make mortgage payments, pay credit card bills, fund home improvement projects and purchase more than $100,000 in coins, stamps and other collectibles.

He also converted more than $182,000 of the stolen funds by way of cashed checks, ATM withdrawals and money orders, according to prosecutors.

Tax returns, federal funding

Bertnagel's federal tax returns for the 2012 and 2013 tax years failed to report any of his embezzled income, resulting in a tax loss to the government of $145,564 for those two years. He also did not file a tax return with the IRS for the 2011 tax year.

Since 2011, the town of Plymouth has received approximately $450,000 in grant awards from the U.S. Department of Health and Human Services.

Will pay restitution

As part of his plea agreement, Bertnagel agreed to make restitution in the amount of $808,030 to the town of Plymouth, and he must cooperate with the IRS to pay all outstanding taxes, penalties and interest.

He also has agreed to forfeit more than $45,000 that he held in bank accounts, and assorted jewelry, stamps, coins and other collectibles that were seized on the date of his arrest.

FBI and IRS involved

This matter is being investigated by the Connecticut Public Corruption Task Force, which includes the Federal Bureau of Investigation, Internal Revenue Service's Criminal Investigation Division, U.S. Postal Inspection Service, and inspector generals from the U.S. Department of Housing and Urban Development, and U.S. Department of Health and Human Services. The case is being prosecuted by Asst. U.S. Attorney Christopher M. Mattei.

The U.S. Attorney's Office for Connecticut is reminding citizens they can report corrupt activity to the Connecticut Public Corruption Task Force by calling 800-CALL-FBI (800-225-5324).

The Scanlon case in Shelton

Sharon Scanlon was the assistant finance director for the city of Shelton. She left her position in 2012 after an investigation began into her possible embezzlement of city funds. She had worked for the city for 17 years.

Scanlon was arrested on state charges in January 2013 and accused of stealing $914,000 in city money over the course of a decade, ending in July 2012.

The indictment charged her with 56 counts of first-degree forgery and one count of first-degree larceny.

She eventually pleaded guilty to one count each of first-degree forgery and first-degree larceny, and was sentenced to four-and-a-half years in state prison in January 2014.

"This is a serious case — a violation of the trust of the taxpayers of the city of Shelton," State's Attorney Kevin Lawlor told the court when Scanlon was being sentenced.

Issuing city checks to herself

Based on court evidence, Scanlon was writing municipal checks to herself and then listing them in city ledgers as either voided or payable to other people.

Her scheme began to unravel in June 2012 when co-workers noticed a city check for $7,825, made out to no one, on Scanlon's desk that had been voided.

The workers wrote down the check number and later saw in bank records it had been made out to "Sharon Scanlon" but was listed as voided in the city's check ledger.

When being sentenced, Scanlon told the court, "I'll spend the rest of my life trying to make amends for this crime, both financially and emotionally."

By Shelton Herald on February 20, 2015

— as edited by Brad Durrell for the Shelton Herald

[U.S. Muni Bond Sales Total $8.8 bln Next Week.]

Feb 20 (Reuters) – Debt sales by U.S. states, cities, schools and other municipal bond issuers next week will total about $8.8 billion, the largest weekly supply so far in 2015, according to Thomson Reuters estimates on Friday.

The week's biggest debt sale comes from Atlanta, Georgia, which plans to refund $1.25 billion of water and wastewater bonds. Loop Capital Markets plans on pricing the deal on Tuesday.

The New York City Transitional Finance Authority will sell $700 million of future tax secured subordinate bonds through Wells Fargo Securities, which set a retail presale period for Monday and Tuesday, followed by formal pricing on Wednesday.

Deals from Nevada issuers top next week's competitive calendar. The Clark County School District will offer $398.4 million of limited-tax general obligation refunding bonds in a two-part sale on

Tuesday. The state of Nevada has set a three-part, $291.4 million sale of new and refunding limited-tax GO bonds for Wednesday.

Yields on Municipal Market Data's benchmark triple-A scale have been ratcheting higher after falling in January.

The yield on 10-year bonds, which started 2015 at 2.01 percent, ended Thursday at 2.08 percent. The 30-year bond yield, which stood at 2.83 percent on Jan. 2, ended at 2.88 percent.

Weekly net flows into U.S. municipal bond funds dropped to just $59 million in the week ended Feb. 18 from $460 million in the previous week, according to Lipper. High-yield muni funds had a second-straight week of net outflows, totaling nearly $220 million in the latest week.

(Reporting By Karen Pierog; Editing by Andrea Ricci)

Draft Accounting Standards Raise Thorny Questions About Accounting for P3 Risks.

A draft document issued by the Federal Accounting Standards Advisory Board (FASAB) calling for greater disclosure of risks associated with P3s by federal agencies raises a number of challenging questions according to a column published this week in The Wall Street Journal's Risk and Compliance Journal.

Risk disclosure for P3s is necessary to help financial statement users understand how taxpayer assets are used and what risks have been taken into account, according to the draft standards. Currently, there is no common reporting standard that would allow a financial statement user to compare them across agencies.

FASAB staffers suggested the kinds of risks that should be disclosed include the costs to oversee P3s, legacy costs, and remote or unlikely risks should be accounted for when turning to the private sector.

"The exposure draft, as applied, would have a chilling effect on sensible risk transfer initiatives within government," Christopher Voyce, senior managing director at Macquarie Capital, said. "My concern about the exposure draft is it treats P3 as a financing decision that doesn't transfer risk."

The problem is that there is no way to account for the benefit a P3 provides by shifting the risk of meeting deadlines and quality standards to the private partner, Voyce explained.

In some circumstances, disclosure of remote risks might be appropriate, depending on the harm that could result from the risk, said Anita Molino, president of Bostonia Partners LLC, and chairman of NCPPP.

At the same time, Molino said, "I don't know how a government accounting officer could, at the start of a relationship, think through what the business risks might be and would they be important enough to be disclosed. In my mind it's way too subjective unless there's something pretty obvious in the relationship."

NCPPP

By Editor February 19, 2015

[S&P's Public Finance Podcast (What's Behind Our Rating Actions on Wayne County, Thomas Jefferson University, and Puerto Rico).]

In this week's Extra Credit, Senior Director Jane Ridley, Director Ken Rodgers, and Senior Director Dave Hitchcock discuss our rating actions on Wayne County, Thomas Jefferson University, and Puerto Rico, respectively.

[Listen to the Podcast.]

Feb 19, 2015

[S&P FAQ: Wayne Charter County, Michigan's Mounting Structural and Financial Pressures Might Affect Credit Quality, but Bankruptcy Fears are Premature.]

In early February, the newly elected Wayne Charter County, Mich., executive, Warren C. Evans raised concerns about the county's ongoing financial problems, highlighting liquidity concerns and the need for major structural fixes, without which a state takeover and bankruptcy could be considerations. Standard & Poor's Ratings Services views bankruptcy and a state takeover of the county as premature. To clarify our views, we are addressing some frequently asked questions regarding our Feb. 13, 2015, downgrade on Wayne County and our opinion of steps the county might take to remedy its financial problems.

Frequently Asked Questions

What was Standard & Poor's recent rating action on the county?
On Feb. 13, Standard & Poor's lowered its rating on Wayne County's limited-tax general obligation (GO) bonds to 'BB+' from 'BBB-', a change to speculative-grade from investment-grade. We based the downgrade on a differentiation between the limited- and unlimited-tax ratings and the county's weakened financial position and ongoing budgetary challenges. The county has no Standard & Poor's-rated unlimited-tax GO debt outstanding.

Standard & Poor's rates the county's limited tax GO bonds 'BB+' with a negative outlook. The rating reflects the county's chronic structural imbalance, brought on in part by cost overages in some of the county's major operating areas, such as the sheriff's department. Of course, falling revenues have also played a part in the imbalance. In addition, chronic management problems, including political gridlock and an inability to create meaningful structural reforms, constrain the rating. These conditions have led to Wayne County's inability to make sufficient changes to operations to eliminate the structural imbalance. (For further details, please see the summary published Feb. 13, 2015, on RatingsDirect.)

What does the negative outlook reflect?
Wayne County has significant, long-standing problems creating a balanced budget. With a new administration that faces such a chronic imbalance, we believed it was the appropriate time to signal that either management must address the imbalance in a relatively short time frame, or further

negative rating action could be warranted. As such, the negative outlook reflects the magnitude of closing the county's structural budget gap and concerns that the time frame for making the changes could be drawn out beyond the county's current expectations.

What is Standard & Poor's view on the comments from the new county executive?
In our view, to start treating the county as if it is about to file for bankruptcy is a bit premature, given the process required in Michigan to file. As we recently saw in Detroit, bankruptcy is a significant issue, with serious potential repercussions for bondholders. We take very seriously any possibility of bankruptcy, but we don't want to rush to judgment before letting the process take its course.

What steps are necessary to file for bankruptcy?
Michigan's Act 436 addresses the circumstances under which local governments can file for bankruptcy, and it outlines numerous steps before a local government can reach that point.

First, the state financial authority must conduct a preliminary review, after which the governor can decide to appoint a formal review team. That team then prepares a report on the local government's financial condition and submits it to the governor's office so the governor can determine if a financial emergency exists. If the governor determines it does, two paths allow a local government to file for bankruptcy. One is that the local government can pursue the appointment of an emergency manager, who has the authority to file for Chapter 9 bankruptcy–but only with the governor's approval. The other path is to bypass the emergency manager and head directly to a Chapter 9 bankruptcy filing, but before this can occur, the governor must approve the action. Again, given this process, a rush to bankruptcy would be difficult for the county.

While many consider it a positive step to bring in a third party who has powers to make changes, such as the Emergency Manger option, given Detroit's recent experience and very rapid move to bankruptcy, our view on the county's trajectory could well change with the appointment of an emergency manager.

In addition to the pressure of the structural imbalance, what other pressures does the county face?
Although Wayne County does not have a lot of debt compared with many peers ($408.2 million in direct GO-only backed debt as of Sept. 30, 2013), it does have a significant other postemployment benefits (OPEB) liability ($1.6 billion at as of Oct. 1, 2012, the most recent actuarial report) and, perhaps most significantly, a pension funding issue. As the Wayne County Employees Retirement System is only 45% funded and carries an unfunded accrued actuarial liability of $878.3 million as of Sept. 30, 2012, (the most recent actuarial report) the pension funding level is clearly a rating factor, and the county definitely needs to address it to regain structural balance and solid financial footing. However, in the context of Detroit's bankruptcy, it is important to remember that although Detroit's pensioners did lose OPEB, the cuts that came out of bankruptcy were borne largely by bondholders, with relatively small—comparatively speaking—changes to pensions.

What issues could lead to a further negative rating action?
Outside of any actions taken toward filing for bankruptcy, an inability to make meaningful changes to the departments with chronic cost overruns is also a credit factor. The county has made progress in some areas, but these departmental overages are still adding to the structural imbalance. Wayne County's management score (Very Weak) is also a credit weakness, given the county's past political gridlock. A meaningful change to this is also important to prevent a further downgrade. Ultimately, we expect the county to show it can make meaningful spending cuts that allow it to regain–and maintain–ongoing structural balance. Without that, we could lower the rating further.

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 Advisors Concerned About IRMA Exemption.

NEW YORK — Municipal advisors remain concerned about one of the key exemptions to the Securities and Exchange Commission's municipal advisor registration rule, even though they said communications between issuers and underwriters remain robust nearly eight months after the final rule took effect.

Municipal advisors expressed concern about the independent registered municipal advisor, or IRMA, exemption in remarks at The Bond Buyer's National Outlook 2015 conference Wednesday.

The IRMA exemption allows an underwriter firm to avoid having to register as an MA as long as the issuer retains, as its own MA, an advisor that doesn't have ties to an underwriting firm, and says that it will rely on that MA's advice. Underwriters who give bond advice to state or local governments without an exemption from the rule, such as the IRMA exemption, otherwise assume a fiduciary duty to put the municipality's interests before their own and are precluded from underwriting any bonds in that same transaction.

"There's still a lot of feeling our way through it," said Noreen White, co-president at Acacia Financial Group, Inc. While there have been some growing pains, White said, she has seen no evidence of a major concern expressed by issuers and underwriters when the rule was unveiled in fall 2013, when there was fear that the regulation would effectively end the practice of investment bankers offering ideas to issuers.

"I haven't seen any of the dreaded impeded conversations," White said. "We still see as many proposals coming across the transom as we ever did."

Steven Peyser, president at Public Resources Advisory Group, said the IRMA exemption should be tweaked to allow for more of what he called a beneficial "cross fertilization" between muni advisors and underwriters. The SEC rule says that an IRMA is only independent if it has been separate from the underwriter seeking to use the exemption at both the entity and employee levels for two years. The MA cannot have been controlled by the underwriter and MA employees involved in the transaction cannot have worked for the underwriter. Peyser said the SEC should either eliminate the two-year cool-off period for individuals or should grant another exemption for sophisticated issuers – a suggestion that has garnered support from industry groups and large issuers in the past.

Peyser added, however, that he also has seen no restrictions on market conversations since the rule's final effectiveness July 1 of last year, so long as the IRMA exemption is used.

"Communications between issuers and underwriters have remained virtually the same," he said.

White said she has another important concern about the potential for abuse of the IRMA exemption through the use of so-called "paper IRMAs" that are listed on a transaction but are not really very involved. SEC muni office officials have said repeatedly that an IRMA has to be meaningfully engaged in the work at hand to qualify as an IRMA and provide the exemption. White said she expects there could be SEC action on that front eventually, perhaps as soon as the Municipal Securities Rulemaking Board has finished writing its own MA rules. White said she would be wary of the potential for trouble in such a situation and told the conference that issuers need to show any serious proposals they get from investment bankers to their IRMA.

"I'm not going up the river for anybody with a pair of silver bracelets," she said.

Federal regulators at the conference discussed expectations for the coming year. Rebecca Olsen, chief counsel at the SEC's muni office, told the group that 2015 could indeed be another "year of the municipal advisor."

"There's a lot of work left to do," she said.

MSRB chair Kym Arnone provided an update on MSRB rulemaking, and spoke about the board's reaction to a Feb. 13 speech by SEC commissioner Luis Aguilar. In that public statement, released by Aguilar's office, the commissioner expressed dissatisfaction with transparency in the muni market and called on the regulators to move swiftly to implement the recommendations included in the SEC's 2012 Report on the Municipal Securities Market. Arnone said Aguilar's sentiments are in line with the MSRB's goals and with those previously stated by SEC chair Mary Jo White. She said the MSRB welcomes Aguilar's interest in the muni market.

THE BOND BUYER

BY KYLE GLAZIER

FEB 18, 2015 12:51pm ET

NCPPP to Partner with EPA, Chesapeake Bay Trust on CBP3S.

The National Council for Public-Private Partnerships has signed an agreement with the Chesapeake Bay Trust and the U.S. Environmental Protection Agency (EPA) to provide community support on the emerging subject of community-based public-private partnerships (CBP3s). NCPPP will provide outreach to support alternative financing for green infrastructure-driven stormwater management. This collaboration supports implementation of President Obama's 2009 Chesapeake Bay Protection and Restoration Executive Order that made restoration of the bay a federal priority.

The highlight of the year-long project will be a CBP3 Stormwater Summit in Philadelphia this spring for communities and potential private sector partners interested in or unfamiliar with the CBP3 model.

According to EPA, this model develops a strong, long-term partnership between a municipality and a private equity group, sharing the risk and creating greater accountability by reinvesting cost savings and revenues to create a pool of funds for reinvestment in future projects. The model was developed by the EPA Region 3 office in Philadelphia and is being employed on a major green stormwater system retrofit project in Prince George's County, Maryland.

"NCPPP is excited to provide its one-of-a-kind educational resources in support of the valuable restoration work that EPA and the Chesapeake Bay Trust are undertaking," NCPPP Executive Director Todd Herberghs said. "Working together, we will be able to foster an understanding of the CBP3 model that can be used to meet some of our nation's growing infrastructure financing needs."

NCPPP also will work with its project partners to develop a model for a one-day charrette to be conducted in the Mid-Atlantic. During the hands-on planning exercise, public and private sector leaders would learn how CBP3 innovations can benefit their particular projects and, specifically, how a value-for-money analysis can be conducted to demonstrate the financial value of the CBP3 model.

These events will help inform a third element of the project — a strategic plan for education, outreach and awareness of the issue. With recommendations from NCPPP, EPA will create a series of educational materials that will further the dialogue about the CBP3 model.

By Editor February 19, 2015

Utah Applies Social Impact Bonds to Early Childhood Education.

The investment tool is catching on as a better, safer way to invest scarce public resources.

In 2009, President Obama announced the first social innovation fund (SIF), an initiative of the Corporation for National and Community Service, which I chaired at the time. SIFs provide a new way of thinking about how to fund government services: Instead of prescriptively asking nonprofits to respond to a bid, we would ask them to nominate an important social problem and describe how they would go about solving it. Over the years, the fund has invested more than a half-billion dollars to address social challenges.

Building on those successes, governments across the country have begun to utilize social impact bonds (SIBs) to solve complex problems with the help of private investors — and to put those resources only into approaches that work. I recently spoke with Ben McAdams, mayor of Utah's Salt Lake County and champion of a pioneering SIB in the field of early childhood education. The Utah High Quality Preschool Program provides assistance to increase school readiness and academic performance among 3- and 4-year-olds to reduce the number of children who require costly special education and remedial services.

As part of the SIB, Goldman Sachs and J.B. Pritzker are providing funding for early education services for more than 3,500 children. Goldman Sachs, the senior lender, will provide up to $4.6 million to the United Way of Salt Lake, which is overseeing implementation of the program. J.B. Pritzker will loan another $2.4 million to the United Way as a means of reducing the senior lender's risk should the preschool program prove to be ineffective. There is no upfront cost to the taxpayer. With the first $1 million investment, more than 450 children were able to attend the preschool program in the fall of 2013.

The amount of the SIB repayments to the lenders is based on the actual savings realized by the state from reducing the number of students who may require special education programs. If the intended results are achieved, the lenders will receive payments equal to 95 percent of the savings, or $2,470 per child each year from kindergarten through sixth grade, plus interest of 0.5 percent. Pay-fo--success payments thereafter will be 40 percent of the savings, or $1,040 per child per year of special education services avoided. If the preschool program does not result in increased school readiness and a decrease in the use of special education services, there is no obligation by the United Way or Salt Lake County to repay the loans.

In practice, SIBs are not really bonds at all, but creative procurement solutions that allow public and private stakeholders to work together toward positive outcomes. Part of Mayor McAdams' excitement, which we have also seen in other jurisdictions, results from the fact that these types of innovative investments are collaborative efforts that can be replicated and create positive social impacts across policy areas.

For now, though, the focus is on this particular pioneering program addressing the needs of young children. "We're following data and evidence to ensure that children — no matter what their economic status — get a chance for a great educational start in life," McAdams said. "We know the county's budget will benefit due to avoiding costs of juvenile crime, drugs and gangs. But the most important bottom line is the measurably better lives for these children."

GOVERNING.COM

BY STEPHEN GOLDSMITH | FEBRUARY 18, 2015

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A Cost-Effective Way to Bust (and Prevent) Contractor Fraud.

Governments that lack the resources for effective oversight should consider turning to independent monitors.

Fraud by government contractors and vendors is all too common, and attempts, particularly by local governments, to spot or prevent it often fall short due to limited funds and staff with too much work and not enough time.

Governments seeking an alternative to a too-often-underfunded inspector general's office, an overburdened contract-compliance unit or an audit staff focused only on internal operations may want to consider an independent monitor. A monitor can keep a watchful eye on contractors and slam the door on potentially unscrupulous vendors before they have an opportunity to engage in fraud.

In the past, independent monitors have been reserved for corporate deferred-prosecution agreements, allowing a business to avoid prosecution after law enforcement has exposed fraud or serious compliance violations. But why wait for the fraud to occur? For governments, it's far better to take a proactive approach and avoid reputation-damaging news about wasted tax revenue.

In considering the independent-monitor approach, it's important for governments to analyze their history. What problems have occurred in the past? Do staff members feel ill-equipped to effectively and efficiently respond to complaints? Would an audit by a funding source reveal agency wrongdoing? If so, a monitor may be the answer to these concerns.

But how can a government with limited funds and a host of programs to service afford to fund an independent-monitor program? The answer is that they can pass the cost on to the contractors themselves. They can build a provision into their requests for proposals and inform potential vendors that they will bear the cost of the monitoring, and vendors can then build the cost into their bids.

So instead of increasing long-term budget allocations to properly fund oversight offices, expenditures will increase incrementally and only on matters that warrant further inspection. Once in place, the monitor reports to appropriate staff inside the government agency who can review any significant findings, report to management if necessary and determine the proper course of action.

To start, though, governments should follow a couple of straightforward guidelines for developing a successful independent-monitoring program:

• When issuing requests for qualifications for independent monitors, governments should evaluate respondents based on their neutrality, objectivity and professionalism. Then evaluators can create a pool of qualified service providers — preferably numerous vendors in each service area. A few red flags to watch out for include respondents that would likely have conflicts with the engagements needing monitoring, inexperienced respondents and vendors that have other business with the governmental agency.

• Governments also should provide the contractor with a list of approved and available professional service firms and let them select one, subject to the government's approval. After a conflicts check to ensure that there are no hidden relationships, the monitor can begin the engagement with a scope of work written by the government.

So what's the return on investment for governments? An effective independent monitoring program can investigate bribery and kickback allegations, ethics policy violations, compliance with minority and women-owned business participation requirements, overbilling, false claims and a myriad of other potential schemes. For example, an independent monitor could require a contractor in an industry known for wining and dining public officials to allow the monitor to review all relevant employee expense reports. This drastically decreases the potential for fraud in this area.

As governments increasingly face tighter budgets and increasing pressure to protect taxpayer dollars, it's crucial that they identify ways to put fraud checks in place across all levels of their organizations. Employing independent monitors is a cost-effective way to help ensure that governments focus on their primary mission: better serving their constituents.

GOVERNING.COM

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Survey Forecasts 2015 Public-Sector Employment.

Most local governments expect to hire some workers, but more will not only continue to leave vacancies unfilled but also anticipate an uptick in layoffs.

Most governments expect to hire some workers for newly created positions this year. But they're also still leaving vacant positions unfilled as a result of tight budgets, according to a survey released today.

The International Public Management Association for Human Resources (IPMA-HR) surveyed more than 1,000 of its members to gauge the employment outlook for 2015. For the most part, the survey found employers don't expect much change from last year.

It's unlikely the sector will see a significant acceleration in hiring. Two thirds of respondents, most of whom represent local governments, plan to hire for new positions this year, the same tally as in 2014. Of those hiring, the majority (58 percent) plan to expand their workforce by less than 1 percent.

While there may be a limited amount of hiring, many governments still aren't in a position to fill slots that have remained vacant, often for years, as a result of recession-era cutbacks. According to the survey, 89 percent of responding governments plan to leave some vacancies unfilled for budgetary reasons. Another 16 percent expect layoffs to occur this year, up slightly from 10 percent in 2014.

While the survey doesn't suggest major changes from 2014, the results still represent notable improvements from prior years. In 2010, just 45 percent of surveyed employers reported hiring for newly-created jobs.

Growth in state and local government employment has been among the slowest of any sector in recent months.

The fact that other sectors of the economy are expanding, though, is certainly good news. If strong private sector growth continues, the resulting revenues should eventually help fund some of the jobs that were cut in the immediate aftermath of the recession.

The IPMA-HR survey also found that 77 percent of responding governments plan to issue pay increases, the same percentage as last year.

GOVERNING.COM

BY MIKE MACIAG | FEBRUARY 18, 2015

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Boston's Public-Transit Snow Job.

The region's transit system is crippled by more than terrible weather. It's suffering from decades of irresponsible financial decisions.

Boston has endured over seven feet of snow in less than a month, and the most visible casualty has been the region's decrepit transit system. A closer look at the woes bedeviling the Massachusetts Bay Transportation Authority (MBTA) reveals a more-than-20-year guide to how not to run a transit system, and the lessons don't only apply to systems that have to contend with mountains of snow and extreme cold.

The MBTA's struggle with this winter's weather has become national news. Massachusetts Gov. Charlie Baker's frustration grew as the system was unable to restore service after each storm, causing MBTA General Manager Beverly Scott to announce her resignation. She then said it would be 30 days before full commuter-rail and subway service could be restored — if there were no more snow in the interim.

Meanwhile, the economic cost to the region of the system's inability to move its 1.3 million daily riders mounts.

It's a mess that could easily have been avoided. The problems trace back to 1991, when state officials signed a consent decree with a local environmental advocacy group that had sued to stop construction of Boston's now infamous "Big Dig" unless the state agreed to build new transit projects as environmental mitigation for the additional cars that the transportation megaproject would accommodate.

The consent decree bound the state to complete 14 new projects, including subway extensions and new commuter-rail lines. It set the MBTA on a path to being the fastest-growing major transit agency in the country even though it serves a relatively slow-growing metropolitan area. No funding source was identified for any of the expansions.

Almost a decade later, in 2000, a law was enacted to "forward fund" the MBTA. Believe it or not, the previous funding system consisted of the authority informing the legislature what it had spent during the previous year and the legislature cutting a check to cover it.

Under forward funding, the MBTA would get the revenue from one penny of the state sales tax and assessments from the municipalities it serves in addition to the revenue it could raise from such sources as fares, parking, advertising and rent on its extensive property holdings. The bonds sold to build the mandated new transit lines also became the MBTA's responsibility.

But before the ink was dry on the forward-funding legislation, the phenomenon of tax-exempt Internet sales began to eat away at sales-tax receipts. It also quickly became clear that parts of the MBTA finance plan were unrealistically optimistic.

By 2002, the MBTA's financial problems were obvious. Reports published in 2007 and 2009 detailed the problems. But state leaders did little, limiting themselves to raising the sales tax in 2009 and modestly increasing the gas tax four years later. By then it was too little too late.

Today the MBTA owes nearly $9 billion in debt and interest, which translates into more than one-quarter of its operating revenue going to debt service. And since money that should have funded maintenance had to be diverted to the legally mandated expansions, the system faces an estimated $5 billion maintenance backlog. Trains, buses and signal systems that should have been retired decades ago have been no match for this winter's cold and snow.

The MBTA debacle holds two major lessons for other transit agencies. First, don't undertake expansions without knowing how they'll be paid for. And see that paying for them includes operations, maintenance and debt service, not just construction costs.

Second, elected officials must have the courage to ensure that transit systems have sufficient funding to meet their critical maintenance and other needs. By kicking the can down the road and waiting years to address the MBTA's looming crisis, state leaders turned a multimillion-dollar problem into a multibillion-dollar disaster — and that's before accounting for the staggering toll the system's meltdown is taking on the local economy.

The long-term silver lining here may turn out to be Beverly Scott's announcement that it will take at least 30 days to restore full service. With every day that customers can't access trains and buses and motorists must contend with the resulting congestion, it becomes less likely that voters will allow their elected representatives to forget about the MBTA's problems once the snow finally melts.

GOVERNING.COM

BY CHARLES CHIEPPO | FEBRUARY 20, 2015

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Refundings Double as Yields Decline Most Since 2011: Muni Credit.

(Bloomberg) — Municipalities across the U.S. are reaping the benefits of interest rates close to five-decade lows, refinancing billions of dollars of debt and freeing up money for roads, schools and environmental projects.

Washington, under court order to boost education spending, expects to save almost $90 million in the next two years, the cost of operating two community colleges. In Oregon, refundings last month saved about $72 million, equivalent to what it paid to fund a Portland research hospital for two years. Louisiana, which faces a $1.6 billion deficit next fiscal year as oil prices slide, will steer a $109 million windfall to transportation work.

"We're spending less money on interest and more money on roads," Louisiana Treasurer John Kennedy said in a telephone interview. "Every penny counts."

Municipal borrowing costs dropped the past four quarters, the longest stretch since 2011, as fixed-income markets rallied amid concern that global economic growth was slowing. Benchmark 10-year munis yield about 2.1 percent, down from about 3 percent at the start of 2014, data compiled by Bloomberg show.

Doubling Up

As interest rates sank, refunding issuance tallied about $70 billion last quarter, up from $36 billion a year earlier, Bloomberg data show.

Since the start of 2015, state and local governments have refunded $27.6 billion in debt as of Feb. 12, for combined savings of $1 billion to $2 billion, said Phil Fischer, head of municipal bond research at Bank of America Merrill Lynch in New York.

The refunding leap spurred the busiest January for muni-bond sales since 2010 — at about $27 billion — and may signal higher issuance for the year ahead, according to Chris Mauro, head of U.S. municipal strategy at RBC Capital Markets in New York.

For local treasurers, the refinancings come at an opportune time, bringing an influx of cash as officials balance rising pension costs with the need to invest in neglected infrastructure projects.

"Incremental funds are always helpful and can accelerate improvements in state finances," Fischer said.

Washington Shortfall

Refunding volume may reach about $235 billion this year, $45 billion higher than last year, Fischer wrote in a Jan. 23 report. The last time refundings were as high was in 2012, he said. Ten-year yields for benchmark muni issuers fell to about 1.5 percent that year, the lowest since at least 2010.

Washington faces a projected budget shortfall of more than $2 billion for the two-year cycle that begins July 1, according to Ralph Thomas, a spokesman for the Office of Financial Management.

A Jan. 21 refunding of about $460 million in general-obligation debt produced $5 million in savings in the two-year budget cycle that begins July 1, said Scott Merriman, a spokesman for the treasurer. A separate refinancing this month generated more than $32 million in savings, the treasurer’s office said.

“We’re a profit center in state government,” Treasurer James McIntire said in an interview. “We finance long-term capital projects, and when we get the opportunity, we refinance them, just like any homeowner would take advantage of lower mortgage rates.”

Taxpayers’ Gain

A state Supreme Court order requiring Washington to boost support for K-12 education accounts for the biggest piece of the budget gap, said Thomas, the spokesman for the financial management office.

Oregon also took advantage of the drop in interest rates, saving about $72 million by refunding lottery-revenue bonds and highway user-tax revenue bonds, according to a Jan. 15 news release.

In Iowa, a refinancing this month by a state authority will generate $33 million of savings for a fund that finances drinking-water and wastewater infrastructure improvements.

Louisiana, which had its credit outlook revised to negative Feb. 13 by Moody’s Investors Service and Standard & Poor’s, generated its savings through a refinancing of gasoline and fuel-tax bonds last month.

The state, where mining activity, including oil, gas and coal, accounts for almost 13 percent of the economy, is confronting budget deficits as oil prices are down about 50 percent since June.

“We’re giving taxpayers more bang for the buck,” said Kennedy, the treasurer.

Bloomberg Muni Credit

by Alison Vekshin
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Schwab Resolves N.Y.’s 2009 Auction-Rate Securities Suit.

(Bloomberg) — Charles Schwab Corp. and New York agreed to settle a 2009 lawsuit in which the state accused the firm of promoting auction-rate securities as safe while failing to disclose the risks before the market for them froze.

New York claimed Schwab engaged in “fraudulent and deceptive conduct” in promoting the investments. Auction-rate securities are municipal bonds, corporate bonds and preferred stocks whose rates of return are periodically reset through auctions. Andrew Cuomo, then attorney general, brought the suit.

The settlement was disclosed in a filing in state Supreme Court in Manhattan. No terms were provided. Schwab and New York said in a November filing that they were in talks to end the case.

The $330 billion worldwide market for auction-rate securities collapsed during the 2008 credit crunch as potential buyers vanished. The crisis sparked regulatory investigations and lawsuits alleging that underwriters and brokers had falsely promoted the securities as safe, cash-like investments.

Liz DeBold, a spokeswoman for current Attorney General Eric Schneiderman, confirmed the settlement and declined to comment further. Sarah Bulgatz, a spokeswoman for San Francisco-based Schwab, said in an e-mail that the company is pleased to have the matter resolved.

Schwab said in an SEC filing in November that it’s been responding to “industrywide inquiries” from federal and state regulators about sales to clients who couldn’t trade their holdings when the “normal auction process for those securities froze unexpectedly in February 2008.”

A Manhattan judge in 2011 granted Schwab’s bid to dismiss the case after the firm said the complaint didn’t cite statements that were false when made or identify who made any misstatements. An appeals court reinstated two of four claims in 2013, saying the state presented enough evidence for a trial.

The case is New York v. Schwab, 453388/2009, New York State Supreme Court, New York County (Manhattan).

by Christian Dolmetsch
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Record Rally Poised to End With Yields at 2015 Peak: Muni Credit

(Bloomberg) — The $3.5 trillion municipal market’s record 13-month rally is poised to end as fixed-income assets slide and localities sell the most debt since 2007.

Munis have lost 1.2 percent this month, and are headed for the first monthly decline since December 2013, Bank of America Merrill Lynch data show. The streak of gains, the longest since the data began in 1989, drove the local-debt market to a 9.8 percent return in 2014.

Treasuries and corporate bonds are also posting February losses after a strengthening labor market signaled the U.S. economy is gaining momentum. State and city obligations face the added headwind of surging issuance from refinancing: Municipalities have sold about $46 billion of securities this year through Feb. 13, the busiest annual start since 2007, data compiled by Bloomberg show.

The borrowing jump "seems to be probably the predominant factor" behind the declines, said Kevin Ramundo, a fund manager who helps oversee $30 billion in munis at Fidelity Investments in Merrimack, New Hampshire. "We certainly didn't think that the returns that we saw in 2014 were likely to be repeated in 2015."

Refunding Pace

States and localities picked up the pace of refunding after interest rates fell to 20-month lows at the start of February. Yields on benchmark 10-year munis have since risen to about 2.1 percent, close to this year's high, from 1.78 percent on Feb. 2. Yields climbed after Labor Department data for January showed the biggest three-month jobs gain in 17 years.

Refinancings are set to account for about 42 percent of sales this week, Bloomberg data show. Scottsdale, Arizona, and Pennsylvania's Montgomery County Industrial Development Authority are among issuers refunding.
The leap in bond sales may increase issuance forecasts for 2015, according to Michael Zezas, chief muni strategist at Morgan Stanley. Offerings this year may exceed his December forecast of about $354 billion, which would be 15 percent higher than in 2014 and end a four-year market contraction, he said.

"The upside in supply is pretty substantial," Zezas said at a Bond Buyer conference in New York on Wednesday. In addition to the flood of refinancings, the economic expansion has also strengthened local finances and made voters more open to debt sales for infrastructure, he said.

Beating Treasuries

While munis are on pace for a monthly loss, Treasuries and corporate debt have declined even more, by 2.1 percent and 1.6 percent, respectively.

Munis have benefited from demand for tax-free income, with the top federal income-tax rate at 39.6 percent as of last year, the highest level since 2000.

Even as munis outperform Treasuries in February, tax-free yields still exceed those on federal debt for 10-year maturities. The ratio of the yields, a measure of relative value between the two markets, is about 101 percent, where the six-year average is about 99 percent. The higher the figure, the cheaper munis are in comparison.

Munis remain "one of the cheaper asset classes," said Dan Heckman, a fixed-income strategist who helps oversee $126 billion at U.S. Bank Wealth Management in Kansas City. "Fundamentally, most municipalities are doing well."

Minutes' Signal

The reaction to Wednesday's release of minutes for the Federal Reserve's January meeting suggests municipalities have more room to refinance. Treasuries climbed as the minutes showed many policy makers favored keeping the overnight benchmark at virtually zero "for a longer time."

The Fed will raise its target, which it's held in a range of zero to 0.25 percent since 2008, as soon as the third quarter, according to the median forecast in a Bloomberg News survey.

The prospect for higher rates in 2015 means the tax-free market will struggle to match last year's performance, according to Zezas.

In his 2015 outlook, published in December, Zezas estimated munis will earn 1.14 percent this year. "I imagine you'll see much more modest returns than you had in 2014, and the path to get there is likely to be much more volatile," he said Wednesday.

Bloomberg Muni Credit

by Meenal Vamburkar and Brian Chappatta

February 18, 2015

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Risk Disclosure for Public-Private Partnerships Under Scrutiny.

Public-private partnership (P3) risks are on the agenda of the Federal Accounting Standards Advisory Board, which sets financial reporting standards for the federal government. An exposure draft issued in October called for more disclosure of the risk of deals where the government turns to the private sector to provide infrastructure, goods and services. Comments on the draft closed in January.

In conversations with Risk & Compliance Journal, FASAB staff have pointed to the increasing use of P3 arrangements, and their complexity, as sources of undisclosed risk. The complexity begins with the very definition of a public-private partnership, a task so elusive that rather than provide a definition, the draft provides a matrix of factors to determine whether disclosure is appropriate. Risks to be addressed, the staff suggested, might include costs of overseeing the P3, legacy costs such as the human resource expenditure for employees whose functions are transferred to the private sector, and even "remote" or unlikely risks.

The exposure draft points out that better disclosure is necessary to help financial statement users understand how taxpayer assets are used and what risks are being incurred in P3 deals. Although public-private partnerships are increasingly the resort of government agencies trying to make the most of scarce budget resources, there is no common reporting standard that would allow a financial statement user to compare them across agencies.

For example, the Forest Service's 2014 budget justification described a new program to "develop public-private partnerships to reduce risks to communities in fire-prone landscapes; to protect public service utilities and enhance water quality in municipal watersheds; and to maintain and restore the resilience of aquatic ecosystems " However, disclosure is limited. Steve Lohr, director of partnerships for the Forest Service, said in an interview, "Currently there is no broader framework for reporting than what our agency requires."

Some industry participants have concerns about the new disclosure requirements, though.

"The exposure draft, as applied, would have a chilling effect on sensible risk transfer initiatives within government," said Christopher Voyce, senior managing director at Macquarie Capital, which advises on and arranges financing for public-private partnerships. "My concern about the exposure draft is it treats P-3 as a financing decision that doesn't transfer risk," he said.

Mr. Voyce noted for example that when a government agency builds and operates something on its own, such as a hospital, it bears all of the risk associated with the project. The same hospital built and operated in a P3 arrangement might well require the private partner to bear the risk of meeting deadlines and quality standards, and reduce the cost to the agency if the private partner didn't deliver on commitments.

Such risk transfer has value that the accounting treatment does not reflect, and Mr. Voyce said that without full accounting for the benefit of the arrangement, P3 would effectively be handicapped in a comparison with other structures.

Another point at issue is the draft's treatment of those "remote" risks that, while unlikely to materialize, could have high impact if they did. "Disclosure of remote risks is the biggest dilemma," said Wendy M. Payne, executive director of the FASAB. According to the draft, "The Board believes that significant P3 risks, including those that may be deemed remote should be disclosed."

Anita Molino, president of Bostonia Partners LLC, and chairman of the National Council for Public-Private Partnerships, concurred that, in some circumstances, disclosure of remote risks might be appropriate, depending on the harm that could result from the risk. However, she said, "I don't know how a government accounting officer could, at the start of a relationship, think through what the business risks might be and would they be important enough to be disclosed. In my mind it's way too subjective unless there's something pretty obvious in the relationship."

She said she supports an alternative view discussed in the Exposure Draft, narrowing the scope of the definition and reducing the disclosure requirements.

In issuing a standard for P3, the FASAB is following the state and local government accounting standard setter, the Governmental Accounting Standards Board, which in 2010 issued a standard for a specific form of public-private partnership, the service concession, but excluded all others, such as construction of infrastructure. A spokesman for the GASB told Risk & Compliance Journal, "There is nothing broader underway."

THE WALL STREET JOURNAL

February 17, 2015, 6:00 AM ET

By GREGORY J. MILLMAN

(Gregory J. Millman is a senior columnist with Risk & Compliance Journal He is the author of The Vandals' Crown: How Rebel Currency Traders Overthrew the World's Central Banks, and several other books. He can be reached at +1 (212) 416-2352 or by email at gregory.millman@wsj.com Follow on Twitter @GregoryJMillman)

House Panel to Hear Proposal for Puerto Rico Bankruptcy Protections.

A U.S. House committee is planning a hearing on a proposal to grant public agencies in cash-strapped Puerto Rico access to the same bankruptcy protections provided to cities such as Detroit, according to a person familiar with the plans.

The hearing, expected to take place in coming weeks before the U.S. House Judiciary Committee, would address bondholder concerns about how a possible default by any of the island's heavily indebted agencies would be handled. The U.S. commonwealth is struggling with more than $70 billion in debt, a sluggish economy and a declining population.

The U.S. Bankruptcy Code denies Puerto Rico's so-called public corporations the protections afforded under Chapter 9, and a federal judge in San Juan last week blocked a law that would have allowed some of those agencies to restructure their debts, ruling it unconstitutional.

Pedro Pierluisi, Puerto Rico's nonvoting representative and a member of the committee, on Wednesday resubmitted a bill that would extend Chapter 9 protections to the Commonwealth, saying lawmakers should act swiftly to avert uncertainty.

The bill would allow the agencies to follow the same path as Detroit, which emerged from a record bankruptcy last year, and aims to reassure investors who are already familiar with the Chapter 9 process, Rep. Pierluisi said.

"The current state of matters is there's no legal framework here for enforcing a restructuring or reorganization plan for any government-owned entity in Puerto Rico," Rep. Pierluisi said.

The law that was struck down, known as the Recovery Act, would have paved the way for public agencies, such as the island's power, water and highway authorities, to restructure debt. The Puerto Rico Electric Power Authority, which has about $9 billion outstanding, is negotiating to extend an agreement with creditors to postpone some obligations that expires at the end of March. Moody's Investors Service said on Tuesday that it expects the utility to default later this year.

Rep. Pierluisi's bill, which was first submitted last summer but failed to advance, has garnered support from some investors and lawyers. Fitch Ratings said on Wednesday that amending the bankruptcy code to include Puerto Rico's entities would benefit bondholders and "place Puerto Rico on an equal footing with the 50 states."

'The current state of matters is there's no legal framework here for enforcing a restructuring or reorganization plan for any government-owned entity in Puerto Rico.'
—Pedro Pierluisi, Puerto Rico's nonvoting congressman and a member of the committee.
Prices for some power-authority bonds maturing in 2036 traded at about 58 cents on the dollar Friday, up from about 40 cents after the Recovery Act's passage in June. Yields went to 12.4% from 17.5%. Yields fall as prices rise.

Standard & Poor's Ratings Services on Thursday cut its rating on Puerto Rico debt further into junk territory and increasing liquidity problems. S&P lowered its rating on the island's general obligation debt to B from BB.

"All of this poses a threat, in our view, to the commonwealth's ability to continue providing basic public services," S&P's report said. "We have observed in other jurisdictions that such an environment can easily give way to political and policy instability."

The bill's chances are improving as lawmakers realize Puerto Rico's importance to stability in the bond markets, where the debt is widely held because of its tax advantages, said Robert Donahue, managing director at Concord, Massachusetts-based research firm Municipal Market Analytics. More than half of municipal mutual funds still hold Puerto Rico bonds, down from about 70% in 2013, according Morningstar data.

"Having a territory default on its bonds is not something that looks good internationally," Mr. Donahue said. "That would be a black eye for the U.S., so it's in the interests of Congress to rectify this problem."

Several analysts, however, said the bill had little chance of advancing beyond the committee, where even Rep. Pierluisi's fellow Democrats have other legislative priorities. Daniel Hanson, an analyst with Washington, D.C.-based investment firm Height Securities LLC, said in a report on Friday that the bill faces opposition from some Republicans and may be all-but dead already.

The Puerto Rico government may also resist having its public corporations enter Chapter 9, because a judge could force politically unpalatable moves such as tax increases and increased user fees, said Mike Comes, a portfolio manager and vice president of research at Sarasota, Florida-based Cumberland Asset Management, which owns some insured bonds issued by the island.

Puerto Rico, meanwhile, is appealing the court decision on the Recovery Act and is working to avert a cash crunch by borrowing at least $2 billion to repay a loan the island's highway authority took from the Government Development Bank, the government's fiscal arm. Puerto Rico's Gov. Alejandro Garcia Padilla this week also proposed reforms that would move the island from an income tax to a consumption tax, an action aimed at increasing collections and stabilizing government revenue.

Rep. Pierluisi said protecting public corporations is another key to Puerto Rico's economic development. "You want them viable," he said. "You want them operating. And if they are insolvent, you want to return them to financial stability through an orderly and stable process."

THE WALL STREET JOURNAL

By AARON KURILOFF

Feb. 13, 2015 5:30 p.m. ET

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

[Court Upholds Ohio's Power to Regulate Oil and Gas Drilling.]

COLUMBUS, Ohio — Certain local zoning laws aimed at limiting fracking can't be used to circumvent the state's authority over oil and gas drilling, a fiercely divided Ohio Supreme Court ruled Tuesday.

In a 4-3 decision with three written dissents, the high court said that the home rule clause of Ohio's constitution doesn't allow a municipality to block drilling activities otherwise permitted by the state.

The decision came in a case brought by the Akron suburb of Munroe Falls against Beck Energy Corp. over a 2004 state law that gives Ohio "sole and exclusive authority" to regulate the location of wells.

Beck received a state-required permit from the Ohio Department of Natural Resources in 2011 to drill a traditional well on private property in Munroe Falls. The city sued, saying the company illegally sidestepped local ordinances.

The lawsuit has been closely watched nationally, raising a question in cities and towns where lucrative oil and gas is trapped in underground shale: Can regulations put in place by states eager for the jobs and tax revenues that come with drilling trump local restrictions on hydraulic fracturing, or fracking, that communities are enacting to protect against haphazard development.

Writing for the court's majority, Justice Judith French said, "The issue before us is not whether the law should generally allow municipalities to have concurrent regulatory authority, but whether (the law) and Home Rule Amendment do allow for the kind of double license at issue here. They do not."

Chief Justice Maureen O'Connor and Justice Sharon Kennedy joined her in determining that Munroe Falls' particular drilling restrictions constituted an exercise of police power — not the local self-government that's protected under home rule.

"Here, the city's ordinances do not regulate the form and structure of local government," French wrote. "Instead, they prohibit — even criminalize — the act of drilling for oil and gas without a municipal permit."

Beck Energy attorney John Keller said the company was pleased but not surprised with the decision.

"This is an area which is, and should be, highly regulated," he said. "The question is not should it be regulated, the question is should it be regulated by people that have the expertise to regulate it or by the local officials who just simply don't have that expertise."

Three justices — Paul Pfeifer, Judith Lanzinger and William O'Neill — dissented in the decision.

"Let's be clear here. The Ohio General Assembly has created a zookeeper to feed the elephant in the living room," wrote O'Neill. "What the drilling industry has bought and paid for in campaign contributions they shall receive."

In their dissents, both Lanzinger and Pfeifer said they saw room for the state and local laws to live side-by-side. Lanzinger noted that the high court has regularly ruled that state laws written to pre-empt local laws can't divest a community of its constitutional home-rule protections.

Justice Terrence O'Donnell opted to concur on the opinion in judgment only. Munroe Falls attorney Tom Houlihan said that means that the court was divided 3-1-3 on the legal reasoning behind Tuesday's decision.

"It's obviously a very complicated and difficult case," he said. "None of the reasons got a majority of votes, which could be carefully read by future courts that there's still a role for local zoning in the oil and gas field. I'm hopeful that is the case."

By THE ASSOCIATED PRESS

FEB. 17, 2015, 1:31 P.M. E.S.T.

San Bernardino Creditors Cry Foul at City's Plan to Hire PR Firm.

LOS ANGELES — A move by bankrupt San Bernardino to spend up to $200,000 on a public relations firm has angered some of the cash-strapped California city's creditors, who face deep cuts under an imminent exit plan.

Negotiations between San Bernardino and most of its creditors have stalled, three months before it must produce a court-ordered bankruptcy exit plan. The city, 65 miles east of Los Angeles, is in year three of a bankruptcy process beset by delay and dysfunction.

City officials have made clear their intention to significantly cut their debt to the holders of $50 million in pension obligation bonds. The city has imposed deep cuts to its police and fire departments and wants to enshrine those cuts in a bankruptcy plan.

On March 2 the city council is set to discuss invited bids from eight public relations firms to improve the city's communications strategy.

Bids have ranged from $72,000 to $201,000 annually. The city already has a $600,000 contract for fiscal year 2014/15 with a financial consultancy to help with the bankruptcy. In November it hired a management consultancy in a $300,000 deal.

"The city's problem is not public relations. It's a lack of leadership," said Corey Glave, the attorney representing the city's fire union.

Ron Oliner, representing the police union, said: "The city is bringing in new experts and advisors, but we cannot yet discern real progress toward its exit from bankruptcy."

Calls to the city manager's office were not immediately returned.

San Bernardino declared bankruptcy in August 2012 with a $45 million deficit, one of a handful of municipal bankruptcies 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 like large pension funds during Chapter 9 protection.

Last year it agreed under any bankruptcy plan to pay in full its biggest creditor Calpers, the state public pension system.

In January, Luxembourg-based Erste Europäische Pfandbrief-und Kommunalkreditbank AG (EEPK), which holds $50 million in pension obligation bonds, sued the city over the Calpers deal.

EEPK argues that its debt should be treated the same as the city's obligation to Calpers. EEPK was joined in suing the city by Ambac Assurance Corp, which insures a portion of the pension bond debt, and Wells Fargo Bank, the bond trustee and flagship bank of Wells Fargo & Co.

By REUTERS

FEB. 19, 2015, 5:39 P.M. E.S.T.

(Reporting by Tim Reid; Editing by Chris Reese)

Illinois Governor Makes Case to Rating Agencies on Fiscal Fix.

CHICAGO — Governor Bruce Rauner is seeking to persuade credit rating agencies from further downgrading Illinois' weak ratings, shortly after presenting his turnaround budget to the state General Assembly.

The Republican governor spoke with the three major credit rating agencies about his spending plan and agenda, his office said late on Thursday. Further downgrades would potentially boost the state's already-high borrowing costs.

"He stressed he is intent on solving the years of financial recklessness that put us in this fiscal crisis," the governor's office said.

Rauner, who took office in January, delivered his first Illinois budget address on Wednesday.

Illinois' credit ratings at A3 and A-minus are the lowest among the 50 states and due to negative outlooks are tipping toward triple-B, a low investment-grade rating level rarely assigned to states.

A chronic structural budget deficit, huge unfunded pension liability and big revenue loss from the recent partial rollback of temporary higher income tax rates are major credit factors for the fifth-biggest U.S. state.

Rauner's $32 billion general funds budget for the fiscal year that begins July 1 aims to chop $6.6 billion from healthcare, local government revenue sharing, mass transit and other areas. Controversial pension changes account for a third of the savings.

"Obviously, Illinois is in a difficult position and these proposals are just proposals," said Ted Hampton, an analyst at Moody's Investors Service, noting the rating agency would be guided by the enacted budget and would weigh the risk that included reforms may not be implemented.

"The governor is certainly aware of the magnitude of the budget challenges Illinois faces and that's important," Hampton added.

Standard & Poor's analyst John Sugden said the major focus is how Illinois will achieve structural balance in its budget regardless of whether that is accomplished with spending cuts or revenue. He added however that the state has had some challenges in the past in terms of delivering on expenditure reduction initiatives.

Illinois is paying a higher price to pay off its debt in the U.S. municipal bond market than many other governments. The state's bonds are yielding 140 basis points over the market's benchmark yield scale for AAA-rated bonds, according to Municipal Market Data. By contrast California, which has addressed many of its fiscal woes, has a so-called credit spread that tops out at only 30 basis points.

The governor's budget was met with howls of protest from Democratic state lawmakers, labor unions, hospitals, and the city of Chicago, which estimates it would lose about $210 million of revenue sharing through the end of 2016.

By REUTERS

FEB. 20, 2015, 11:42 A.M. E.S.T.

CUSIP Issuance Trends Report for January 2015.

NEW YORK, NY, February 12, 2015 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for January 2015. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity, suggests a possible slowdown in U.S. and international corporate debt issuance and an increase in municipal bond issuance over the next several weeks.

Total CUSIP requests for new U.S. and Canadian corporate equity and debt fell 11% in January, with a total of 1,697 new identifiers requested over the course of the month. Within those totals, domestic corporate debt CUSIP demand fell to just 697 in January. On a year-over-year basis, corporate CUSIP request volume fell 18%.

By contrast, municipal CUSIP volume surged 14% in January with a total of 1,076 new identifier requests made over the course of the month. This represents the best opening month for municipal CUSIP orders since 2013 and a 24.5% increase over the year-ago period.

Following steady growth throughout 2014, international debt and equity CUSIP International Numbers (CINS) orders eased in January. Total requests for new international equity CINS were down 2.3%, while international debt CINS requests decreased 4.8% on a year-over-year basis.

"We've seen a mixed volume of new CUSIP orders so far in 2015, with request for new municipal bond identifiers increasing sharply on an annualized basis," said Gerard Faulkner, Director of Operations for CUSIP Global Services. "This month's data also reveals some interesting trends being driven by regulatory reform, such as increased derivatives requests and conversions of tender option bonds to be Volcker Rule compliant."

"Volatility continues to be the name of the game when it comes to new capital creation trends in the U.S. and internationally," said Richard Peterson, Senior Director of Global Markets Intelligence, S&P Capital IQ. "As the macroeconomic environment continues to keep the markets on their toes, we expect to see new instrument issuance ebb and flow with the perceived level of opportunity over the course of Q1."

To view a copy of the full CUSIP Issuance Trends report, please click here.

Robert Fippinger to Join MSRB as Chief Legal Officer.

ALEXANDRIA, Va.–(BUSINESS WIRE)–The Municipal Securities Rulemaking Board (MSRB) announced today that Robert Fippinger, one of the country's preeminent municipal securities attorneys, will join the MSRB as its Chief Legal Officer, overseeing all legal and external affairs. Fippinger, who currently is Senior Counsel at Orrick, Herrington & Sutcliffe and has served on the MSRB Board of Directors since October 2010, tendered his resignation from the Board effective immediately.

"The MSRB is pleased to bring in-house the man who literally wrote the book on 'The Securities Law of Public Finance,'"

"The MSRB is pleased to bring in-house the man who literally wrote the book on 'The Securities Law of Public Finance,'" said MSRB Executive Director Lynnette Kelly. "Bob's knowledge of municipal securities law is unparalleled and he has made enormous contributions to the municipal market, including serving on the MSRB Board of Directors. We are excited to draw upon his talents even more as he assumes this leadership position."

The MSRB also announced that it has promoted Deputy General Counsel Michael L. Post to General Counsel-Regulatory Affairs. Post continues in his role as policy advisor to the MSRB and its Board of Directors, and is taking on additional responsibilities, including managing regulatory relationships and professional qualifications regulations for municipal securities dealers and municipal advisors.

"Since joining the MSRB in 2013, Mike has quickly made significant contributions and in his new role, he will focus his exceptional skills on rulemaking and policy issues, as well as key relationships with other regulators," Kelly said.

Fippinger joins the MSRB at an important time in its development of a regulatory framework for municipal advisors and initiatives to increase price transparency in the municipal market. He will be responsible for overseeing market regulation, communications, education and outreach, and legislative affairs. He will also oversee the MSRB's professional qualification and enforcement support programs, as well as corporate governance.

A legal educator, Fippinger has been an Adjunct Associate Professor of Law at the New York University School of Law, a Visiting Lecturer in Law at Yale University Law School and an Adjunct Law Professor at Hofstra Law School. He is a sought-after expert and lecturer on securities law whose two-volume treatise, first published in 1986 and now updated annually, remains the definitive reference text on the regulation of the municipal securities market.

Prior to his position at Orrick, Herrington & Sutcliffe, Fippinger was a partner and an associate at Hawkins, Delafield & Wood. He received a bachelor's degree from Duke University, and master's and doctorate degrees from Northwestern University. He received a law degree from the University of Michigan Law School.

Before joining the MSRB, Post served for a decade at the Securities and Exchange Commission. He was counsel to Chair Christopher Cox and Chair Mary Schapiro, advising on legal and policy matters arising primarily out of the Divisions of Trading and Markets and Enforcement and the Office of Municipal Securities. Most recently, he was a senior counsel in the SEC's appellate litigation group. Prior to the SEC, he was an associate at Sidley, Austin, Brown & Wood LLP, and began his legal career as a law clerk to the Honorable Paul J. Kelly, Jr., on the U.S. Court of Appeals for the Tenth Circuit. He received a bachelor's degree in economics from the University of California, Los Angeles and a law degree from The George Washington University Law School.

February 19, 2015 08:54 AM Eastern Standard Time

About the MSRB

The MSRB protects investors, state and local governments and other municipal entities, and the public interest by promoting a fair and efficient municipal securities market. The MSRB fulfills this mission by regulating the municipal securities firms, banks and municipal advisors that engage in municipal securities and advisory activities. To further protect market participants, the MSRB provides market transparency through its Electronic Municipal Market Access (EMMA®) website, the official repository for information on all municipal bonds. The MSRB also serves as an objective resource on the municipal market, conducts extensive education and outreach to market stakeholders, and provides market leadership on key issues. The MSRB is a Congressionally-chartered, self-regulatory organization governed by a 21-member board of directors that has a majority of public members, in addition to representatives of regulated entities. The MSRB is subject to oversight by the Securities and Exchange Commission.

Contacts

Municipal Securities Rulemaking Board (MSRB)

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- Obama's Proposed 2016 Budget Seeks to Address Infrastructure Needs: Ballard Spahr
- Judge Says $178 Million Detroit Bankruptcy Fee Tab 'Reasonable'
- Bank Loan Disclosure Fraught With Uncertainty.
- Eight Things we Learned From the Detroit Bankruptcy.
- MSRB Rule G-45 on 529 Plan Data Collection: Upcoming Effective Date and New Manual.
- U.S. District Court Holds that Puerto Rico's Recovery Act is Unconstitutional: Cadwalader
- GFOA: An Elected Official's Guide – Internal Control
- CDFA, Yale Clean Energy Finance Forum Launches New Webinar Series.
- *Schwegel v. Milwaukee County* – Supreme Court of Wisconsin holds that county employees who had not retired did not have vested contract right in reimbursement, and therefore county ordinance that prospectively eliminated Medicare Part B premium reimbursement upon retirement for county employees who did not retire before retirement dates established by county did not impermissibly abrogate a vested contract right.
- And finally, Patience Drake Roggensack. I'm sure that she's a fine Justice, and serves with distinction on the Wisconsin Supreme Court, but she's also Exhibit A in *People v. Lady, Please Just Keep Your Maiden Name*.

ZONING - IDAHO

917 Lusk, LLC v. City of Boise

Supreme Court of Idaho, Boise - June 2014 Term - February 10, 2015 - P.3d - 2015 WL 527852

Commercial building owner petitioned for judicial review of city council's decision granting a conditional use permit (CUP) for developer to build an apartment complex. The District Court affirmed. Building owner appealed.

The Supreme Court of Idaho held that:

- City's refusal to consider adverse effects on property in vicinity of the project was an abuse of discretion, and
- Building owner demonstrated prejudice to substantial rights.

City zoning and planning commission's failure, in granting conditional use permit (CUP) for developer to build an apartment complex taller than applicable zoning height limitation, to recognize that Idaho law and city building code provided it with discretion to require the project to provide on-site automobile parking beyond the minimum required by parking chapter of the code, and thereby refusing to consider adverse effects on property in the vicinity, as evinced by testimony before it, was an abuse of discretion.

City planning and zoning commission's decision to grant conditional use permit (CUP) for developer to build an apartment complex taller than applicable zoning height limitation, prejudiced substantial rights of owner of commercial building located adjacent to proposed building site. Project called for 622 bedrooms to house students at state university and parking chapter of city code required only 280 parking spaces for the project, therefore, there would be significant numbers of residents looking for parking in the vicinity, which could potentially put owner in jeopardy of economic harm.

EMINENT DOMAIN - ILLINOIS

City of Chicago v. Eychaner

Appellate Court of Illinois, First District, Third Division - January 21, 2015 - N.E.3d - 2015 IL App (1st) 131833

The City of Chicago exercised its power of eminent domain to take Fred Eychaner's property and transfer it to the Blommer Chocolate Company. Eychaner filed a traverse and motion to dismiss, challenging the taking as unconstitutional, which the trial court denied. After a trial on just compensation, a jury valued Eychaner's land at $2.5 million.

Eychaner appealed, arguing: (i) the City may not use eminent domain to take property in a conservation area in the name of economic redevelopment; (ii) the trial court should have granted Eychaner's motion in limine to bar reference to the property's planned manufacturing district (PMD) zoning; (iii) the trial court erred in excluding evidence of how and why the City included Eychaner's land in the PMD because it was relevant to the issue of whether there was a reasonable probability of rezoning; (iv) the City should not have been allowed to add new appraisers that Eychaner had originally retained; (v) the trial court should have allowed appraiser Michael MaRous to testify regarding his opinion that there was a reasonable probability of rezoning; (vi) the trial court should have stricken MaRous's testimony for violating the court's in limine order when he identified Eychaner as his original employer; and (vii) the jury's $2.5 million verdict was the result of a mistaken belief that there was no reasonable probability of rezoning.

The Appellate Court held that:

- Under long-standing precedent, the City may use eminent domain to take property in a conservation area to prevent future blight;

- The trial court erred in refusing to exclude reference to the land's PMD zoning (thus the Appellate Court declined to address the relevancy of how and why the PMD zoning came about);
- Eychaner was not prejudiced when the City chose to call witnesses he had formerly retained but had chosen not to call at trial;
- The trial court erred in limiting MaRous's testimony; and
- Because of the trial court's curative instruction, no prejudice arose from MaRous's identifying Eychaner as his original employer.

Accordingly, the court reversed and remanded for a new trial on just compensation.

ANNEXATION - KENTUCKY

Southeast Bullitt Fire Protection District v. City of Shepherdsville

Court of Appeals of Kentucky - February 6, 2015 - Not Reported in S.W.3d - 2015 WL 510935

Fire protection district filed a petition for declaratory judgment asking the court to invalidate fifteen separate annexation ordinances based on City's failure to comply with various statutes governing municipal annexations. The trial court granted summary judgment in favor of City and District appealed.

The Court of Appeals held that:

- Fire protection districts have standing to challenge the annexation of property from within their districts;
- Written waivers of the property owners in each annexation had not cured any proposed defects in the notice requirements of KRS 81A.412, as the waivers were executed after the annexations; and
- The trial court improperly granted summary judgment in favor of City, as District was entitled to conduct discovery regarding its allegations of boundary and filing defects in the annexations.

ZONING - MAINE

Day v. Town of Phippsburg

Supreme Judicial Court of Maine - February 10, 2015 - A.3d - 2015 ME 13

Owner of property abutting beachfront lot filed a complaint against owner of lot and town, seeking a declaratory judgment that lot was not a grandfathered nonconforming lot, created by the merger of two nonconforming lots, within town zoning ordinance. The Superior Court entered judgment in favor of owner of lot and the town. Property owner appealed.

The Supreme Judicial Court of Maine held that grandfathered development status of merged nonconforming lot was permanently lost when that merged lot was unlawfully divided.

ANNEXATION - NEBRASKA

Sanitary and Improvement District No. 196 of Douglas County v. City of Valley

Supreme Court of Nebraska - February 6, 2015 - N.W.2d - 290 Neb. 1

Sanitary and improvement district brought declaratory judgment action against city, challenging city's annexation of land, which included district. The District Court granted summary judgment to city. District appealed.

The Supreme Court of Nebraska held that:

- Parcels of land adjacent to city had rational relation to legitimate purposes of annexation and thus could be annexed by city;
- Parcels of land used for mining gravel and sand were not agricultural land and thus could be annexed by city; and
- Particular parcel was contiguous with or adjacent to city, as would allow annexation.

Parcels of land adjacent to second-class city had rational relation to legitimate purposes of annexation and thus could be annexed by city, even if land was not already zoned and developed into a nonagricultural use, where landowner had made a request for proposals to several developers in the region to explore development opportunities on the land, and landowner financed part of the regional pumping station in order to reserve capacity for over 200 residential lots on site.

Parcels of land used for mining gravel and sand were not agricultural land and thus could be annexed by adjacent second-class city. Mining operations were not traditionally considered an agricultural use of land, there was no indication that instant mining operations were used to further an agricultural purpose, such as creation of pond to irrigate crops, and mining operations in no way involved the production of any plant or animal product.

Parcel of land was contiguous with or adjacent to second-class city, as would allow annexation of land by city, even if parcel itself did not share a common border with city, where annexed area in which parcel was situated had, as a whole, a significant shared border with existing corporate boundary of city.

Evidence that second-class city compared the relative financial health of different sanitary and improvement districts in determining what territory to annex was insufficient to establish that city's subsequent annexation of one of those districts was motivated solely by purpose of increasing tax revenue, as could make annexation unlawful. It would have been fiscally irresponsible for city to not at least take into consideration the debt load of the areas it was annexing, and debt level of district had no relation to increase in tax revenue that city stood to gain from an annexation.

EMINENT DOMAIN - NEW JERSEY

Columbia Gas Transmission, LLC v. 1.092 Acres of Land in Tp. of Woolwich, Gloucester County, N.J.

United States District Court, D. New Jersey - January 28, 2015 - Slip Copy - 2015 WL 389402

Plaintiff brought condemnation actions seeks to acquire a right-of-way (permanent easement), along with a temporary construction easement, for the construction of an interstate natural gas pipeline across Defendants' property.

Plaintiff moved for injunctive relief under the eminent domain authority of the Natural Gas Act, seeking orders establishing Plaintiff's right to condemn the easements across the Defendants' properties, and allowing Plaintiff to take immediate possession of such easements, prior to a final decision concerning the amount and payment of compensation to the Defendants as condemnees.

The District Court held that Plaintiff's FERC certificate gave it a substantive right to condemn Defendants' properties and granted Plaintiff equitable, intermediate relief in the form of immediate possession of Defendants' properties.

MUNICIPAL ORDINANCE - NEW YORK

D'Alessandro, ex rel. Vallemaio Properties, LLC v. Kirkmire

Supreme Court, Appellate Division, Fourth Department, New York - February 6, 2015 - N.Y.S.2d - 2015 N.Y. Slip Op. 01018

Petitioners commenced a hybrid CPLR article 78 proceeding and declaratory judgment action seeking to declare section 90–21 of the Municipal Code of the City of Rochester (Code) unconstitutional. That section of the Code permits the City to collect a "case management fee" (CMF) of $100 in any case in which a property owner has failed, for over one year, to comply with a notice and order notifying that owner of Code violations related to the property.

The Supreme Court, Monroe County, declared that the CMFs were valid, constitutional and legally imposed. Petitioners appealed.

The appeals court reversed, holding that section 90–21 of the Municipal Code of the City of Rochester was unconstitutional under the United States and New York Constitutions, because the CMFs were, in actuality, a fine that was imposed upon property owners without due process.

IMPROVEMENT DISTRICTS - NORTH DAKOTA

Nandan, LLP v. City of Fargo

Supreme Court of North Dakota - February 12, 2015 - N.W.2d - 2015 ND 37

Property owner brought action against city, challenging creation of improvement district. The District Court granted city's motion to dismiss. Property owner appealed.

The Supreme Court of North Dakota held that:

- Statute authorizing municipalities to enter into agreements with other government entities for certain improvements did not require city to adopt a resolution of necessity for drainage project, but
- Property owner stated claim under statute requiring a resolution of necessity except where the improvement constitutes a water or sewer improvement.

City that entered into agreement with water district was not required to adopt a resolution of necessity for drainage project, and property owner had no right of protest, under statute authorizing a municipality to enter into an agreement with another government entity for certain improvements, where city bid out the project itself and entered into construction contract.

Property owner seeking to challenge creation of municipal improvement district without a resolution of necessity stated valid claim against city under statute requiring a resolution of necessity except where the improvement constitutes a water or sewer improvement. Complaint alleged that improvement district included street repairs, utilities and other items not specifically included in the description of a water or sewer improvement, and it was unknown whether such other repairs were merely incidental to the water and sewer repairs.

UTILITIES - NORTH CAROLINA

Fehrenbacher v. City of Durham

Court of Appeals of North Carolina - February 3, 2015 - S.E.2d - 2015 WL 426058

Property owners petitioned for certiorari review of city-county board of adjustment's decision upholding city planning director's interpretation of a concealed wireless communications facility to include a 120-foot tall cellular tower disguised as a pine tree, located on church property. The Superior Court affirmed the board's decision. Property owners appealed.

The Court of Appeals held that:

- Record provided to trial court was adequate even though a substantial portion of the testimony before the board was not recorded due to equipment malfunction;
- Statute governing appeals of municipal body decisions allows trial court to direct that matters other than those submitted to the decision-making board be included in the record on appeal;
- Proposed cellular tower would not have been readily identifiable as a cellular tower; and
- Proposed cellular tower's secondary function as a tree would have been aesthetically compatible with church property's existing use.

Cellular company's proposed tower, designed to look like a 120-foot tall pine tree, was not readily identifiable as a cellular tower, as required to qualify as a concealed wireless communications facility under city ordinance governing approval of such facilities, even though it was substantially taller and five times wider at its base than average nearby trees. Tower had authentic looking bark and branches, national planning association recommended it as nearly indistinguishable from real trees, from many vantage points tower was not visible while from others it had appearance of an unusually tall tree, proposed height of tower was within maximum height limitation set by local ordinance, base of tower was concealed from sight by actual trees, and there was no evidence in record that a reasonable person's reaction to sight of an unusually tall tree would have been to conclude that it was a cellular tower.

The test for determining whether a wireless communications facility is readily identifiable as such, under city ordinance governing approval of concealed facilities, is not whether or how quickly a longtime resident or passing motorist would notice its true nature; rather, the test is whether the design serves a secondary function that helps camouflage the tower's function as a wireless communications facility.

Cellular company's proposed tower's secondary function as a tree, to be located on church property, was aesthetically compatible with the church property's existing use, as required to be considered a concealed wireless communications facility under city ordinance governing approval of such facilities, where church was located in a developing rural residential neighborhood, surrounded by houses and trees.

PUBLIC RECORDS - PENNSYLVANIA

[Paint Tp. v. Clark]

Commonwealth Court of Pennsylvania - February 5, 2015 - A.3d - 2015 WL 469434

Township appealed from decision of the Office of Open Records (OOR) in favor of requester, who made request under Right-to-Know Law (RTKL) for records contained on publicly funded cell phone of chairman of township's board of supervisors. After issuing order requiring township to disclose records, the Court of Common Pleas denied requester's petition for contempt, but ordered township to comply with its previous order, which required township to retrieve and provide any remaining data on publicly funded phone and to provide records of chairman's private phone. Township appealed.

The Commonwealth Court held that:

- Evidence demonstrated that records contained on phone provided by township to chairman no longer existed, such that township could not be ordered to retrieve that data, and
- Records contained on chairman's private phone constituted public records subject to disclosure.

Records contained on cell phone purchased directly by chairman of township's board of supervisors constituted public records, and thus township was required to provide the records in response to request made under Right-to-Know Law (RTKL), even though the phone was chairman's personal phone. That the phone was personal did not change the public nature of the records it contained, and township provided chairman partial reimbursement every month for the phone.

ZONING - PENNSYLVANIA

[Riverfront Development Group, LLC v. City of Harrisburg Zoning Hearing Bd.]

Commonwealth Court of Pennsylvania - January 30, 2015 - A.3d - 2015 WL 400542

Landowner sought review of city's decision to deny variance and special exception application. The Court of Common Pleas. Landowner appealed.

The Commonwealth Court held that:

- City zoning code provision permitting "one or two-family detached dwellings," without limiting how many detached dwellings were permitted on each lot, was ambiguous, and was to be construed in favor of landowner, and
- Landowner was not entitled to a deemed approval of special exception request.

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 nearly two billion dollars of bonds issued by the Puerto Rico Electric Power Authority ("PREPA")
sought a declaratory judgment that the Puerto Rico Public Corporation Debt Enforcement and Recovery Act was unconstitutional.

The bondholders alleged that the Recovery Act eliminated the contractual rights guaranteed them under the PREPA Authority Act (which authorized PREPA to issue bonds) and the Trust Agreement (pursuant to which PREPA issued bonds to plaintiffs) by giving PREPA the right to participate in a new legal regime to restructure its debts.

The District Court held that the Recovery Act was preempted by the federal Bankruptcy Code and was therefore void pursuant to the Supremacy Clause of the United States Constitution. The Commonwealth was permanently enjoined from enforcing the Recovery Act.

For a more detailed explication of the ruling, see this Cadwalader memo.

MUNICIPAL ORDINANCE - WASHINGTON

U.S. Mission Corp. v. City of Mercer Island

United States District Court, W.D. Washington, at Seattle - February 10, 2015 - Slip Copy - 2015 WL 540182

Religious organization sought a preliminary injunction to prohibit City from enforcing its newly-enacted solicitation ordinance, which prohibited door-to-door solicitation after 7:00 pm. The City had not been enforcing the prior version of the ordinance because of fears that it contained unconstitutional restraints on free speech.

The District Court granted the motion, finding that the 7:00 curfew was not the least restrictive means for the City to meet its interests.

PENSIONS - WISCONSIN

Schwegel v. Milwaukee County

Supreme Court of Wisconsin - February 12, 2015 - N.W.2d - 2015 WI 12

County employees’ union brought action against county, claiming a vested benefit contract required county to reimburse employees’ Medicare Part B premiums when they retired, even though they were not yet retired when the county eliminated that benefit. The Circuit Court granted summary judgment in favor of union. County appealed. The Court of Appeals reversed and remanded. Union petitioned for review, which was granted.

The Supreme Court of Wisconsin held that county employees who had not retired did not have vested contract right in reimbursement, and therefore county ordinance that prospectively eliminated Medicare Part B premium reimbursement upon retirement for county employees who did not retire before retirement dates established by county did not impermissibly abrogate a vested contract right.

Statute granting county specific home rule authority over county employee retirement system made no mention of health insurance benefits, health insurance benefits were not governed by same statutes and ordinances as county retirement system, memorandum summarizing proposed ordinance stated that only previously-retired employees had vested right in reimbursement, county payment for health insurance premiums was not defined in fixed way such that county payment was tied to specified benefit that always would follow, and county health insurance payments were not earned in increments as employees continued their employment.

LIABILITY - WYOMING

Halvorson v. Sweetwater County School Dist. No. 1

Supreme Court of Wyoming - February 4, 2015 - P.3d - 2015 WY 18

Student filed suit against school district after she slipped and fell in the locker room of junior high school. The District Court granted judgment in favor of the school district. Student appealed, and school district cross-appealed.

The Supreme Court of Wyoming held that District Court did not clearly err in finding that the school district exercised ordinary care to keep the shower facilities in locker room in reasonably safe condition.

Water carried from wet feet and bodies, as opposed to water "flowing" over a shower boundary, was generally unavoidable in a locker room and did not tend to indicate a substandard degree of care, there was no indication that the drainage system in the locker room was inadequately designed or constructed, plumber for school district stated that he had been required to use a "snake" to unclog drain in the locker room on only one occasion in 16 years, locker room floor was regularly cleaned by janitorial staff, school district implemented appropriate procedures to respond to complaints about slow drains resulting from hair and other debris, and experts agreed that the type of tile used in locker room was considered safe in the industry.

Upcoming Deadline for Application to MSRB Board of Directors.

The Municipal Securities Rulemaking Board (MSRB) is reminding municipal market participants of the February 20, 2015 deadline to apply for a position on its Board of Directors. To be considered for a position on the Board, please complete the application available on the MSRB's website.

All applications must be submitted by 11:59 p.m. ET on February 20, 2015.

Bond Industry Struggles Under Regulatory Burden, Experts Say.

AUSTIN — The municipal bond industry is struggling to cope with heavy regulation while trying to broaden its appeal to the investment community, experts told The Bond Buyer's Texas Public Finance Conference.

The Securities Industry and Financial Markets Association's Leslie Norwood described the current regulatory environment as "death by a thousand cuts."

The most recent struggle came from the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation initiative, or MCDC, which allowed issuers to report violations of disclosure events that they might have failed to report over the last five years. The SEC offered lenient settlement terms in exchange for the voluntary reporting, but not blanket amnesty.

To find any information that the SEC might consider a violation, issuers, their financial advisors and attorneys had to pore over records for the past five years, a time-consuming and costly process, said Norwood, SIFMA's managing director, associate general counsel and co-head of municipal securities.

"Was there any consideration of the cost to the industry searching the same deal over and over?" Norwood asked fellow panel member David Woodcock, regional director of the SEC. "We have an estimate of the costs and they are staggering."

Woodcock said the MCDC effort was one of several firsts for the SEC in 2014, which were designed to "encourage people to take seriously these continuing disclosures."

Woodcock said the SEC is currently examining the disclosures before deciding which ones to pursue, comparing it to "triage" in a hospital emergency room.

"Ultimately, what we're talking about are violations," Woodcock said.

Kit Addleman, a partner with the firm of Haynes and Boone, said that an issuer who stated that it had never failed to disclose any material events would effectively be opening more than five years of record to scrutiny.

"The settlements that were offered in MCDC were not all that different than those offered pre-MCDC," Addleman said. "There was a lot of incentive to participate or cooperate and the cost was enormous."

Norwood questioned how "voluntary" the MCDC disclosure was in the fall of 2014.

"Did you really think it was voluntary when the SEC said we're going to come down on you like a ton of bricks?" Norwood said.

Penelope Blackwell, deputy regional chief counsel for the south region of the Financial Industry Regulatory Authority, disagreed with the notion that pre- and post-MCDC enforcement measures were the same.

"The settlement you've seen in the past for non-reporting are not going to be the settlements you'll see going forward," Blackwell said.

Another issue that also needs more clarity, the experts said, is the municipal advisor rule that went into effect in 2014. The MA rule, which took effect July 1, puts into practice the Dodd-Frank Act's requirement that firms providing advice to muni issuers have a fiduciary duty to put their clients' interests first ahead of their own.

Since the MA rule's requirement that municipal advisors register with the SEC and the MSRB, some advisors remain confused about what the registration entails, according to

Lawrence Sandor, deputy general counsel of the Municipal Securities Rulemaking Board. He said that since the rule went into effect, there have been 550 registrations with the SEC and 780 with the MSRB.

"Obviously, That's going to have to be reconciled," Sandor said.

In another panel discussion on the future of the muni market, Thomas Doe, president and founder of Municipal Market Analytics, said the trend of increasing regulation is in conflict with the need to bring more liquidity to the market.

The only way to invest in the muni bond market is to own bonds, Doe said. In equities, investors can bet against various companies or sectors by short-selling and using arbitrage, Doe said.

“It’s a long-only market,” Doe said. “There is not a hedge for muni debt.”

One way to think of the muni market in the current world is as a parallel to “crowd funding” that is popular with start-ups and new proposals.

“We really are the original version of crowd funding,” Doe said. “That’s certainly a positive way to think about raising money for infrastructure.”

THE BOND BUYER

BY RICHARD WILLIAMSON

FEB 10, 2015

U.S. District Court Holds that Puerto Rico's Recovery Act is Unconstitutional: Cadwalader

On February 6, 2015, Judge Francisco Besosa of the U.S. District Court for the District of Puerto Rico held that the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (the “Recovery Act”) is expressly preempted by section 903 of the Bankruptcy Code and is therefore unconstitutional. The court also denied the Commonwealth’s motion to dismiss the plaintiffs’ claims under the Contracts Clause and certain of the plaintiffs’ claims under the Takings Clause. The decision is among the first to explicitly hold that section 903 of the Bankruptcy Code preempts the States, including Puerto Rico, from enacting a municipal debt adjustment scheme that results in the discharge of indebtedness. The court’s ruling also removes a major leverage point for the Commonwealth and its public agencies attempting to negotiate restructurings with creditors and restores remedies available to bondholders, including the right to appoint a receiver.

Background

On June 25, 2014, Puerto Rico’s legislature introduced and approved the Recovery Act. Shortly thereafter, Governor Alejandro Garcia Padilla signed the Recovery Act into law. The Recovery Act permits Puerto Rico’s three major public corporations (PREPA, PRHTA, and PRASA)1 to pursue two non-consensual alternatives to a restructuring of their debts. The first alternative, Chapter 2, permits a public corporation to modify, amend, or exchange certain of its debt instruments if (i) at least 50 percent of the debt in a given class votes on whether to accept the changes and (ii) at least 75 percent of participating voters approve the changes to the debt instruments. The second alternative, Chapter 3, is modeled after chapter 9 of the Bankruptcy Code and permits a debtor to propose a plan that adjusts its debts without the consent of all of its creditors. The Chapter 3 plan may be confirmed if at least one class of affected debt has voted to accept the plan by a majority of the votes cast in such class and two-thirds of the aggregate principal amount of affected debt in such class that is voted. In addition, the Recovery Act:

- Eliminated existing statutory remedies for certain secured bondholders, including the right for PREPA bondholders to appoint a receiver;
- Permitted debtors to use cash collateral and obtain DIP financing with a priming lien without providing any adequate protection to prepetition creditors, provided that the use of cash collateral or the DIP financing would be to serve a public function;
- Permitted debtors to sell their assets with court approval; and
- Stayed prepetition creditors from enforcing remedies against the debtor during the pendency of the Chapter 2 or 3 case.

Two groups of creditors filed complaints against the Commonwealth of Puerto Rico and PREPA, seeking a declaration that the Recovery Act is unconstitutional because it infringed on the federal bankruptcy power and a declaration that the Recovery Act is expressly preempted by section 903(1) of the Bankruptcy Code. The plaintiffs also sought declarations that the Recovery Act violated the Takings and Contracts Clauses of the U.S. Constitution and that provisions in the Recovery Act that would stay federal proceedings are unconstitutional. The Commonwealth moved to dismiss these claims, and the creditors cross-moved for summary judgment.

The Court's Decision

In Franklin California Tax-Free Trust v. Commonwealth of Puerto Rico and Blue Mountain Capital Management LLC v. Governor Alejandro Garcia-Padilla,2 the court first addressed ripeness, concluding that the plaintiffs' preemption and Contracts Clause claims were ripe for review because, among other things, the claims relied on the enactment of the Recovery Act, not on its application. The plaintiffs' claims were not dependent on any hypothetical facts, presented purely legal issues, and also alleged direct injuries to the plaintiffs' interests. Notably, the court observed:

[N]ot having the guarantee of remedial provisions that they were promised affects plaintiffs' day-t--day business as PREPA bondholders, particularly when negotiating with PREPA over remedies and potential restructuring. Indeed, the threat of PREPA's invocation of the Recovery Act hangs over plaintiffs and diminishes their bargaining power as bondholders.

The court also concluded, however, that certain of the plaintiffs' Takings Clause claims and stay of proceedings claims were not ripe for adjudication, because they were contingent on hypothetical events that had not yet occurred. In addition, the court dismissed the plaintiffs' claims against PREPA, as the plaintiffs did not sufficiently allege any injuries that are traceable to an action by PREPA.

1. Preemption

Having determined that the preemption claims were ripe for review, the court held that the plain language of section 903 of the Bankruptcy Code expressly preempted the Recovery Act. "Express preemption" occurs when congressional intent to preempt state law is made explicit in the text of a federal statute. In addition, a state law may be preempted when it conflicts with or frustrates the purpose of a federal statute. The latter type of preemption is known as "conflict preemption."

Section 903 of the Bankruptcy Code provides, in pertinent part, that a "State law prescribing a method of composition of indebtedness by such municipality may not bind any creditor that does not consent to such composition."3 Under the Bankruptcy Code, Puerto Rico is a "State," except for the purposes of who may be a chapter 9 debtor. However, section 903 does not, on its face, apply only to chapter 9 debtors. Further, unlike other provisions in chapter 9, section 903 applies broadly to the term "municipalities," which would include public agencies like PREPA. The court also found that the Recovery Act was a "method of composition" because the law permits the adjustment and discharge of debts. Accordingly, the court concluded that the Recovery Act was preempted by section 903.

The court also found that the legislative history of section 903 evidenced Congress's intent to preempt state municipal debt adjustment laws. Specifically, the House Report to section 903's predecessor, section 83(i) of chapter IX, stated:

An amendment to section 83(i) provides that State legislation dealing with compositions of municipal indebtedness shall not be binding on non-consenting creditors. State adjustment acts have been held to be valid, but a bankruptcy law under which bondholders of a municipality are required to surrender or cancel their obligations should be uniform throughout the 48 States, as the bonds of almost every municipality are widely held. Only under a Federal law should a creditor be forced to accept such an adjustment without his consent.5

According to the court, the legislative history of section 903 evidenced a clear intent to reserve the power to adjust municipal debts for the federal government. The court concluded that the Recovery Act stood as an obstacle to section 903's stated purpose to permit nonconsensual adjustments of municipal debt under a uniform federal law.

In so holding, the court rejected several of the Commonwealth's defenses. First, the Commonwealth argued that section 903 could not apply to it because Puerto Rico's municipalities are ineligible for chapter 9 relief. The court reasoned, however, that the plain language of the Bankruptcy Code only exempts Puerto Rico from the term "State" in one limited circumstance: chapter 9 eligibility. It does not, on its face, exempt Puerto Rico from the term State in all of chapter 9.

Second, the Commonwealth argued that it would be nonsensical to read the Bankruptcy Code as precluding Puerto Rican municipalities from filing for chapter 9 relief, but simultaneously preempting Puerto Rican laws that govern municipal debt adjustments. However, the court found:

"Congress's decision not to permit Puerto Rico's municipalities to be Chapter 9 debtors…reflects its considered judgment to retain control over any restructuring of municipal debt in Puerto Rico. Congress, of course, has the power to treat Puerto Rico differently than it treats the fifty states."

Third, the Commonwealth contended that section 903 could only apply to states whose municipalities are eligible for chapter 9 relief. The court, though, found nothing in section 903's text or legislative history to suggest that Congress intended section 903 to apply only to states whose municipalities are eligible to be chapter 9 debtors.

Finally, the court rejected the Commonwealth's argument that section 903 could not apply because Puerto Rico's bondholders could not qualify as "creditors," as such term is defined in the Bankruptcy Code. Specifically, the Commonwealth maintained that the term "creditor" is limited to those who hold claims against a "debtor." Because the Commonwealth's public agencies cannot be chapter 9 debtors, the Commonwealth reasoned that section 903 could not apply because the Commonwealth's bondholders are not "creditors." However, the court found that the Commonwealth's interpretation was strained and that nothing in the Bankruptcy Code's definition of "creditor" suggested that the term was limited to claims against a debtor that is eligible for bankruptcy relief.

The court ultimately concluded that this was "not a close case," even though federal preemption is a "strong medicine." According to the court, section 903 of the Bankruptcy Code and its legislative history "provide direct evidence of Congress's clear and manifest purpose to preempt state laws that prescribe a method of composition of municipal indebtedness that binds nonconsenting creditors…and to include Puerto Rico laws in this preempted arena." Accordingly, having found that the Recovery Act is expressly preempted by section 903 of the Bankruptcy Code, the Court held that the Recovery Act is unconstitutional under the Supremacy Clause.

2. The Contracts Clause

The Contracts Clause of the U.S. Constitution prohibits states from impairing their own contracts. To validly state a claim under the Contracts Clause, a plaintiff must demonstrate that (i) the state law operates as a "substantial impairment" of a contractual relationship and (ii) that such impairment is not a reasonable or necessary means to serve an important government interest.

First, the court found that the plaintiffs adequately alleged that the Recovery Act substantially impaired contractual relations. Both the PREPA Trust Agreement and the PREPA Enabling Act created a contractual relationship between PREPA, its bondholders, and the Commonwealth. The plaintiffs alleged that the Recovery Act substantially impaired that contractual relationship by (i) permitting PREPA to modify its debts without creditor consent in a manner that is inconsistent with the PREPA Trust Agreement; (ii) permitting PREPA to grant priming liens on prepetition collateral, notwithstanding prohibitions on such liens in the PREPA Trust Agreement; (iii) permitting PREPA to sell its assets with court approval; (iv) rendering the PREPA Trust Agreement's ipso facto clause unenforceable; (v) limiting PREPA bondholders' rights to enforce Trust Agreement remedies during a Chapter 2 or 3 proceeding; and (vi) eliminating the PREPA bondholders' right to seek the appointment of a receiver.

The court found that Faitoute Iron & Steel Co. v. Asbury Park,6 the principal authority relied on by the Commonwealth, was misplaced. In Asbury Park, the New Jersey statute barred the reduction of principal, affected only unsecured bonds that had no real remedy, and only provided for an extension of the maturity on the bonds and a reduction in the coupon. In contrast, the Recovery Act affects secured bonds that have meaningful remedies, permits the reduction in principal amount on those bonds, and permits modifications to debt obligations that extend beyond the amendments in Asbury Park.

Likewise, the court rejected the Commonwealth's argument that it would be difficult at this juncture to determine whether any contractual relationships are substantially impaired as a result of the Recovery Act. According to the Commonwealth, one cannot make such a determination until a restructuring occurs under the Recovery Act. The court found this argument unpersuasive. Rather, the court held that when a state law authorizes a party to do something that a contract prohibits it from doing, or when a state law prohibits a party from exercising rights or remedies under a contract, the state law itself impairs the contractual relationship, independent of how a party acts pursuant to that law.

The court further found that the right to receive payment and certain covenants and remedies under the Trust Agreement likely induced bondholders to purchase PREPA's bonds. In particular, the court noted that the Recovery Act did not merely modify existing rights and replace them with comparable security provisions, but rather "it completely extinguishes all of them." Because the Recovery Act eliminated such rights, covenants, and remedies that are central to the Trust Agreement, the court concluded that the plaintiffs adequately alleged that the Recovery Act substantially impairs a contractual relationship.

Second, the court held that the plaintiffs adequately alleged that the Recovery Act was not a reasonable and necessary means to serve an important government purpose. Alternatives to the Recovery Act, identified by the plaintiffs included: (i) PREPA could raise its rates; (ii) PREPA could collect overdue accounts from the Commonwealth and other public agencies; (iii) PREPA could reform the manner in which municipalities are charged and eliminate subsidies; (iv) PREPA could correct inefficiencies with its management; and (v) PREPA could negotiate with its creditors to restructure its debts in a consensual manner. The court inferred from these allegations that the Recovery Act imposed a drastic impairment when more moderate courses were available. Thus, the court concluded that the plaintiffs adequately stated a claim under the Contracts Clause and therefore denied the Commonwealth's motion to dismiss.

3. The Takings Clause

The Takings Clause of the U.S. Constitution provides that private property may not be taken for public use without just compensation. Here, the plaintiffs claimed that the Recovery Act violates the Takings Clause because (i) it eliminates plaintiffs' right to appoint a receiver and (ii) permits public corporations to grant priming liens.

The court determined that plaintiffs stated plausible claims that the Recovery Act's elimination of plaintiffs' right to appoint a receiver violated the Takings Clause. According to the court, the Recovery Act provides no compensation for eliminating bondholders' contractual rights, and therefore, may qualify as an impermissible taking. Furthermore, the court concluded that the plaintiffs' claims based on the elimination of the receiver remedy are facial takings claims, and therefore are ripe for review.

The court rejected the Commonwealth's defenses. For example, the Commonwealth argued that the receivership remedy did not even exist because PREPA had not yet defaulted on its obligations. Thus, the Commonwealth argued, there was no contractual right for the Commonwealth to take. However, the court found that even though the right to appoint a receiver is contingent on a default, the right nevertheless currently existed under terms of PREPA Enabling Act and PREPA Trust Agreement.

By contrast, the court concluded that plaintiffs' claims that the Recovery Act constitutes a taking on plaintiffs' liens on PREPA's revenues were not ripe for review, because the claims were "as applied" claims that were contingent on events that not yet occurred (i.e., a Commonwealth court's approval of the priming lien pursuant to section 322 of the Recovery Act).

Conclusion

The decision in Franklin California Tax-Free Trust v. Commonwealth of Puerto Rico is significant because it reaffirms the principle that only the federal government may pass bankruptcy laws. The decision also clarifies that Puerto Rico remains subject to Congress's plenary powers. Where, as in the case of Puerto Rico, a state passes a law that allows states or municipalities to adjust and discharge debts, that law would likely be unconstitutional and preempted by section 903 of the Bankruptcy Code.

Footnotes

1 The full names of these public corporations are: the Puerto Rico Electric Power Authority, the Puerto Rico Highways and Transportation Authority, and the Puerto Rico Aqueduct and Sewer Authority.

2 Civ. Nos. 14-1518 and 14-1569 (ECF No. 119), available at http://cases.justia.com/federal/district-courts/puerto-rico/prdce/3:2014cv01518/111423/119/0.pdf?ts=1423304308

3 11 U.S.C.§ 903(1).

4 11 U.S.C. § 101(52).

5 H.R. Rep. No. 2246, 79th Cong., 2d Sess. 4 (1946) (emphasis added).

6 316 U.S. 502 (1942)

February 10 2015

Article by Thomas Curtin, Mark C. Ellenberg, Howard R. Hawkins, Jr., Ivan Loncar and Lary Stromfeld

Cadwalader, Wickersham & Taft LLP

Bank Loan Disclosure Fraught With Uncertainty.

WASHINGTON – As regulators increasingly push for more disclosure of bank loans, some of these "loans" may actually be securities that are already subject to federal securities laws and rules, including municipal disclosure requirements, lawyers said this week.

The Municipal Securities Regulatory Board, rating agencies, and other groups have recently stepped up efforts to promote voluntary disclosure of bank loans, pointing out that the interests of bond investors could be at risk if bank loans and private placements of debt draw on government resources also used to back securities.

But their plea for voluntary disclosure is running up against a tangled web of legal issues involving issuers, broker-dealers and municipal advisors.

In general, issuers are not required to disclose information about their bank deals. While certain information about a loan, such as its size will eventually turn up in the city's financial documents, detailed information about its terms may remain hidden.

The MSRB and rating agencies have urged issuers to put detailed information about their bank loans on EMMA, raising legal concerns for muni analysts who want to be able to consider the impact of the perhaps $60 billion muni bank loan market on the bond market.

But some transactions that are structured as, and classified by, banks as "loans," can be municipal securities that are subject to federal securities laws and MSRB rules.

In September 2011, the MSRB published a warning that loans and direct purchases could be subject to these laws and rules. The warning acknowledged the difficult legal issues.

"Municipal securities that are purchased by banks and subsequently restructured do not lose their character as municipal securities," the MSRB warned. "However, when banks make 'loans' to state and local governments, even if only to provide a source of funds for those governments to purchase their own securities, whether such 'loans' will be considered securities can be a difficult question."

The Financial Industry Regulatory Authority chimed in the following February, telling dealers that "these financings may be municipal securities and thus subject to all MSRB rules."

There is widespread agreement that the question of whether a transaction is a security or a loan is problematic. The Securities Act of 1933 defines a "security" to include most notes, evidence of indebtedness, and certificates of participation. Many muni bank loans are evidenced by notes.

The most concrete guidance available comes from a Supreme Court ruling in 1990, in Reves v. Ernst & Young that provides a four-part test for determining whether such notes are securities.

The court ruled that notes are presumably securities unless they fall into a limited category decided by the court to be outside the securities realm, or if the instrument in question bears a "family resemblance" to an excluded category. The test involves: whether the instrument is motivated by investment or commercial purposes; the plan of its distribution; the expectations of the public; and whether the notes fall under other federal regulations which make applying the securities laws unnecessary.

The MSRB explained the test in its September 2011 notice, pointing out the court said an instrument is likely a security if it was sold to finance substantial investments and the buyer expected a profit or if there were trading for speculation or investment. The court also opined that it might consider instruments to be "securities" on the basis of public expectations, even if other factors pointed to a loan, the board said.

While the so-called "Reves Test" provides guidance suggesting that debt instruments structured as closely as possible to traditional bank loans might not fall under Securities and Exchange Commission oversight or be subject to any MSRB rules, bond lawyers and disclosure experts said the question of whether something is a loan or a security is still very hard to answer.

"That is not an easy determination to make," said Dave Sanchez, who runs his own law firm in California. "Not with legal certainty."

Ernesto Lanza, a shareholder in Greenberg Traurig's Washington office, said the status of the debt can wind up being "pretty amorphous."

"It's almost a gut feel," he said.

"There's no telltale sign that something is a bank loan or is a security," said Jessica Giroux, Bond Dealers of America senior counsel and managing director for federal regulatory policy.

If a security is being mischaracterized as a loan that is not subject to securities laws, and regulators discover it, the implications could be severe. Dealers acting as placement agents between issuers and banks could potentially violate a host of MSRB rules, including those requiring dealers to obtain CUSIP numbers and report trades, as well as comply with the pay-to-play rule and restrictions on gifts and gratuities to municipal officials.

Bank loans have already been a source of tension between non-dealer municipal advisors and dealer firms. BDA has accused non-dealer MAs of acting as broker-dealers, even though they are not registered as such, when they serve as go-betweens for loans that are really securities.

The National Association of Municipal Advisors has countered by claiming that negotiating the terms of an issuer's loan with a bank constitutes an MA activity and asking the SEC to clarify this by providing an exemption from broker-dealer registration for MAs acting in this capacity.

Larry Kidwell, president of Brentwood, Tenn.-based MA Kidwell & Company, however, continues to caution non-dealer MAs about such activities. "I would recommend in the strongest possible terms that registered independent municipal advisors avoid activities which may be deemed to be those of a dealer firm by the SEC," Kidwell said.

Sanchez described a flip side of that coin, saying broker-dealers have to be worried about pitching bank loans as alternatives to bond financings, because this would make them subject to the municipal advisor registration regime. The Dodd-Frank Act places a fiduciary duty on MA firms that offer advice "with respect to" an issuance of munis that is considered by regulators to be inconsistent with the relationship between an underwriter and an issuer. The duty requires an MA to put the issuer's interests first before its own. Any dealer actively recommending a loan needs to be sure they are complying with MA rules and G-23, Sanchez said.

While the growing popularity of bank loans and direct purchases has thrust these issues to the forefront, the lack of clarity about how to categorize them may not be resolved any time soon. Bond lawyers said the SEC would be hard-pressed to provide useful guidance on such a facts and circumstances-based standard. Lanza said it's likely only a major SEC enforcement action would provide much for the market to go on.

"People would love to have the SEC say 'here's the definition,' Lanza said. "The only guidance you'll get is if there's a really meaty case."

Sanchez said it remains a question whether bank loans that are not securities should become subject to continuing disclosure obligations. The SEC would have to amend its Rule 15c2-12 on disclosure to require that they be included as financial information relevant to bondholders.

The Government Finance Officers Association has recommended voluntary disclosure of bank loans. But issuers who release this information voluntarily are still under antifraud obligations to ensure the information is not misleading.

Giroux said disclosure would generally be helpful to the market, and help alleviate regulators' primary anxiety that investors could be harmed by undisclosed debt that draws on the same tax flows as outstanding bonds.

"Nobody can really point fingers if it's all disclosed," Giroux said.

THE BOND BUYER

BY KYLE GLAZIER

FEB 12, 2015 12:32pm ET

IRS Releases Qualified Zone Academy Bond Allocations for 2014.

The Internal Revenue Service has released Notice 2015-11, which announces the total Qualified Zone Academy Bond allocation for each state, totaling a $400 million national limitation for calendar year 2014. The national limitation allocated for 2014 is effective for QZABs issued after December 31, 2013.

Part III — Administrative, Procedural, and Miscellaneous

SECTION 1. PURPOSE

This notice sets forth the maximum face amount of Qualified Zone Academy Bonds ("QZABs") that may be issued for each State for the calendar year 2014 under § 54E(c)(2) of the Internal Revenue

Code. Under § 54A(e)(3), the term State includes the District of Columbia and any possession of the United States.

SECTION 2. BACKGROUND

.01 INTRODUCTION

Section 313 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C of Pub. L. No. 110-343, 122 Stat. 3765 (2008) ("Act") added new § 54E, which provides revised program provisions for QZABs in lieu of the existing provisions under § 1397E, effective for obligations issued after October 3, 2008. The Act amended § 54A(d)(1) to provide that the term qualified tax credit bond ("QTCB") means, in part, a qualified zone academy bond which is part of an issue that meets the requirements of §§ 54A(d)(2), (3), (4), (5), and (6) regarding expenditures of bond proceeds, information reporting, arbitrage, maturity limitations, and prohibitions against financial conflicts of interest. The Act also amended § 54A(d)(2)(C) to provide that, for purposes of § 54A(d)(2), the term "qualified purpose" for a QZAB means a purpose specified in § 54E(a)(1), described below.

The Act added § 54E(c)(1) to provide a national zone academy bond limitation authorization for QZABs of $400 million for each of calendar years 2008 and 2009. Section 1522 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) ("2009 Act") amended § 54E(c)(1) to provide an increased national zone academy bond limitation authorization for QZABs of $1.4 billion for each of calendar years 2009 and 2010. Section 758 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public L. No. 111-312, 124 Stat. 3296 (2010) ("2010 Act") amended § 54E(c)(1) to provide an authorization for QZABs of $400 million for calendar year 2011. Section 310 of the American Taxpayer Relief Act of 2012, Public L. No. 112-240, 126 Stat. 2313 (2012) ("2012 Act") amended § 54E(c)(1) to provide authorization for QZABs of $400 million for each of calendar years 2012 and 2013. Section 120 of the Tax Increase Prevention Act of 2014, Public L. No. 113-295 (2014) ("2014 Act") amended § 54E(c)(1) to provide authorization for QZABs of $400 million for calendar year 2014. The amendment made by § 120 of the 2014 Act applies to obligations issued after December 31, 2013. Section 202 of the 2014 Act also amended § 6431(f)(3)(A)(iii) to provide that the direct-pay subsidy option does not apply to any national zone academy bond limitation for years after 2010 or any carryforward of any such limitation.

.02 QUALIFIED ZONE ACADEMY BOND UNDER § 54E

Section 54E(d) defines "qualified zone academy" as any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level provided: (A) the public school or program is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates and prepare students for college and the workforce; (B) students will be subject to the same academic standards and assessments as other students educated by the eligible local education agency; (C) the comprehensive education plan is approved by the eligible local education agency; and (D)(i) such public school is located in an empowerment zone or enterprise community including such designated after October 3, 2008; or (ii) there is a reasonable expectation (as of the date of bond issuance) that at least 35 percent of the students will be eligible for free or reduced cost lunches under the school lunch program established under the National School Lunch Act.

Section 54E(a) provides that a "qualified zone academy bond" or QZAB means any bond issued as part of an issue if: (1) 100 percent of the available project proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency; (2) the bond is issued by a State or local government within the jurisdiction of which such academy is located, and (3) the issuer: (A) designates such bond for purposes of this section; (B) certifies that it has written assurances that the private business contribution requirement of § 54E(b) will be met; and, (C) certifies that it has the written approval of the eligible local education agency for such bond issuance.

Section 54E(d)(3) provides that a qualified purpose with respect to each academy means: (A) rehabilitating or repairing the public school facility; (B) providing equipment; (C) developing course materials; and, (D) training teachers and other school personnel. The private business contribution requirement of § 54E(b) is met if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue. Section 54E(d)(4) defines "qualified contributions" as any contribution (of a type and quality acceptable to the eligible local education agency) of: (A) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment); (B) technical assistance in developing curriculum or in training teachers to promote appropriate market driven technology in the classroom; (C) employees' services as volunteer mentors; (D) internships, field trips, or other educational opportunities outside the academy; or (E) any other property or service specified by the eligible education agency. Section 54E(d)(2) defines "eligible local education agency" as any local educational agency as defined in § 9101 of the Elementary and Secondary Education Act of 1965.

Section 54E(c)(2) provides that the Department of the Treasury shall allocate the national zone academy bond limitation among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

Under § 54E(c)(3), the maximum aggregate face amount of bonds issued during any calendar year which may be designated as QZABs with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy for such calendar year. However, under § 54E(c)(4)(A), if for any calendar year the limitation amount for any State exceeds the amount of bonds issued during such year which are designated QZABs with respect to qualified zone academies within such State, the limitation amount for such State for the following calendar year shall be increased by the amount of such excess. Under § 54E(c)(4)(B), however, any carryforward of a limitation amount may be carried only to the first 2 years following the unused limitation year. For these purposes, the limitation amount shall be treated as used on a first-in first-out basis.

Sections 1.1397E-1 (the "Final Regulations") sets forth regulations that were issued under § 1397E. For other guidance concerning the applicability of the regulations issued under § 1397E, the credit rate, and the sinking fund yield see § 1.397E-1(m), and Notice 2009-15, 2009-6 I.R.B. 449, Notice 2009-30, 2009-16 I.R.B. 852, Notice 2010-22, 2010-10 I.R.B. 435, and Rev. Proc. 2011-19, 2011-6 I.R.B. 465.

SECTION 3. NATIONAL ZONE ACADEMY BOND LIMITATION FOR 2014

The national limitation for QZABs issued under § 54E for calendar year 2014 is $400 million. This amount is allocated among the States as follows:

Qualified Zone Academy Bond Allocations (in dollars)
by State or Territory, 2014

State or Territory	QZAB Allocation
Alabama	$7,035,000
Alaska	$575,000
Arizona	$9,550,000
Arkansas	$4,410,000
California	$50,069,000
Colorado	$5,264,000
Connecticut	$2,954,000
Delaware	$916,000
DC	$911,000
Florida	$25,858,000
Georgia	$14,637,000
Hawaii	$1,214,000
Idaho	$1,952,000
Illinois	$14,574,000
Indiana	$7,979,000
Iowa	$2,983,000
Kansas	$3,099,000
Kentucky	$6,354,000
Louisiana	$7,099,000
Maine	$1,435,000
Maryland	$4,680,000
Massachusetts	$6,100,000
Michigan	$13,024,000
Minnesota	$4,688,000
Mississippi	$5,476,000
Missouri	$7,349,000
Montana	$1,260,000
Nebraska	$1,857,000
Nevada	$3,428,000
New Hampshire	$911,000
New Jersey	$7,876,000
New Mexico	$3,465,000
New York	$24,276,000
North Carolina	$13,540,000
North Dakota	$641,000
Ohio	$14,191,000
Oklahoma	$4,939,000
Oregon	$5,044,000
Pennsylvania	$13,355,000
Rhode Island	$1,173,000
South Carolina	$6,793,000
South Dakota	$904,000
Tennessee	$8,930,000
Texas	$35,854,000
Utah	$2,849,000
Vermont	$585,000
Virginia	$7,446,000
Washington	$7,620,000

West Virginia $2,624,000
Wisconsin $5,963,000
Wyoming $491,000

American Samoa $247,000
Guam $287,000
Northern Mariana Islands $211,000
Puerto Rico $12,872,000
U.S. Virgin Islands $183,000

Total Allocation $400,000,000

SECTION 4. EFFECTIVE DATE OF NATIONAL ZONE ACADEMY BOND LIMITATIONS

The national limitation allocated in section 3 for calendar year 2014 is effective for QZABs issued after December 31, 2013.

SECTION 5. DRAFTING INFORMATION

The principal authors of this notice are James A. Polfer and David E. White of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice contact David White or James Polfer at (202) 317-6980 (not a toll-free call).

MSRB Rule G-45 on 529 Plan Data Collection: Upcoming Effective Date and New Manual.

The Municipal Securities Rulemaking Board (MSRB) reminds dealers of the February 24, 2015 effective date for new Rule G-45 requiring underwriters of 529 college savings plans to electronically submit information about those plans to the MSRB through its Electronic Municipal Market Access (EMMA®) system. Rule G-45 establishes semiannual reporting periods, the first of which is January 1 – June 30, 2015. Additional data on investment option performance is due on an annual basis, beginning with information for calendar year 2015.

Underwriters have 60 days following the end of each semiannual reporting period and calendar year to submit the required information to the MSRB. Read the approval notice for Rule G-45.

The MSRB will host an educational webinar about Rule G-45 on Thursday, March 12, 2015 at 3:00 p.m. ET. Register here.

To assist 529 plan underwriters in using electronic Form G-45 to comply with the new submission requirements, the MSRB is providing a manual and specifications document. As the manual describes, submitters can choose to submit Form G-45 via the EMMA Dataport web user interface or via an automated computer-to-computer (B2B) interface. The MSRB has also created beta test environments to allow submitters to conduct tests and ensure proper programming and configuration of their applications for making Form G-45 submissions to the EMMA system using either method:

EMMA Dataport Web User Interface Beta Environment

Automated B2B Interface Beta Environment

Please contact MSRB Support at 703-797-6668 with any questions.

SEC's Aguilar Calls for Bold Reforms to U.S. Municipals Market.

Feb 13 (Reuters) – A top U.S. regulator called for a major overhaul of the rules governing the $3.6 trillion municipal bond market on Friday, taking aim at a law many traders, issuers and underwriters have considered sacrosanct.

In a wide-ranging statement, Securities and Exchange Commission member Luis Aguilar called on Congress to repeal the so-called “Tower Amendment” which prevents the SEC from requiring bond issuers to file details of their offerings before selling them to investors.

“Unfortunately…the municipal securities market has been subjected to a far lesser degree of regulation and transparency than other segments of the U.S. capital markets,” said Aguilar, a Democrat, in his statement.

“Investors in municipal securities are afforded second-class treatment under current law in many ways,” he added.

For years, the municipal bond market considered the amendment, a part of securities law, a protection against heavy federal regulation.

But in recent years the SEC has taken a narrow interpretation of the amendment, saying it only bars the federal government from requiring pre-sale documents on debt and does not pre-empt regulation of other areas of disclosure and trading.

Using that interpretation, the SEC has been chipping away at the Tower Amendment through some precedent-setting enforcement cases.

Last year, the SEC took the unusual step of seeking an emergency restraining order to stop a planned bond sale by the Chicago suburb of Harvey.

Harvey ultimately settled, agreeing to hire an independent consultant, undergo an audit and face some restrictions on selling new debt.

Aguilar said Friday that Congress needs to go beyond just repealing the Tower Amendment, and should also repeal other exemptions that the municipal market receives from various federal securities laws that shield some players from registration and reporting rules.

“With the appropriate statutory authority, the commission could take a number of steps to enhance disclosure in the municipal securities markets,” he said.

In addition to calling on Congress to grant the SEC new powers, Aguilar laid out numerous other possible reforms.

One such step the SEC could take, he said, would be to revise SEC rules to improve municipal issuers’ disclosures.

This could pave the way for more information about terms of bond offerings and distribution plans, as well as ongoing reporting requirements concerning potential risks such as credit downgrades.

In addition, Aguilar said there needs to be pre-trade price transparency for investors – especially as the market braces for the impending rise of interest rates.

BY SARAH N. LYNCH

WASHINGTON Fri Feb 13, 2015 1:39pm EST

(Reporting by Sarah N. Lynch; additional reporting by Lisa Lambert; editing by Andrew Hay)

Ryan: Tax Reform Difficult After the Summer.

WASHINGTON – A tax-reform agreement has to be reached by the end of the summer or it will not happen during this Congress, House Ways and Means Committee Chairman Paul Ryan said Friday.

“We’re operating on the timeline that it’s got to be done within the first seven or so months of the year,” Ryan said at a question-and-answer session with reporters. It’s hard to see how any tax reform gets done after a new budget cycle starts in the fall, he said.

Ryan said he wants tax reform to be comprehensive, applying to both individuals and businesses. However he is open to accomplishing tax reform in phases if it is necessary to do it that way while there is a Democratic president and a Republican-controlled Congress. President Obama is only interested in doing business tax reform.

“The question is, can we find an agreement this year,” Ryan said. That means doing business tax reform and possibly some individual changes under a divided government and doing the rest of tax reform in the next Congress.

“I think we’re going to reform this tax code somewhere between one and three years away,” Ryan said. “And if we can do part of it in year one, great, but if we have to wait for year three to do it all, so be it, as long as we get it done.”

Another issue on the Ways and Means Committee’s agenda this year is a highway bill. The committee will also have to find a way to pay for highway funding, since the current law expires May 31.

One transportation funding idea that has been floated in Congress, notably by Sens. Barbara Boxer, D-Calif. and Rand Paul, R-Ky., is a one-time repatriation holiday. But Ryan is not a fan of this idea.

“That doesn’t work,” he said, adding that it doesn’t produce the money for the Highway Trust Fund. The only way repatriation can work to provide funds for the HTF is if it is done as part of tax reform, Ryan said. Obama is proposing to use one-time revenues from a transition business tax to provide transportation funds.

The top Democrat on the Senate Finance Committee, Ron Wyden of Oregon, wants bonds to be used to help finance infrastructure. Ryan said he hasn’t talked to Wyden about this idea.

On Thursday, the Ways and Means committee passed a bill that would make the state and local sales tax deduction permanent. The deduction, which can be taken in lieu of the deduction for state and local income taxes and expired at the end of 2014, is particularly important for states that do not have income taxes.

Ryan said the state and local sales tax deduction is “an issue of parity.”

THE BOND BUYER

BY NAOMI JAGODA

FEB 13, 2015 4:28pm ET

TAX - OREGON

Oregon School Boards Association v. Marion County Assessor

Oregon Tax Court, Magistrate Division, Property Tax - February 3, 2015 - 2015 WL 556433

Unincorporated nonprofit association of school boards composed of 196 K–12 school districts, 17 community colleges, 19 education service districts, 87 public charter schools and the State Board of Education purchased property to be used for additional parking and filed an application with the Marion County Assessor seeking a property tax exemption for the property.

The Assessor denied the Association’s application for exemption pursuant to ORS 307.090, on the basis that: 1. Association was not itself a “school district;” 2. Association was not a “public or municipal corporation” because it was organized for the benefit of its members; and 3. Association was not organized as a corporation. Association appealed.

The Tax Court held that the Association was in fact a “corporation” under state law, but that record was not sufficiently developed for the court to conclude whether the Association served a public purpose and therefore qualified as a “public corporation.”

Muni Bond Fans in the Heartland.

What do people in the land of no debt think of today’s debt markets?

I wondered about that during a visit last week to Nebraska, my home state. After all, the forces whipping through markets—sharply falling oil prices, volatile stocks, 10-year Treasury yields stuck stubbornly below 2%, a Federal Reserve seemingly intent on raising rates, and a European Central Bank that just committed to buying a boatload of euro-zone debt—ultimately trickle down to the humble, workaday U.S. municipal bond. And the Cornhusker State, which has a state income tax, has its fair share of buyers and issuers of munis.

Over the past 12 months, munis have handed investors a return of about 7.5%, according to a Barclays index. In comparison, Treasury bonds have logged a 4.76% return across all maturities.

“PEOPLE STILL VIEW the muni market as a safe place to be,” says Craig Jones, managing director for public finance at First National Capital Markets in Omaha, Neb. “It’s kind of a safe harbor in the winds of the other markets,” he tells Barron’s. “I don’t think that’s changed.”

In Nebraska, there’s no such thing as debt, at least of the state general-obligation variety. The state’s constitution essentially prohibits it. A Barron’s analysis in 2013 found Nebraska’s debt profile to be the best among all the states and Puerto Rico.

Still, the state's municipalities and state-backed organizations—its university and public-power systems among them—must fund capital projects and other big-ticket expenses, and use the bond market to do so.

So far, even with the uncertainty that has gripped markets in 2015, issuers are steady-on, says Jones, who deals mostly with clients in the Midwest and whose organization is part of First National of Nebraska, which manages $17 billion in assets.

Clients are "very aware" of the uncertainty, he says, "but we haven't necessarily seen push back" in terms of putting a sale on hold or scrapping plans to issue debt altogether. Besides, he says, in his part of the nation, "We view debt as something that you only use when you need it."

But Tom Carney, who manages Omaha-based Weitz Investments' Nebraska Tax-Free Income fund (ticker WNTFX), says he's positioning it "defensively" in anticipation of a Fed that could allow inflation to exceed its 2% target—potentially eating into fixed-income investors' real returns.

Nebraska Tax-Free is part of the fund family of Wally Weitz, perhaps Omaha's second-best-known investor. (You know who's No. 1.) "We have been beating the drum about the challenging investment landscape in fixed income for some time now," Carney observes. "Low Treasury rates have a gravitational effect on all other fixed-income assets, municipal bonds included." The 10-year note traded around 1.985% late last week, compared with 2.173% at the end of 2014. (It began last year near 3%.)

SOME DANGERS CERTAINLY DO LURK: With oil prices having plummeted about 50% since June, New York advisory NewOak is warning clients to be wary of muni issuers exposed to energy.

The muni market appears to have taken oil's fall "in stride, at least for the time being," writes Triet Nguyen, a NewOak managing director. Yet, pressure from falling petro prices could end up being felt at the local level, Nguyen warns. "As you may recall, the last oil bust created one of the first large-scale municipal credit debacles in the country" he says, referring to the 1980s collapse that ravaged the Southwest's oil patch. "It might be time to go over your muni loan portfolio more closely and figure out exactly where your risk is."

Back in Omaha, Jones is keeping an eye on market volatility and oil prices. But, he says, "We're pretty steady—I don't want to say completely insulated from those things, but we don't see the ups and downs that other parts of the country do."

BARRON'S

By BRADLEY DAVIS

Feb. 13, 2015

SEC Commissioner Aguilar: Retail Investors Victimized by Lack of Muni Bond Oversight.

Securities and Exchange Commissioner Luis Aguilar claimed Friday retail investors in municipal bonds are victimized by a lack of transparency, higher markups than for institutional investors and the SEC's inability to regulate public offerings by issuers.

He asserted retail investors paid more than $10 billion in excessive markups and markdowns between 2005 and 2013.

Pointing out consumers paid an average of double the spread of institutional investors, the Democratic commissioner said, “Retail investors lack access to reliable price information about the municipal securities they may want to buy or sell. As a result, it is exceedingly difficult for retail investors to determine if the prices they are offered and the fees they are charged by their brokers are reasonable.”

He noted the vast quantities of municipal bonds—more than 1.5 million different issues—makes it difficult for investors to buy or sell a particular one.

Aguilar urged the Financial Industry Regulatory Authority (Finra) and the Municipal Securities Rulemaking Board to impose an accurate markup disclosure requirement and to require dealers to disclose their proposed markups before a trade is executed.

FINANCIAL ADVISOR

FEBRUARY 13, 2015 • TED KNUTSON

Will Chris Christie bail out Atlantic City?

It took six decades for Detroit to reach the brink of bankruptcy. Atlantic City, New Jersey, got there in less than one. With casino revenues falling by half between 2006 and 2014 and the local economy imploding, the beleaguered gambling mecca resorted to fiscal gimmicks to shield its budget from severe cuts. But the day of reckoning has come. The 5 percent loan that the city secured from Bank of America represents a near tripling of its borrowing costs in only one year. As unwise as it was for Detroit to have relied so heavily on the auto industry, a city economy based on gambling makes even less sense.

Atlantic City suffers from many of the same problems that have led other American cities to ruin. The city’s annual pension bill has risen over 200 percent since 2006, from $6.5 million to $20.2 million. City employees receive defined-benefit pensions administered through two massively underfunded statewide systems. In November, Governor Chris Christie’s administration released a report recommending that Atlantic City take a pass on the annual, actuarially recommended payments, a “reform” the city had already tried. So far, the city has not sought to reduce pension benefits, though it is trying to negotiate cheaper labor contracts.

Fiscal gimmicks have only exacerbated Atlantic City’s problems. As casino revenues tumbled, so did real estate values. The city reacted by raising tax rates and overvaluing its casino properties. Casino owners appealed these inflated assessments, and they won big on the overcharges. They’re not finished yet. Four out of the city’s top ten taxpayers now have outstanding tax appeals with the New Jersey Tax Court. Because the awards are too large to pay out in cash, Atlantic City issued general-obligation bonds to reimburse the casinos. Last month, Moody’s downgraded those bonds to junk status. Already, $125 million of the city’s $340 million debt burden consists of “Tax Appeal Bonds,” a total that may soon more than double. Simply put, the city has been borrowing to pay for current operating expenses—the big no-no of municipal finance. Atlantic City taxpayers face years of paying off debt used to finance past services. That means less money for future services.

Atlantic City officials are trying to revamp the local economy, but their plans will take many years to succeed, if they ever do. In the near-term, officials' main concern is the debt. Bankruptcy is not out of the question. Harrisburg, Pennsylvania, Springfield, Massachusetts, and several other nearly broke cities have managed to restore solvency without going to federal court. (Springfield appears determined to jeopardize its fragile revival by opening a casino.)

The state government hasn't decided whether to let Atlantic City go bankrupt. State senate president Steve Sweeney has staked out a strong anti-bankruptcy position, but Christie signaled his openness to bankruptcy by appointing Kevyn Orr, who oversaw Detroit's bankruptcy, as a "special consultant" to emergency manager Kevin Lavin, a former financial consultant to Philadelphia. Though Christie's November report called for an emergency manager with "ultimate power on hiring, firing and budget expenditures," Lavin and Orr have no real authority. Their charge is to lay out a plan by mid-March that shows how to "place the finances of Atlantic City in stable condition on a long-term basis by any and all lawful means." The plan will be welcome if only because it will shed some light on exactly what is going on. Atlantic City's financial disclosure practices leave much to be desired.

Christie may have the legal authority to go ahead with bankruptcy over the objections of state and local officials. But before he does, he should define the problem that bankruptcy would solve. Is it incompetence? Corruption? Intractable creditors? Atlantic City is a fiscal and economic disaster, and Christie can't turn it around on his own. The governor, who is considered a potential presidential candidate in 2016, should think carefully about how much political capital he wants to invest.

Politics aside, New Jersey has a responsibility to Atlantic City. Municipalities are creatures of their state governments. A failing city is prima facie evidence of failed state policymaking. Atlantic City's casino-focused economic development policy is a state policy: state voters authorized casinos during the mid-seventies, and about $200 million in casino tax revenues still flow into Trenton's treasury each year. Atlantic City's future, whatever it might be, should not obscure the fact that, if not for casinos, the city wouldn't be facing insolvency. More pain is certain for residents and businesses, who must now serve as martyrs for the cause of better fiscal management.

CITY JOURNAL

STEPHEN EIDE

12 February 2015

Stephen Eide is a Manhattan Institute senior fellow.

TAX - NEW YORK

Rite Aid Corp. v. City of Troy Bd. of Assessment Review

Supreme Court, Rensselaer County, New York - February 5, 2015 - N.Y.S.2d - 2015 N.Y. Slip Op. 25036

Commercial lessee, which operated a free-standing retail pharmacy under 20-year lease, challenged city's real estate tax assessment for three tax years. The Supreme Court, Rensselaer County, granted city's motion to dismiss. Lessee filed motion to reargue.

The Supreme Court, Rensselaer County, held that:

- Capitalization rate offered by lessee's appraiser was not based on sound theory and objective data

set forth with sufficient particularity, but
- National survey of capitalization rates conducted by accounting firm was based on sound theory and objective data.

Capitalization rate, which appraiser for commercial lessee, which operated a free-standing retail pharmacy under 20-year lease, derived by reviewing four sales of comparable properties, was not based on sound theory and objective data set forth with sufficient particularity, as would be required to satisfy lessee's initial burden of rebutting the presumption that city's real estate tax assessments were valid. Lessee's appraiser provided information regarding income for two comparable properties but no information regarding expenses, appraiser relied completely on brokers involved in sales of the other two properties for information regarding income and expenses, and appraiser admitted that while a triple-net lease minimized the impact of expenses on the lessor, there were obviously expenses that needed to be paid and estimated.

National survey of capitalization rates conducted by accounting firm, which survey was used by appraiser for commercial lessee that operated a free-standing retail pharmacy under 20-year lease, was based on sound theory and objective data, as required to satisfy lessee's initial burden of rebutting the presumption that city's real estate tax assessments were valid.

Illinois Lawmakers Propose Easier Path to Municipal Bankruptcy.

(Reuters) – Lawmakers in financially strapped Illinois have introduced a bill that would make it easier for the state's many struggling local governments to file for Chapter 9 bankruptcy, and they have support from the newly elected governor.

Bill co-sponsor Representative Joe Sosnowski said municipalities should have more options for repairing their finances, including seeking protection from creditors without the state's approval as currently required.

"You don't want to make it too easy and you don't want to make it near impossible," the Republican from Rockford said. "The problem now is it's near impossible."

House Bill 298, now before the House rules committee, proposes that "any municipality may file a petition and exercise powers pursuant to applicable federal bankruptcy law."

Governor Bruce Rauner, who entered office in January, is lending his support. He is "committed to turning around Illinois – that includes providing relief to communities that are struggling," his office said in an email to Reuters.

Illinois has the lowest credit rating of any state, and the bill may shield the state from the financial woes of local governments by allowing them to file for bankruptcy.

"I believe municipalities are going to be left more and more to their own devices," said Republican Rep. Ron Sandack of Downers Grove, the bill's sponsor. "We ought to give them all of the financial tools they can have to handle their own affairs."

Local governments in Illinois, with the exception of the Illinois Power Agency, currently may not voluntarily petition for Chapter 9 protection without specific authority from the state. Supporters of HB 298 describe that process as convoluted.

Karol Denniston, a partner at Squire Patton Boggs, cautioned that Illinois should also look to follow the example of states with programs for intervening when local finances fall on hard times to help avert bankruptcy filings.

“How do you make sure the process isn’t chaotic?” said Denniston, who helped draft rules for guiding Chapter 9 filings in California. “If you’re going to say, ‘Have at it,’ impose some oversight and discipline.”
Michigan appoints emergency managers with the power to restructure finances and modify and renegotiate contracts for local governments. They may also file Chapter 9 petitions, with the governor’s approval, as Detroit did due to its overwhelming financial problems.
Some see House Bill 298 being more about giving local officials leverage in labor talks over pensions after judges in the bankruptcy cases of Stockton, California, and Detroit said pensions may be impaired in Chapter 9.

“Chapter 9 gives you the negotiating benefit of saying ‘we want to make these changes – or else,'” said municipal bankruptcy expert James Spiotto of Chapman Strategic Advisors.

Jim Christie

REUTERS LEGAL

February 13, 2015

Three Things to Watch for as Lawmakers Implement California Water Bond.

Only a few months after voters overwhelmingly approved the $7.5 billion water bond known as Proposition 1, the California Economic Summit is urging state lawmakers to give water agencies more precise direction for allocating these funds—and to provide systematic oversight so voters can see how this money is being spent.

Summit leaders offered these recommendations in testimony submitted today to the Assembly Committee on Water, Parks, and Wildlife, which last year earned plaudits for drafting clearly-defined “principles” for the bond—from prohibiting earmarks to increasing accountability—that many credit with contributing to the measure’s success.

With California’s drought lingering, the Summit remains focused on ensuring bond funds allow regions to take “the right next steps” toward sustainability. Echoing a set of Summit drought-response proposals released last year, the testimony emphasizes the need not just for more investment to the state’s aging water infrastructure, but for smarter investment that encourages more comprehensive governance of the fragmented water system—and more comprehensive solutions to the state’s water challenges.

Three ideas for implementing Prop 1

Today’s Summit testimony highlights three ways state leaders charged with implementing Prop 1 can accomplish these goals—all drawn from the Summit’s Roadmap to Shared Prosperity, a long-term plan for putting all of the state’s regions on a path to sustainable growth.

1. Refine the state role. The Summit has encouraged state leaders to use the water bond to advance state goals for water resiliency—with state government providing financial incentives and gap financing for projects that meet the priorities outlined in the California Water Action Plan. The Summit notes an immediate opportunity in the bond's $100 million allocation for enhancements to "an urban creek"—a funding stream that could support a range of urban restoration projects, including the Los Angeles River. The Summit has already begun working with the City of Los Angeles on how the new authority of Enhanced Infrastructure Financing Districts could leverage bond funds to support river restoration.

2. Support integrated, multi-benefit projects across watersheds. Summit leaders have also urged the state to ensure Prop 1 advances the new paradigm where the state sets goals and regions compete to craft strategies that deliver the most benefit. This approach can be found in two different sections of the measure, which together add up to $2.3 billion:

<u>Watersheds:</u> The $1.495 billion watershed chapter is made up entirely of "competitive grants for multi-benefit ecosystem and watershed protection and restoration projects in accordance with statewide priorities." The legislation provides a detailed list of ways these dollars can be used, giving highest priority to "multi-benefit" projects that could reduce fire danger, for example, while also increasing water supply, improving water quality, reducing flood impacts, and replenishing aquifers. The Summit notes that Prop 1 only allocates $38 million to the Sierra-Cascade region—meaning 0.5 percent of the bond's total funds will go directly to the upper mountain watersheds that provide two-thirds of the state's runoff. Still, the Summit letters outlines a variety of ways mountain regions can compete for more funds, connect these projects with their beneficiaries in the more populous valleys below, and ensure beneficial uses of water throughout the watershed—all keys to water sustainability.

<u>Integrated water management:</u> Prop 1 also allocates $810 million to "regional water management"—a decade-long effort to connect projects in upper and lower watersheds—with the measure directing funds first to projects "that cover a greater portion of the watershed." The Summit letter calls out several opportunities for increasing these efforts—urging lawmakers to use bond funds to encourage local water agencies to accelerate development of their newly-required groundwater management plans, for example. The Summit also calls attention to its ongoing work with cities and local water agencies to identify ways to bring multiple local governments together to develop projects that capture and store stormwater.

3. Maximize return on investment: Before Prop 1 passed, many stakeholders expressed concern over how the state will spend $2.7 billion allocated to storage projects—a looming choice between funding new dams or investing in alternative means of storage. While the bond's storage funds won't be allocated for years, the Summit letter notes that Prop 1 outlines a set of laudable goals for distributing these dollars—with the measure requiring the California Water Commission to create a competitive process "that ranks potential projects based on the expected return for public investment as measured by the magnitude of the public benefits provided." The Summit letter notes several ideas for how the state can ensure these new funds help water agencies more effectively coordinate surface and groundwater storage, conveyance, and habitat restoration.

Since the debate over Prop 1 began, the Summit has made the case that implementing the bond would be as important as the passage of the measure itself. The Summit letter makes the case that the bond's language sets the bar high—and gives the Summit's civic leaders an opportunity to work with lawmakers to ensure these funds help California begin the long journey to water sustainability.

FEBRUARY 09, 2015

BY JUSTIN EWERS

[S&P: Kansas' Proposed Midyear Budget Adjustments and Recent Court Ruling on Education Could Hamper Structural Budget Balance.]

NEW YORK (Standard & Poor's) Jan. 9, 2015—Standard & Poor's Ratings Services believes two recent credit developments for the State of Kansas — a lower court ruling that could require substantially higher education funding if upheld on appeal, and the state's projection of a substantial fiscal 2015 shortfall — raise additional obstacles for Kansas to achieve structural budget balance in fiscal 2016 and potentially beyond. In this respect, the extent of the state's movement toward structural budget alignment in fiscal

2016 will be an important component in our view of Kansas' future credit quality.

The lower court ruling on education could require the state to spend more than $500 million extra per year, beyond the $129 million of increased education funding the Kansas Supreme Court required the state to spend in fiscal 2015. We do not see an immediate impact from the new court ruling, as it will likely be appealed to the state supreme court. In our opinion, however, the ruling adds uncertainty to future years' budgets.

Kansas also released a new forecast that projects a negative $280 million general fund budget balance at the end of fiscal 2015, or a negative 4% of budgeted expenditures, absent corrective action. This is in contrast to the adopted 2015 budget, which forecasts a positive 6% ending balance and also assumed that fiscal 2014 would end with a large 11.6% balance; instead the state's preliminary estimate is that fiscal 2014 ended with a lower balance equal to 6% of 2014 expenditures, or $380 million.

The projected negative ending balance for fiscal 2015 has prompted Governor Sam Brownback to propose an offsetting $280 million of midyear corrective actions that would eliminate the projected general fund deficit position, although still leave the state with essentially no general fund balance at the end of the year. The bulk of the governor's proposed midyear adjustments, involving fund transfers and other measures, will require legislative approval when the legislature reconvenes Jan. 12.

In our view, the proposed budget adjustments, if enacted, would result in a state general fund balance position broadly consistent with our expectation in August 2014, when we lowered our rating on Kansas to 'AA' from 'AA+' and assigned a negative outlook, although it would appear that the state's structural imbalance has grown. We had earlier expected a marginal fiscal year-end 2015 balance due to large shortfalls in the April 2014 income tax collections that were not reflected in the adopted fiscal 2015 state budget.
Kansas' current revenue forecast now incorporates the earlier April shortfall, resulting in a lowerbeginning balance that carries forward into a lower year-end balance. However, the state's structural imbalance appears to have grown further due to increased education and Medicaid spending. Although the proposed midyear corrective actions could eliminate a year-end deficit position, they do not appear to significantly address the mismatch between recurring revenues and expenditures.

The governor's $280 million proposed midyear adjustments include: $201 million of one-time transfers from other funds, the delay of a scheduled increase in pension funding ($41 million), savings from a bond refinancing ($3 million), delays in a hospital expansion ($5 million), reduced transfers out for capital
construction ($5 million), and 4% spending reductions for many state agencies.

Although Kansas will likely make adjustments to bring its general fund balance back to a marginally positive level at fiscal year-end 2015, we remain concerned about the one-time nature of most of the budget fixes, and the large fund balance drawdown on a budgetary accounting basis. (On a generally accepted accounting principles [GAAP] basis the fund balance is lower — the recent release of the state's fiscal 2014 GAAP financial statement shows a fiscal year-end 2014 general fund balance of only $2.5 million.) We believe
the state will have enough working cash to operate using its other internally borrowable funds. However, the large reduction of the fund balance in the past two years during a period of economic recovery indicates credit stress, in our opinion, and contributes to our negative rating outlook. Kansas reduced its top individual income tax rate to 4.6% from 4.8% in fiscal 2015, and has another reduction in the top rate scheduled in fiscal 2018 to 3.9%. State credit quality could be affected to the extent tax reductions are not paired with ongoing spending cuts, absent significant economic growth.

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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Extra Credit: S&P's Public Finance Podcast (Credit Implications for Utilities Tied to Nuclear Plants, and Kern County)

In this segment of Extra Credit, Senior Director David Bodek discusses the credit implications for public power and cooperative utilities with stakes in delayed nuclear plants, and Associate Li Yang explains what's behind our recent rating action on Kern County.

Listen to the Podcast.

Feb 12, 2015

Obama's Proposed 2016 Budget Seeks to Address Infrastructure Needs: Ballard Spahr

The Obama administration's proposed 2016 budget, released on February 2, 2015, reflects the administration's commitment to finding ways to finance the country's growing infrastructure requirements. The 2016 budget includes many of the tax-exempt bond proposals previously introduced in the administration's 2014 and 2015 budgets, as well as four new bond proposals.

Highlighted below are the new bond proposals:

Provide a New Category of Qualified Private Activity Bonds for Infrastructure Projects –Qualified Public Infrastructure Bonds

The administration proposes a new category of tax-exempt qualified private activity bonds called Qualified Public Infrastructure Bonds (QPIBs) that are eligible to finance specific categories of facilities financed with exempt facility bonds under current law. A significant aspect of this proposal is that, unlike other categories of qualified private activity bonds (PABs), QPIBs are not subject to the bond volume cap requirement and the alternative minimum tax (AMT) preference for interest on qualified PABs. For years, advocates of qualified PABs have requested that bonds not be subject to AMT, thereby putting them on the same footing as governmental bonds. Also, proponents of qualified PABs have argued that the volume cap requirement hinders the use of these bonds for larger projects such as sewage and water facilities. The QPIB proposal addresses both concerns.

Facilities eligible for QPIB financing include airports, docks and wharves, mass commuting facilities, facilities for the furnishing of water, sewage facilities, solid waste disposal facilities, and qualified highway or surface freight transfer facilities. The proposal imposes two core eligibility requirements for QPIBs: a governmental ownership requirement and a public use requirement. The proposal provides a safe harbor for establishing governmental ownership of financed projects so that property leased by a governmental unit is treated as owned by the governmental unit if the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit related to such property, the lease term is not more than 80 percent of the reasonably expected economic life, and the lessee has no option to purchase the property other than at fair market value (at the time the option is exercised).

Existing categories of exempt facilities that overlap with QPIBs would be removed on the effective date of the proposal (which applies to bonds issued starting January 1, 2016), subject to a transitional exception for qualified highway or surface freight transfer facilities. Alternatively, the proposal provides that Congress consider continuing the existing categories of exempt facilities that overlap with QPIBs for privately owned projects, subject to the unified annual state bond volume cap.

Qualified highway or surface freight transfer facilities are eligible for QPIBs at the same time as other eligible facilities when QPIBs become available and the existing category of exempt facility bonds also continues to be available until the Secretary of Transportation has allocated the existing $15 billion of authorization (and the additional $4 billion proposed by the administration in one of its other proposals).

Modify Qualified Private Activity Bonds for Public Educational Facilities

Under existing law, tax-exempt private activity bonds may be issued for “qualified public educational facilities” under section 142(k) that are part of public elementary or secondary schools. The current rules require that a private corporation own the public school facilities under a public-private partnership agreement with a public state or local educational agency and that the private corporation transfer the ownership of the school facilities to the public agency at the end of the term of the bonds for no additional consideration. A special separate annual volume cap (equal to $10 multiplied by the state’s population or $5 million, whichever is greater) applies to these bonds.

The proposal eliminates the private corporation ownership requirement and allows any private person, including private entities organized in ways other than as corporations (such as partnerships, limited liability companies, or sole proprietors) either to own the public school facilities or to operate those school facilities through a lease, concession, or other operating agreement. The aim of the proposal is to encourage use of these types of bonds. To date, no bonds have been issued under this category because of the constraint that only private corporations may own the school facilities. The proposal goes one step further by removing the separate volume cap for qualified public educational facilities and instead including these facilities under the unified annual state bond volume cap for private activity bonds. The proposal is effective for bonds issued after the date of enactment.

Modify Treatment of Banks Investing in Tax-Exempt Bonds

For tax-exempt bonds issued in 2009 and 2010, the American Recovery and Reinvestment Act of 2009 (ARRA) established a temporary rule that lifted the total prohibition on deducting the interest expense allocable to tax-exempt bonds, which permitted the 80 percent deduction. Bonds that benefited from this rule could not exceed 2 percent of the taxpayer financial institution’s total assets. ARRA also modified the definition of “qualified small issuer” to allow up to $30 million of these bonds instead of the previously allowed $10 million. For 501(c)(3) bonds, the $30 million limit, unlike the pre-ARRA $10 million limit, applied at the borrower level rather than the issuer level. For conduit financings and composite or pooled issues where each borrower is a 501(c)(3), each borrower was treated as a separate issuer for the applicable qualified portion borrowed. The administration proposes to permanently expand the qualified small issuer limit in the definition of qualified tax-exempt obligations to include issuers of up to $30 million of tax-exempt bonds annually.

However, the proposal does not appear to expand the limit at the borrower level. During ARRA, increasing the $10 million limit to $30 million proved to be a very successful way to expand the tax-exempt market. The proposal aims to capture the same benefits of that time period on a long-term basis. Beginning with bonds issued in 2016, the proposal permanently implements the ARRA exception that allowed financial institutions to deduct up to 80 percent of interest expenses allocable to any tax-exempt bonds. This exception would continue to be limited to 2 percent of the taxpayer’s assets.

Repeal Tax-Exempt Bond Financing of Professional Sports Facilities

Currently, professional sports stadiums can be financed with tax-exempt governmental bonds, even if use by a professional sports team of a bond financed facility exceeds 10 percent of the facility’s total use, if the debt service is paid from sources other than sports facility revenues or other private payments, such as generally applicable taxes.

For years, there have been public debates (including congressional hearings) on whether sports facilities should be financed with tax-exempt bonds. Opponents argue that tax-exempt bond financing should not be used to benefit private sport team owners but should be available to construct a sports facility for the team. The administration’s proposal eliminates the private payment test for professional sports facilities so that bonds issued to finance these facilities would have to be taxable bonds if more than 10 percent of the facility is used for private business. The proposal is effective for bonds issued after December 31, 2015.

28 Percent Cap and other Prior Years’ Proposals Included

While the administration continues to show strong support for encouraging the financing of infrastructure projects, the 2016 budget includes the proposal from the prior years’ budgets to limit the tax rate where upper-income taxpayers can use itemized deductions and other tax preferences, including interest on tax-exempt bonds to reduce the tax liability to a maximum of 28 percent. This limitation would reduce the value of the specified exclusions and deductions that would otherwise reduce taxable income in the top three individual tax rate brackets of 33 percent, 35 percent, and 39.6 percent to 28 percent.

For the last few years, opponents have strenuously argued that the 28 percent cap proposal would severely limit investor appetite for tax-exempt bonds and should be eliminated. In response, the administration has noted that the proposal should not be viewed as a direct attack on tax-exempt bonds but rather as part of a broader reform of tax expenditures.

Other proposals carried over from the administration's 2014 and 2015 budgets are the America Fast Forward Bond proposal (a broader category of taxable bonds similar to Build America Bonds at a 28 percent subsidy rate), as well as proposals to:

- Allow current refundings of state and local governmental bonds
- Repeal the $150 million non-hospital bond limitation on qualified section 501(c)(3) bonds
- Increase the national limitation amount for qualified highway of surface freight transfer facility bonds
- Allow more flexible research agreements for purposes of private business use limits
- Modify tax-exempt bonds for Indian tribal governments
- Simplify arbitrage investment restrictions and single-family housing mortgage bond targeting requirements
- Streamline private business limits on governmental bonds

by Vicky Tsilas, Linda B. Schakel, Brian Walsh, and Steve T. Park

February 6, 2015

Attorneys in Ballard Spahr's Public Finance Department have participated in every kind of private activity financing, including exempt facility bonds, qualified 501(c)(3) bonds, and exempt facility bonds.

For more information, please contact Vicky Tsilas at 202.661.2283 or tsilas@ballardspahr.com, Linda B. Schakel at 202.661.2228 or schakel@ballardspahr.com, Brian Walsh at 215.864.8510 or walsh@ballardspahr.com, or Steve T. Park at 215.864.8533 or parks@ballardspahr.com.

Senator: TIF Bill Stemmed from Madison Co. 'Debacle.'

State Sen. Joey Fillingane said as the result of a recent "debacle" concerning an economic development project in Madison County, Trustmark Bank has pulled its participation from similar projects in the state.

Fillingane, R-Sumrall, said that's what prompted him to author Senate Bill 2550, which allows (but does not mandate) cities and counties to use general fund or other taxpayer money to make tax increment financing bond payments when in danger of defaulting.

TIF bonds are a financing option that allows counties and municipalities to borrow money to fund an economic development project based on the taxes the project would generate in the future. The payments are made off taxes from the property itself and adjacent lands, not regular taxpayer money.

In October, Madison County was unable to pay its November bond payment of $90,000 for its Galleria/Parkway South TIF bond. The county made the decision to restructure the payments in order to avoid default.

"Because of that debacle, the bank is protecting itself and saying, 'We don't want to get ourselves or our stockholders back into that situation again,' " Fillingane said.

Trustmark did not directly answer whether it has made any such decision or whether the Madison County project affected any others in the state.

"Trustmark has a long history of participating in the Tax Increment Financing market in Mississippi. The method of financing is not the issue; it's the underlying, individual project that determines if Trustmark has an interest," Barry Harvey, Trustmark's executive vice president and chief credit officer, said in an emailed statement. "We will continue to look at each Tax Increment Financing transaction on its own merit and participate in the projects we feel are viable."

Madison County Board of Supervisors attorney Mike Espy said in October the biggest revenue loss came from a single building owner who lowered his property tax liability, thus decreasing his payments. The county also made an error putting tax-forfeited properties in the TIF area.

This week, however, Espy said the building owner who had his tax liability lowered recently paid money from back taxes to Trustmark. County Administrator Mark Houston also said the county is getting a "little bit better collections" than expected since making the decision to restructure.

Commercial real estate attorney Ron Farris said Trustmark's reported decision not to participate in TIF bonds in the state has hurt two major projects in Hattiesburg.

"It has impaired and hurt people in two major projects in Hattiesburg in terms of delay, cost and unmet expectations," Farris said. "It's a big threat to the commercial real estate industry in Mississippi."

Farris was involved in the proposed plan for the Galleria TIF in its early stages.

Fillingane's bill would also mandate county and city officials be provided separate tax rolls that identify any changes in valuations for properties associated with bonds so as to prevent a property's valuation and thus its tax revenue from being decreased.

The bill has passed out of the Senate Finance Committee and will be voted on by the Senate.

Kate Royals

The Clarion-Ledger February 6, 2015

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CDFA, Yale Clean Energy Finance Forum Launches New Webinar Series.

The Yale Clean Energy Finance Forum (CEFF) & the Council of Development Finance Agencies (CDFA) have partnered for a three-part webinar series. This first webinar is entitled "Catalyzing Energy Investment with Development Finance Programs". It will focus on the impact that tested development finance tools can have on clean energy investment.

Tue, Mar 3, 2015 10:00 AM – 11:00 AM PST

Click here for more information, and to register.

MMA Issuer Brief: Strong Jan Ends; White House Budget.

Read the Brief.

Municipal Market Advisors | Feb. 10

S&P: Proactive Management Actions and Improving Demand Should Afford Most U.S. Airports Credit Stability in 2015, Report Says.

NEW YORK (Standard & Poor's) Feb. 12, 2015–In a report released today, Standard & Poor's Ratings Services said it expects generally stable credit quality in 2015 for most U.S. airports it rates, with large-hub airports in a stronger position. With U.S. air travel demand gradually improving, although not uniformly across all airports, following the Great Recession and numerous airline mergers, the U.S. airport sector's median financial and operational metrics have continued to recover gradually (according to 2013 data).

Enplanements, or the number of passengers boarding a plane, increased in 2013 for more than half the airports we rate, although only a third reached levels exceeding those of 2007. To address a loss in traffic or added uncertainty management teams are taking steps to shore up their finances, such as raising rates, building cash by enhancing non-airline revenues, and deferring demand-driven and maintenance capital projects. Some are also renegotiating agreements with airlines and concessionaires, funding projects from other revenue streams, paying down their debt, and limiting increases to operating expenses and reducing debt service expense from refunding bonds to take advantage of low interest rates.

"We believe these measures have enabled airports to maintain steady financial performance despite experiencing lower traffic levels," said Standard & Poor's credit analyst Joseph Pezzimenti in the report, entitled "2015 U.S. Airport Medians Report: Proactive Management Actions And Improving Demand Should Allow
Most Airports To Maintain Credit Quality."

Although the majority our airport credits has a stable outlook, we believe the future could hold some risks for airports' financial metrics. All airports are susceptible to the effects of airlines' service decisions and pricing strategies, the integration of consolidated airlines, limited or unpredictable federal support for capital projects, weaker-than-expected economies, and increases in fuel prices. "All of these could lead to lower or less predictable demand and strain financial flexibility for some, especially those with high or increasing debt burdens or lower liquidity after funding necessary capital improvements," Mr. Pezzimenti added.

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.

The report is available to subscribers of RatingsDirect at www.globalcreditportal.com and at www.spcapitaliq.com. If you are not a RatingsDirect subscriber, you may purchase a copy of the report by calling (1) 212-438-7280 or sending an e-mail to research_request@standardandpoors.com. Ratings information can also be found on Standard & Poor's public Web site by using the Ratings search box located in the left column at www.standardandpoors.com. Members of the media may request a copy of this report by contacting the media representative provided.

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Removing Blight, One Block at a Time.

A nonprofit founded by mayors is helping seven cities finance and organize community service projects to revitalize low-income urban neighborhoods.

Mayors in seven cities have won a competition to receive a full-time AmeriCorps VISTA member, a $30,000 grant and on-going technical assistance for three years of neighborhood revitalization work.

Cities of Service, a national nonprofit organization, awarded the grants as part of its ongoing "Love Your Block" program, which focuses on urban neighborhoods and uses volunteers from the community to try to improve the local quality of life. Cities involved in the program organize volunteers to pick up litter, plant trees, clean vacant lots, create community gardens and remove graffiti.

Cities of Service is supporting a specific method of government-organized community service for eliminating neighborhood blight, which it explains in an online how-to guide. Part of the initial $30,000 will go toward planning. Cities may raise additional money from local foundations and then offer small grants to volunteers with proposals to improve a single block. Cities also look for ways to supplement the volunteer efforts by training a host of municipal services on the area to fix signs, repair potholes and replace damaged trash bins.

The winning cities announced Feb. 11 were Birmingham, Ala.; Boston; Lansing, Mich.; Las Vegas, Phoenix, Richmond, Calif., and Seattle. The awardees all plan to focus on improving low-income neighborhoods, though they outlined slightly different strategies. Volunteers in Las Vegas will work near low-performing schools; in Richmond, Calif., they'll target only areas surrounding public housing.

To receive the grant, cities had to demonstrate that their mayor would spend time and attention on the project, said Myung Lee, the executive director of Cities of Service. "We're not here to be just a funding source and then just walk away," she said. "We are looking for partners."

The grants are an extension of work that began in New York City under former Mayor Michael Bloomberg. His administration created an office in 2009 (NYC Service) that organized volunteers to address social problems. The office focused on data collection and measured the impact of volunteerism in several issue areas, such as health, education and the environment. Bloomberg's initiative was itself inspired by a 2009 federal law aimed at expanding community service.

The year after NYC Service launched, the Rockefeller Foundation awarded $100,000 grants to 10 cities for a paid staff position in the mayor's office to create and oversee their own version of NYC Service.* Bloomberg Philanthropies has since offered additional grants to expand the program and in January 2014, it helped fund the creation of an independent nonprofit, which is overseen by Lee, a former deputy commissioner of children's services in New York City.

By now, the service model has a record of tangible results in participating cities. In New York City, volunteers have coated at least 618 rooftops with a reflective surface that reduces a building's heating costs. In Flint, Mich., volunteers scrubbed at least 17,000 square feet of graffiti. Cumulatively, Cities of Service have recorded the removal of at least 1.9 million pounds of litter and the creation of at least 520 community gardens or other types of green space.

The biggest benefit from the latest round of grants isn't the money; it's access to technical expertise. Both the AmeriCorps employee and the supervisor who runs the service programs have to participate in monthly phone check-ins and webinars with Cities of Service. Staff from Cities of Service also conduct site visits to all their grantees.

Each city will report back on the immediate accomplishments of service projects, such as the number of volunteers who participated or pounds of litter collected. But Lee said the long-term goal is that as residents invest their time and energy in these blocks, the city will see measurable impact on crime and people's perception of safety. The newest round of grants encourage cities to track those deeper indicators that might change as the aesthetics of the neighborhood improve.

"We're trying to change how the world deals with volunteers," she said. "Don't think about how many volunteers are coming out. Think about what the volunteers are trying to address."

*CORRECTION: A previous version of the story said the first Cities of Service grants were awarded in 2009. They were announced in 2009 and awarded in 2010.

GOVERNING.COM

BY J.B. WOGAN | FEBRUARY 12, 2015

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The Elusive Pension Cure-All.

A new study by the National Institute on Retirement Security provided a good reminder that the 401(k)-style retirement plans that some governments have established for new employees are not a cure-all for the unfunded pension liabilities those governments have. Governments that close off their pension plans to new employees will still have huge liabilities for the employees under the old plan, a situation made worse when there's a market downturn and they have to pay out more money from the fund in benefits than their dwindling employee members are putting in.

Even if plans are fully funded when they're closed, things can turn sour. Michigan closed its defined benefit plan to new hires back in 1997. The plan was actually overfunded at the time – it had slightly more money in it than it needed to pay all the benefits it had promised to those employees. But by 2012, the plan's funded status had dropped to about 60 percent while retirement security for defined contribution plan participants had decreased, the NIRS report said.

The report found similar losses in West Virginia and Alaska. Two very important factors are at play. For one, the 2008 stock market crash wiped out nearly a third of most plans' assets. Michigan's assets still have not recovered from the recession. That's partly due to another other factor: Michigan had not been putting in its full contribution to during those years. The state is now trying to fix the problem and in 2013 put in 99 percent of the recommended contribution.

Still, the report correctly noted that there is less retirement security for those in a 401(k)-style plan. Of course, that's the financial benefit for governments – they pay a set benefit now and thus eliminate the risk that they will have to pay more later. The risk is transferred over to the employee.

In Washington, hybrid plans potentially offer a balance. A paper by the University of Washington's Center for Education Data & Research on the state's teacher pension system indicated that the state's financial exposure is significantly lower under a hybrid plan becuase its per-teacher pension liability is approximately half as large as under its traditional plan. And, when given a choice, at least six in 10 teachers (statistics vary by year) choose the hybrid plan.

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 13, 2015

Bloomberg Brief - Municipal Market Weekly Video 02/12/15.

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

View the video.

As New Yorkers Live Longer, Cuomo Seeks Pension IOU: Muni Credit.

(Bloomberg) — New Yorkers are living longer, which is good news for the state's 19.7 million residents. For Governor Andrew Cuomo, it's triggering a budget headache.

The fiscal strain emerged in September, when Comptroller Thomas DiNapoli factored in longer life expectancies for retirees in the third-largest U.S. public plan, as actuaries estimated that pensioners would be around at least an extra two years. The longer lives raised the $176.8 billion fund's liability, boosting the 2016 pension bill to $355 million more than Cuomo had projected.

The added cost has Cuomo, a second-term Democrat, tapping a program allowing the state and its municipalities to borrow part of their annual pension bill from the fund with interest. Since 2011, Cuomo has used the tool to defer about $3.2 billion in payments. While he'd planned to exit the program in 2016, the budget he introduced last month includes borrowing $395 million for that year.

"Amortization takes volatility out of the state's pension contribution costs and helps us maintain stability," Morris Peters, a spokesman for Cuomo's budget division, said via e-mail.

Swelling Liability

Since Cuomo took office in 2011, he's closed more than $12 billion in budget gaps, capped annual spending growth at 2 percent and won the state's first four consecutive on-time budgets since 1977. The moves spurred Standard & Poor's to award the state a AA+ mark in July, its highest since 1972. Yet the company also said the pension borrowing is swelling the state's unfunded retirement liability.

Most municipalities are dealing with similar fiscal strains. U.S. state and local retirement plans are short at least $1.3 trillion because of investment losses triggered by the recession that ended in 2009 and insufficient contributions, according to Federal Reserve data.

To help public and corporate pensions estimate costs, the Society of Actuaries last year released a new scale that predicts the rate at which life expectancy will increase over decades. As the method is adopted, liabilities will rise by a range of 4 percent to 8 percent, said Dale Hall, the Schaumburg, Illinois-based group's managing director of research. The society is the largest group of financial-risk assessors.

Corporate Takeover

Investors in companies such as AT&T Inc. and Northrop Grumman Corp. have gotten a glimpse of the fallout from aging societies as they incorporated new life-expectancy estimates. Companies including Motorola Solutions Inc. are paying insurers to take over their plans to avoid ballooning costs from years of additional pension checks.

In New York, investment losses led annual contribution rates to almost triple from 2010 to 2014 for state and local workers. The 2010 law allowing the payment deferments was designed to smooth out the jump by spreading it over a decade.

While only seven states had stronger pensions than New York as of 2013, its funding ratio isn't as robust as it once was. The fourth-most-populous state had 87.3 percent of assets to meet obligations, down from 105.9 percent in 2008, data compiled by Bloomberg show. The median was about 69 percent in 2013.

Extra Years

The society's new mortality scale was its first revamp in 15 years. From 2000 to 2014, the life expectancy for 65-year-old American men rose 2 years to 86.6, while for women it climbed 2.4 years to 88.8, according to the society.

Before adopting the new scale, New York had been using the version released by the society in 2000. "Mortality rates have been improving faster than the last study predicted," said Bill Hallmark, who leads the public plans subcommittee for the Washington-based American Academy of Actuaries, which consults for policy makers.

Based on advice from the state actuary to adopt the new scale, DiNapoli set the contribution rate for state and local workers for fiscal 2016, which starts April 1, at 18.2 percent of payroll. The Cuomo administration was expecting 14.2 percent, according to budget documents. The difference raised the fiscal 2016 pension bill by about $355 million, to about $2.2 billion.

DiNapoli, the sole trustee of New York's retirement fund, didn't see many options, said Thomas Nitido, deputy comptroller for the New York State and Local Retirement System.

"We were mindful that this had an impact on rates, but anything we don't pay now will only increase costs in the future," he said.

While the deferments hurt New York's credit profile, the approach is preferable to forgoing payments, said Marcia Van Wagner, an analyst at New York-based Moody's Investors Service.

"Many states, as a matter of routine, do not pay their full actuarially designated contribution and they don't have a formal payback program," she said by phone. "We don't see it as weakening New York substantially relative to its peers."

Bloomberg Muni Credit

by Freeman Klopott

February 12, 2015

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Moody's: Texas and its Municipalities Face Difficult Budget Decisions in Wake of Oil Slowdown.

New York, February 09, 2015 — The State of Texas (Aaa stable) and its local governments will encounter difficult budget decisions during the remainder of this fiscal year and the next biennium owing to lower oil prices, Moody's Investors Service says in a new report "Tough State and Local Government Budget Decisions Ahead as Oil Sector Slows."

Despite having a robust and diverse economy, output and revenue growth will slow due to the steep price drop in oil. Budgetary priorities will therefore vie against lower revenues amid the slowdown.

"The state comptroller expects tax revenue growth to slow considerably and for growth to remain low during the next few years," said Moody's Vice President — Senior Credit Officer Nicholas Samuels. "The price drop is occurring while Texas considers how to spend more on schools, increase transportation funding, bolster its pensions and a political desire to cut taxes," The Texas general fund budget is not as directly exposed to oil and gas severance taxes as other states.

Oil and gas taxes comprise 11.2% of Texas' general revenue fund, compared with sales tax, which constitutes 53% of general revenue. While state revenue growth will slow in the next few years, because of the drag of lower oil prices, the lower oil prices could also boost consumer sentiment and buying power, which could positively impact sales tax receipts.

Economic and budgetary impact from lower oil prices will vary regionally. Houston (Aa2 stable) and Harris County (Aaa stable) are the most vulnerable to the downturn because of the high concentration of energy-related employment. Houston has 4.7% of its employment tied to the sector and 10 of Harris County's top 11 employers are oil- and natural gas-related.

These localities are regarded as the "world's oil and gas capital," Moody's Assistant Vice President — Analyst Adebola Kushimo says in a new report, "Harris County and Houston's Economies Poised to Slow Due to Declining Oil Prices." Kushimo says the region's employment is heavily tied to the sector and until oil prices stabilize, job losses will lead to declines in sales tax revenues.

Austin (Aaa stable), Dallas (Aa1 stable) and San Antonio (Aaa negative) are less susceptible to oil price fluctuations since their respective economies are more diverse with technology, transportation, and healthcare among their key employment components. Outside of large metro areas, some regions where oil production is concentrated will slow and see significant contraction, such as Midland (Aa1) and Odessa (Aa2).

In addition, the local economies of some Texas Independent School Districts (ISDs) will be affected by a significant and prolonged oil price decline, which could affect some ISDs' abilities to make timely or complete debt service payments. In a new report, "Fund Exposed to Oil Slowdown but Retains Strong Ability to Cover Calls on Guarantee," Moody's Analyst John Nichols says the Texas Permanent School Fund (Aaa stable) is fundamentally sound despite its exposure to ISDs in high oil-producing areas.

However, downside risk would outweigh upside potential for Texas and its major metro areas if oil prices remain below $50 per barrel for a prolonged period, particularly in the current fiscal year. Greater job losses would constrain the state's revenue forecast, resulting in budget cuts felt at local levels.

Subscribers can access the report at:
https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBM_1002523.

Fitch: Ruling May Endanger Key Revenue Source for Some CA Cities.

Fitch Ratings-New York-11 February 2015: A recent appellate court ruling could lead to increased financial pressure for California cities that transfer revenue from electricity utilities to general operating funds, Fitch Ratings says. We believe this decision could lead to similar lawsuits in other locations.

The court ruled that the city of Redding's electric system payments in lieu of taxes (PILOTs) constitute a tax and, therefore, require two-thirds voter approval to remain in place. If the decision from this court stands or if the case is upheld by the state Supreme Court, it would remove an important income stream from the city of Redding's general fund. In fiscal 2014, the electric fund

PILOT accounted for 7.8% of general fund revenues and transfers in. Electric system transfers account for a significant amount of general fund inflows in a number of other California, cities including Glendale, Lodi, Los Angeles, Pasadena and Riverside. Fitch believes a trend of similar legal actions could become a rating sensitivity in the coming years for those cities.

The appellate court decision would require two-thirds voter approval under Proposition 26 for the PILOTs to remain in place unless Redding can demonstrate that the transfers recover costs associated with providing electric service.

Momentum to limit utility transfers for general government purposes has been building for decades. Proposition 218 (passed in 1996) required new fees or taxes levied by local governments to receive two-thirds voter approval but excluded electric and gas rates. Proposition 218 and a subsequent ruling by the California Supreme Court in 2006 (Bighorn Desert-View Water Agency v. Verjil) successfully limited utility transfers not related to cost recovery. Proposition 26, passed in 2010, more broadly defines taxes with fewer exclusions.

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Judge Says $178 Million Detroit Bankruptcy Fee Tab 'Reasonable'

(Reuters) – The federal judge who oversaw Detroit's historic bankruptcy case ruled on Thursday that the nearly $178 million charged to the city by law firms and consultants for fees and expenses was reasonable.

U.S. Bankruptcy Court Judge Steven Rhodes said he based his decision mainly on the complexity of the bankruptcy case filed in July 2013 as well as substantial reductions that the firms agreed to make in their bills.

"The city is now on a path to success precisely because of the expertise, skill, commitment, endurance, personal sacrifice, civility and proficiency of all of the professionals in the case, including most certainly those whose fees are subject to review in this opinion," the judge wrote.

The biggest bill in the biggest-ever U.S. municipal bankruptcy came from law firm Jones Day, which had employed Kevyn Orr before he was tapped by Michigan Governor Rick Snyder as Detroit's emergency manager in March 2013. For its role as the city's lead attorney in the case, Jones Day charged $57.9 million. It shaved about $17.7 million off its fees and expenses, according to the judge's order.

Financial advisory firm Miller Buckfire dropped its fee for work on the city's debt restructuring to $22 million from $29.1 million, the order added. Fees from dozens of other firms covered legal, actuarial, consulting and art appraisal services, as well as mediation and court-appointed experts.

Detroit exited bankruptcy on Dec. 10 with a court-approved plan to shed about $7 billion of its $18 billion of debt and obligations.

Rhodes said that the case involved numerous parties and drafts of the debt adjustment plan, a myriad of legal and factual issues, appeals and court-ordered mediation. His order noted that actual fees and expenses totaled $183.2 million and that amount was reduced to $178 million after the state of Michigan covered $5.29 million of the costs.

By REUTERS

FEB. 12, 2015

(Reporting by Karen Pierog; Editing by G Crosse and Jonathan Oatis)

Puerto Rico Set for Tougher Debt Struggle After Court Ruling.

NEW YORK — Hopes of an orderly resolution to Puerto Rico's debt crisis suffered a heavy blow after a court voided the island's restructuring law, raising fears it may be heading for a longer, messier debt overhaul.

Late on Friday a U.S. federal judge ruled that the U.S. commonwealth's so-called Recovery Act, which made some of Puerto Rico's agencies eligible for court-supervised debt restructuring, violated the U.S. constitution by allowing a state government to modify municipal debt.

"This decision will ultimately result in a resolution being dragged out over a longer period of time, having the administrative costs incurred eat into the ultimate recovery for the bondholders," said Tom Metzold, a senior portfolio advisor at Eaton Vance, which holds various insured Puerto Rico bonds.

Puerto Rico is expected to appeal the ruling, kicking off lengthy litigation with a hard to predict outcome and possibly delaying for months the matter's final resolution.

Bondholders are, however, likely to interpret Friday's ruling as a sign that the Puerto Rico authorities are on shaky legal ground. That could lift bonds of public corporations such as the Puerto Rico Electric Power Authority (PREPA) covered by the voided law, by strengthening bondholders' negotiating position, investors said.

In contrast, holders of General Obligation (GO) bonds issued by the island could take a hit. The Recovery Act meant to isolate the government from potential liabilities incurred by agencies such as PREPA and that protection may now be in doubt.

“If you are a holder of a power bond, you could say: ‘I have a better negotiating position’,” said John Miller, co-head of fixed income for Nuveen Asset Management, which holds various insured Puerto Rico bonds. “But at the GO level and politically, it’s negative.”

Puerto Rico, struggling with debts of more than $70 billion, passed the law in June, to give public corporations a framework to restructure debt and ring-fence the government from a potential bankruptcy.

U.S. law forbids Puerto Rico’s government and its entities from restructuring debt under Chapter 9 of the U.S. bankruptcy code, which was used for Detroit last year, so the Puerto Rico government passed its own restructuring law in June based loosely on U.S. bankruptcy rules.

U.S. mutual funds OppenheimerFunds, a unit of insurer MassMutual Financial Group, and Franklin Templeton, which owned $1.7 billion of PREPA bonds, quickly sued Puerto Rico, saying the commonwealth had no right to pass its own law that ran counter to federal bankruptcy law.

Puerto Rico’s representative in Congress, Pedro Pierluisi, introduced a bill to include Puerto Rico in Chapter 9 of the U.S. Bankruptcy Code.

Metzold said that the picture could change if Congress passes this bill, avoiding a situation where bondholders with competing interests fight it out in a free-for-all battle with no framework to negotiate.

NEGOTIATING POWER

Friday’s ruling has implications for around $20 billion of debt potentially affected under the act, including $9 billion of debt outstanding at the power utility, which is in restructuring talks with bondholders.

Continue reading the main storyContinue reading the main storyContinue reading the main story
The move gives more negotiating power to holders of PREPA bonds and less power to the utility, as the Recovery Act had essentially allowed Puerto Rico to dictate terms, investors said. It could also have implications for Puerto Rico’s other highly indebted utilities: Aqueduct and Sewer Authority and Highways and Transportation Authority.

“This is a positive development for bondholders and insurers of the so-called public corporations,” said Miller.

How bondholders use their leverage remains to be seen. Without the specter of a bankruptcy process, creditors could cause restructuring talks to drag on.

On the other hand, some creditors may feel empowered to take initiative. PREPA’s problems must be resolved one way or the other, and one person close to Puerto Rico’s creditor community said the onus is now on them to propose a restructuring framework.

Law firm Kramer Levin, representing OppenheimerFunds and Franklin Templeton, said in a statement that the decision was “a major victory for municipal bondholders.”

A potential setback for holders of Puerto Rico’s general debt, Friday’s ruling could also make it tougher for upcoming new debt issues, some investors said.

“I think bringing new issues to enhance liquidity looks very difficult right now,” Miller said, adding that it would be hard to price a large new deal while effectively in a legal limbo.

By REUTERS

FEB. 9, 2015

(Additional reporting by Tom Hals and Ed Krudy; Editing by Tomasz Janowski)

GFOA: An Elected Official's Guide - Internal Control

There are many different types of governments, but all of them share certain basic objectives: **effectiveness, efficiency, safeguarding of assets, reliable reporting, and compliance.** Internal control provides reasonable assurance that a government is, in fact, meeting all of those objectives. An Elected Official’s Guide: Internal Control is specifically designed to offer nonspecialists – be they members of the governing board, staff members without accounting or auditing expertise, or ordinary citizens – the information they need to understand what internal control is, how it operates, and who is responsible. The text of this publication reflects the most recent authoritative guidance on internal control set forth in the Committee of Sponsoring Organizations’ (COSO) revised and expanded version of its classic Internal Control – Integrated Framework (COSO Report), released in 2013.

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Eight Things we Learned From the Detroit Bankruptcy.

Detroit's historic trip through Bankruptcy Court ended in December 2014 with the confirmation of the City's Plan of Adjustment, which trimmed $7 billion in debt from the city's balance sheet and promised improved resident services. At the beginning of the case, no one predicted that the city would emerge from bankruptcy so quickly — only about 18 months — or that the final Plan of Adjustment would enjoy such widespread support among creditors and politicians. What can we learn from the largest municipal bankruptcy ever?

1. Not all municipalities can take advantage of Chapter 9. Detroit's very first battle after it filed for bankruptcy was whether it was even eligible to do so. This dispute underscored a little known fact: Most U.S. municipalities are unable to file for Chapter 9 bankruptcy. A Chapter 9 filing must be "specifically authorized" by the law of the state where the city is located. So, in the case of municipal bankruptcies, the states themselves control access to the bankruptcy courts. About one-half of the states do not say anything at all about Chapter 9, so the municipalities in those states lack the "specific authority" to file bankruptcy. Other states, such as Michigan, have very rigorous prerequisites that must be satisfied before filing. Missouri law specifically permits most municipalities to file Chapter 9. Incidentally, the term "municipality" is much broader than "city." Other political subdivisions, such as water, school or levy districts, are also included within the definition of "municipality." States cannot themselves file bankruptcy, so Illinois will have to find another way to solve its financial problems. Even if a municipality can file bankruptcy, however, there is another very important threshold question.

2. Can public pension obligations be modified in Chapter 9 cases? Private industry long ago mostly moved from defined benefit pension plans to defined contribution plans. But defined benefit plans are still popular for government employees, including many municipal employees. Many states, including Michigan, have special protections for public pensions in their statutes or even their state constitutions. For instance, Michigan's state constitution says: "The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby." Therefore, when Detroit filed its case, there was a legitimate question about whether the public pensions could be modified in the Chapter 9 case.

Michigan's Attorney General argued that Michigan's constitution absolutely prohibited any restructuring of vested pension benefits. Not surprisingly, various retiree groups also opposed the city's efforts to reduce pension benefits. The bankruptcy judge ultimately determined, however, that pension benefits were not entitled to any more protections than any other contractual benefits and permitted Detroit to propose a plan that reduced vested benefits. The judge in the Stockton, California, Chapter 9 case ruled the same way a few months later. Public retirees can no longer assume that their vested benefits are sacrosanct. A definitive trend is developing in the law that a federal bankruptcy court can modify those kinds of benefits, even though state or local law suggests that they cannot be modified.

3. Bondholders and pensioners vs. residents. The Detroit case was mind-numbingly complex; one observer called it the Olympics of Restructuring. But in its simplest terms, the case was all about balancing the interests of three groups:

- Bondholders who held billions of dollars of debt issued by Detroit or its city agencies and for whom the prospect of a massive municipal default was utterly unthinkable.
- Retirees who had worked for the city for decades at below-market wages but who looked forward

to a stable pension in their retirement.
- And the city's residents, who had seen city services deteriorate to a level not often seen in this country; indeed, one Forbes columnist called Detroit "America's first Third World city."

Each of the three groups had strong legal and equitable arguments that they claimed should be favored at the expense of the others. The bondholders argued that the entire municipal finance market was predicated on a municipality's solemn promise to pay the bonds, no matter what, and that the cost of municipal credit would increase all across the country if Detroit were permitted to default. The retirees argued that their pensions were not overly generous (the pensions generally ranged from $1,500 to $3,000 per month) and pointed out that many of the former employees were ineligible for Social Security because they did not have sufficient service time in the private sector. The residents pointed to Detroit's dramatic population decline, from 1.8 million in 1950 to less than 700,000 in 2013, as evidence that its residents were "voting with their feet" by leaving the City whenever they were able.

Of course, there were also many differences within the three major groups. Some of the bonds (but not all) were insured by large insurance companies, but the exposure of the bond insurers was so large that their own existence was threatened if they had to pay out. Some bonds were secured by income streams from specific projects, but others were not. Even the pension obligations were complicated. The police and firefighters had a separate pension plan from the other retirees, and it was in considerably better financial shape than the general plan. Moreover, the former city employees were entitled to other post-employment benefits (called "OPEB" in pension parlance) in the form of health and life insurance benefits that were not pre-funded at all. When everything was totaled up, Detroit had a staggering $18 billion or so in liabilities.

4. It really helps to own a $1 billion art collection. Along with its 78,000 abandoned buildings and 70 Superfund sites, Detroit also happened to own a world class art collection that included Van Gogh's "Self-Portrait," Rembrandt's "The Visitation," and Matisse's "The Window." Detroit's involvement in the art world dated back to 1919, when the City bailed out its then-bankrupt local art. In the 1920s, when Detroit was riding particularly high, the museum went on a buying spree and accumulated a collection that was the envy of museums in much larger cities. By 2013 when Detroit filed Chapter 9, the art collection was probably the city's most valuable asset, and the bondholders and retirees, who could agree on almost nothing else, both argued that it would be unfair for Detroit to keep its valuable artwork while asking for creditors to take deep discounts. After months of legal wrangling and public sniping, with estimates of the art collection's value ranging from $350 million to $2 billion, the parties reached the so-called "Grand Bargain."

This agreement, forged in dozens of court-ordered mediation sessions, formed the cornerstone of Detroit's bankruptcy plan. The deal called for the transfer of the art collection to a charitable trust in exchange for $816 million contributed from the State of Michigan, private donors, and several large charitable foundations, including the Ford Foundation, which donated $125 million itself. The retirees had to agree to accept relatively modest reductions in their monthly pensions (less than 5%) but future cost of living adjustments were eliminated. Also, almost all of the other post-employment benefits, such as retiree health care and life insurance, were slashed or eliminated.

5. Retirees fared much better than bondholders. The consensus is that the retirees fared much better than the bondholders in Detroit's case, and that the disparity in treatment was as more because of political concerns than legal distinctions. For instance, the funders of the Grand Bargain insisted that their contributions go toward shoring up the pension plans — not into the pockets of the bondholders. As the case progressed, the judge, the court-ordered mediators, and the other parties began clearly discounting the bondholders' arguments that the entire U.S. municipal bond market would be harmed if Detroit did not pay back its bond debt in full. The city reached agreements with its other creditor groups before turning its attention to the bondholders (or more precisely, the companies that insured the bonds against a default). Faced with the prospect of being the only remaining major hold-out, the bondholders began a frantic round of last-minute deal making.

For instance, Detroit and Syncora (one of the largest bond insurers) reached a deal that will set the creativity bar very high for future settlements in other cases. Syncora just happened to own the company that operates the Detroit-Windsor tunnel, having acquired that company when it filed bankruptcy several years ago. The lease on the tunnel was set to expire in 2020. As part of its settlement with Syncora, the City of Detroit agreed to extend the tunnel lease through 2040, and to give a Syncora a long term lease on a city-owned parking lot, conditioned on Syncora's commitment to make $13 million in improvements on the garage. The city also gave Syncora credits to purchase additional city-owned property in the future, including the old Joe Louis Arena. Similarly creative arrangements were reached with the other major bond insurer.

6. Not all bonds are alike. The bondholders were treated very differently, depending on the types of bonds they held. Some of the bonds that were well secured by project revenues will actually receive payment in full. Other bonds, which were secured by little or no collateral, will receive as little as 15% of their claims. This result turned the municipal bond market on its head. Historically, the bond market has considered so-called "general obligation" bonds as the safest debt that a municipality can issue because the municipality can always raise taxes to make bond payments. Special revenue bonds, on the other hand, have historically been viewed as more risky because the bond payments could come only from the collateral securing them. In the Detroit case, however, "general obligation" bonds were considered unsecured claims that are typically among the last to receive any payment in a bankruptcy case. To-date, however, the gloom and doom predictions about the future of the municipal bond market have been unfounded.

7. Municipal reorganizations are expensive. The total bill for Detroit's bankruptcy professionals was around $170 million, or about $10 million per month. Jones Day, the city's lead bankruptcy counsel, is set to collect over $51 million in fees, which it claims equates to about $17 million in discounts from its normal billing rates. Dentons, the lead bankruptcy counsel for the official retirees committee, made over $14 million. Dozens of other law firms and consultants also worked on the case. A law firm was even appointed to review and monitor the other professionals' bills, and that firm has been paid over $500,000.

8. City services should improve. Residents and visitors to Detroit have long endured abysmal city services. The average response time for a Detroit police call in 2013 was 58 minutes, compared to 11 minutes nationwide. Forty percent of the city's street lights were burned out in 2013. As part of the bankruptcy restructuring, Detroit plans to spend $1.7 billion over 10 years in so-called reinvestment and restricting initiatives, including $400 million to demolish the 78,000 or so blighted or abandoned buildings, $91 million to replace police vehicles — more than half of which are over 10 years old — and $152 million in IT expenditures — about 80% of the city's computers still run Windows XP.

Thankfully, Detroit is *sui generis*. No one expects a flood of municipal bankruptcies based on the relative success (at least insofar as we can tell at this point) of Detroit's restructuring. Missouri's large cities, however, are not immune from some of the same pressures and problems that contributed to Detroit's financial melt-down.

2/11/2015

by David Warfield | Thompson Coburn LLP

(This article originally appeared in Missouri Lawyers Weekly.)

Atlantic City Emergency Manager Powers and Pre-Conditions for Filing Municipal Bankruptcy: Fox Rothschild

On January 22, 2015, New Jersey Governor Chris Christie issued Executive Order No. 171 through which he appointed an Emergency Manager for the City of Atlantic City. Drastic as this measure may seem, the Executive Order only grants the Emergency Manager the limited powers to analyze and assess Atlantic City's financial condition, recommend a plan to the governor within 60 days, negotiate with affected parties and consult with all stakeholders. The Emergency Manager is not empowered to directly run the city or make any unilateral decisions regarding Atlantic City's financial condition.

This alert outlines the powers granted to the Emergency Manager in the Executive Order, offers a brief summary of the statutes and other documents cited within and briefly discusses the pre-conditions necessary for a New Jersey municipal bankruptcy filing.

Emergency Manager Powers

The Executive Order grants the Emergency Manager the authority to perform three main tasks:

1. Analyze and assess the financial condition of Atlantic City;
2. Prepare and recommend, within 60 days of appointment, a plan to place the finances of Atlantic City in a stable condition on a long-term basis by any and all lawful means, including the restricting of municipal operations and the adjustment of the debts of Atlantic City pursuant to law; and
3. Negotiate with parties affected by the recommended plan for an adjustment of Atlantic City's debts and the restructuring of its municipal operations and, in [the Emergency Manager's] discretion, to recommend modifications of the plan as a result of such negotiations.

Executive Order No. 171 (January 22, 2015).

In support of these tasks, the Emergency Manager is granted wide discretion to consult with any and all parties necessary to secure the long-term financial stability of Atlantic City (i.e., the mayor and council of Atlantic City, creditors, representatives of bondholders, collective bargaining representatives, etc.). Id. And, the Emergency Manager is granted unlimited access to "all financial and other information, documents, and records of, or pertaining to Atlantic City." Id.

The Executive Order does not grant the Emergency Manager the power to make any unilateral decisions, despite his significant authority to investigate and assess Atlantic City's financial condition. Nor does the text of the Executive Order indicate that any power has been taken away from the mayor or city council. Thus, the mayor and city council remain in control of the city. The power to act on the Emergency Manager's recommendations is expressly reserved in the Executive Order for Governor Christie. The specific language of the Executive Order makes this undeniable, stating, "[p]ending receipt of recommendations from the Emergency Manager, I reserve the right to take such additional actions, invoke such emergency powers and issue such emergency order or directives as may be necessary…" Id. Accordingly, the Emergency Manager is limited to assessing, recommending, negotiating and consulting.

The Emergency Manager's powers should not be trivialized, even though they are less than the total control granted to the recent Detroit Emergency Manager. The Executive Order expressly permits the Emergency Manger to make ***any*** lawful recommendations he sees fit, no matter how drastic, in stabilizing Atlantic City's finances. Id. This includes recommending the restructuring of municipal operations and the adjustments of the debts of Atlantic City. Id. Although they may just be recommendations for now, it is likely that some, if not all of them, will be implemented in the future.

Statutes and Documents Cited in the Executive Order

There are four main citations referenced in the Executive Order.

The Local Government Supervision Act, N.J.S.A. 52:27BB-54 et seq.
The act permits the state to appoint a Fiscal Control Officer to oversee and supervise the finances of a municipality in unsound financial condition, of which Atlantic City has been subject to since September 2010. Under this law, the Local Finance Board has the authority to approve all expenditures and any incurrence of debt.

Local Finance Board Resolution of September 10, 2014.
The Local Government Supervision Act requires the Local Finance Board to vote annually for the continuation of oversight and supervision of a city, otherwise the oversight automatically expires. This resolution was simply the most recent vote by the Local Finance Board extending its supervision over Atlantic City for another year.

Executive Order No. 11. Executive Order 11, issued February 3, 2010.
This Executive Order by Governor Christie created the New Jersey Gaming, Sports and Entertainment Advisory Commission. The Advisory Commission "is charged with developing recommendations for the governor for a comprehensive, statewide approach regarding the issues and financial needs of New Jersey's gaming, professional sports and entertainment industries and making proposals for the implementation of its recommendations." Exec. Order No. 11 (Feb. 3, 2010).

The Advisory Commission's November 12, 2014, report.
Among a number of financial problems and recommended solutions, this report suggested that an Emergency Manager be appointed immediately with "extraordinary supervisory powers" under the act. The report also notes that to appoint an Emergency Manager, legislative action may be required to augment the existing statute.

Thus, no statute cited in the Executive Order specifically authorizes the appointment of an Emergency Manager.

Pre-Conditions to New Jersey Municipal Bankruptcy

While the Emergency Manager has said that it is too early to discuss bankruptcy, his background in restructurings and the appointment as his special counsel of the former bankruptcy lawyer who shepherded Detroit through its bankruptcy, has led to speculation that this alternative is clearly on the table. New Jersey municipalities cannot file for bankruptcy under the United States Bankruptcy Code without state approval. Section 109 of the code, titled, "Who may be a debtor," provides that a municipality must be specifically authorized to be a debtor by state law. 11 U.S.C. § 109(c).

New Jersey state law requires the state Municipal Finance Commission to approve the filing of a petition, as well as any plan of readjustment, prior to a municipality filing a petition in bankruptcy court. N.J.S.A. 52:27-40.

A petition to file for bankruptcy must also be authorized by an ordinance of the governing body of the municipality. N.J.S.A. 52:27-41. The governing body must adopt this ordinance by an affirmative vote of not less than two-thirds of the governing body's elected members. Id. After the ordinance is adopted, the municipality must submit the petition (and a plan of readjustment, if there is one) to the commission for approval. Ultimately, the commission possesses the discretion to approve any petition for bankruptcy or plan of readjustment. N.J.S.A. 52:27-43.

In the past 75+ years, only two New Jersey municipalities have even attempted to file for bankruptcy protection: the City of Asbury Park in 1936 and more recently the City of Camden in 1999.1 This is most likely the result of "New Jersey [having] one of the most significant set of laws, budgetary tools and state oversight programs, including aid funds from the state, to monitor local government finance…."2 The Division of Local Government Services in the Department of Community Affairs and its Local Finance Board serve as a constant check over the financial health of municipalities. There are numerous red flags under state law that identify when a municipality is experiencing financial difficulty, specifically designed to avoid a full-fledged bankruptcy. See N.J.S.A. 52:27-1 et seq. If any of the red flags are signaled, the state is empowered to step in and assume either partial or full supervisory control over a municipality's finances until stabilization.

Conclusion

The Executive Order primarily empowers the Emergency Manager to assess Atlantic City's financial condition while ultimately recommending solutions for long-term economic stability. Despite not possessing any actual "power" to take action, the Emergency Manager certainly has an abundant amount of influential "power" in shaping Atlantic City's economic future. For now, only Governor Christie can act on the Emergency Manager's recommendations while the mayor and city council remain in control of Atlantic City.

If you have any questions regarding this alert, please contact Gaming Practice Chair Nicholas Casiello, Jr. at 609.572.2234 or ncasiello@foxrothschild.com, or restructuring attorney Michael Viscount at 609.572.2227 or mviscount@foxrothschild.com.

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1 Shortly after the City of Camden filed for bankruptcy protection, the state sought to dismiss its bankruptcy petition because it had not received state approval prior to filing. Within days of filing the petition, Camden withdrew its bankruptcy petition in exchange for $62.5 million in immediate state aid.

2 Richard Keevey, New Jersey's Laws and Fiscal Safeguards Make Municipal Bankruptcy Unlikely, NJ Spotlight, Oct. 28, 2013, at 2.

Puerto Rico Lawmakers Remove Interest Cap from $2 bln Bond Deal.

Feb 10 (Reuters) – Puerto Rico's lawmakers have scrapped a statutory cap on the interest the island would pay on a roughly $2 billion bond deal in a bid to make it more appealing to hedge fund investors.

The move comes after a federal judge voided a local law that was key to Puerto Rico's efforts to carry out an orderly restructuring of its public corporations while securing funds for the central government.

The judge's ruling late on Friday that the Recovery Act contravenes federal law, raised questions about the strength of government-backed debt, sending benchmark Puerto Rico's bonds to record lows on Monday.

Eliminating the interest rate cap was "necessary to make viable a successful transaction in the capital markets because of current market conditions and the current value of Puerto Rico general obligation bonds," according to the legislation approved by the Senate.

The amendment eliminated a restriction on how large a discount Puerto Rico could offer buyers that would have established a floor of 93 cents on the dollar, but they kept a provision that limits the average coupon rate to 8.5 percent.

The elimination of the discount restriction removes what would have been a roughly 9.2 percent cap on the yield even though the debt is trading with yields at over 10 percent.

Puerto Rico's House approved the measure on Tuesday after the Senate backed it late the previous day.

Puerto Rico was planning to issue the bonds last year but delayed the sale due to disputes about raising a tax on oil needed to back them. Puerto Rico issued $3.5 billion of debt last March that was largely bought by hedge funds as risk-averse municipal bond investors stayed away.

The island's Government Development Bank (GDB) wanted to work around the interest rate cap by insuring $500 million of the deal, which would have helped lower the average coupon rate. But given the slow pace of negotiations with bond insurers, officials are looking at alternatives.

"We are studying other options, but the best option is to amend the legislation. It's a completely different market from last year," said Melba Acosta, president of the GDB, which acts as Puerto Rico's financing arm.

The GDB also wants lawmakers to index a hike in the petroleum tax to inflation, allowing them to increase the size of the deal to $2.95 billion. The petroleum tax is being used to back the debt.

"Without the (inflation) escalator this is just a patch for the GDB," said one New York based hedge fund investor who may participate in the deal and had been at the legislature all day meeting with lawmakers.

Feb 10, 2015 7:35pm EST

(Reporting by a Contributor in San Juan; Writing by Edward Krudy; Editing by Ken Wills, Bernard Orr)

IRS LTR: Water Distributor Improvements Constitute Facilities: Tax Analytsts

The IRS ruled that the private business use of proceeds from bonds issued by a water distributor for improvements and equipment does not exceed 10 percent and that other improvements and equipment constitute facilities for furnishing water under section 142(e).

Read the Letter (subscription required).

Citations: LTR 201507002

- US Municipal Credit Report, Fourth Quarter and Full Year 2014.
- The Bond Lawyer – Winter 2015
- GFOA GAAFR Supplement.
- Lawyers Recommend Disclosure Strategies in Wake of MCDC.
- What Obama's 2016 Budget Means for States and Localities.
- Best Bonds Seen Due Beyond 22 Years as U.S. Expands: Muni Credit.
- GFOA Executive Board Approves 10 Best Practices, Advisories.
- Recent Favorable IRS Guidance for Tax-Exempt Bond Financed Facilities: Ballard Spahr.
- *Board of Trustees of City of Omaha Police and Fire Retirement System v. City of Omaha* – Supreme Court of Nebraska holds that board of trustees of city retirement system had authority to hire actuarial consultant at city's expense, but lacked authority to hire private legal counsel unless there was a conflict of interest preventing city attorney from serving.
- And finally, for evidence of a little clerk-on-clerk violence going down behind the scenes at the Alabama Supreme Court, see the following: Murdock, J., filed opinion concurring specially; Moore, C.J., filed opinion concurring in the result; Main, J., concurred in the result; Shaw, J., filed dissenting opinion; Bryan, J., filed dissenting opinion. Kumbaya, anyone? Anyone?

EMPLOYMENT - ALABAMA

McDaniel v. Ezell

Supreme Court of Alabama - January 30, 2015 - So.3d - 2015 WL 403076

Candidate for position of battalion chief with city fire and rescue department brought action against city and city civil service board seeking review of decision of board to promote other candidates to position. The Circuit Court entered judgment on jury verdict in favor of candidate. City, board, and promoted candidate appealed.

The Supreme Court of Alabama held that candidate failed to establish that he was an aggrieved party within meaning of statute governing appeals from decisions of civil service boards, and therefore candidate lacked statutory right to appeal decision of city civil service board promoting other candidates to position of battalion chief within city fire and rescue department.

Candidate did not present any argument or evidence to establish that his legal rights had been adversely affected by the board's promotion decision, rather, his argument and evidence simply focused on his personal dissatisfaction with the way in which the board exercised its discretion pursuant to its internal rules and regulations.

Check this out:

Murdock, J., filed opinion concurring specially.
Moore, C.J., filed opinion concurring in the result.
Main, J., concurred in the result.

Shaw, J., filed dissenting opinion.
Bryan, J., filed dissenting opinion.

Can't we all get along?

EMPLOYMENT - CONNECTICUT

Town of Stratford v. International Federation of Professional and Technical Engineers, Local 134

Appellate Court of Connecticut - February 3, 2015 - A.3d - 155 Conn.App. 246

Town applied to vacate, and former town employee applied to confirm, an arbitration award that reinstated employee who had been terminated for swapping emergency medical technicians in his ambulance while transporting a patient. The Superior Court denied town's application to vacate and granted employee's motion to confirm. Town appealed.

The Appellate Court held that:

- Former employee's conduct in swapping emergency medical technicians while transporting a patient did not constitute a detrimental act and thus arbitration award did not violate public policy;
- Arbitration award did not limit town's legal right to manage contractual and disciplinary actions with regard to its employees;
- Town did not present sufficient evidence to establish partiality on the part of arbitrators; and
- Town failed to establish that arbitration panel did not provide a full and fair hearing by refusing to consider certain evidence.

Former town employee's conduct in swapping emergency medical technicians in his ambulance while transporting a patient did not constitute a detrimental act and thus arbitration award reinstating his employment did not violate public policy, where patient was not put in harm's way due to swap, patient was being transported to a hospital farther away at the request of family, the swap took no more than four minutes to complete, and such crew swaps took place routinely and were encouraged by town to avoid employee overtime.

SCHOOLS - LOUISIANA

Lapointe v. Vermilion Parish School Bd.

Court of Appeal of Louisiana, Third Circuit - February 4, 2015 - So.3d - 2014-919 (La.App. 3 Cir. 2/4/15)

Following her termination, tenured teacher challenged Section 3 of Act 1 of the 2012 Regular Session of the Louisiana Legislature as it amended La.R.S. 17:443 as unconstitutional because it violated the due process rights of tenured public school teachers.

The Court of Appeal found that the overall scheme of Section 3 of Act 1 of 2012 as it amended and reenacted La.R.S. 17:443 was unconstitutional, as it deprived a tenured public school teacher adequate due process before he or she is terminated. Pursuant to Act 1, only one person, the superintendent, makes the decision to terminate, the superintendent. While the teacher is allowed to oppose the charges brought by the superintendent, it is only after termination that a tenured teacher is allowed to submit her case, including witnesses, to a panel. While it would seem that a teacher receives due process at this post-termination proceeding because she is entitled to a full evidentiary hearing, the court found that this was not the case.

The court held that teacher was entitled to reinstatement and her full pay and any other benefits to which she would have been entitled had she not been terminated.

EMPLOYMENT - MARYLAND

Blue v. Arrington

Court of Special Appeals of Maryland - January 30, 2015 - A.3d - 2015 WL 404398

Employee, who was injured by co-worker while both men were acting within the scope of their city employment and who received workers' compensation for his injuries, brought a negligence action against co-worker for the same injuries. City filed, on co-worker's behalf, a motion to dismiss. The Circuit Court granted motion, and employee appealed.

The Court of Special Appeals held that:

- Local Government Tort Claims Act provision, stating that, if injury sustained is compensable under the Maryland Workers' Compensation Act, an employee may not sue a fellow employee for tortious acts, did not violate equal protection, and
- Local Government Tort Claims Act provision did not violate open access to courts provision of the Declaration of Rights.

UTILITIES - MASSACHUSETTS

Bay Colony R.R. Corp. v. Town of Yarmouth

Supreme Judicial Court of Massachusetts, Norfolk - January 29, 2015 - N.E.3d - 2014 WL 7693584

Railroad company brought action against town alleging breach of solid waster transportation contract. The Superior Court granted summary judgment in favor of company in part and entered judgment on jury verdict in favor of company. Town appealed.

The Supreme Judicial Court of Massachusetts held that:

- Federal Aviation Administration Authorization Act preempted state statute governing railroad operation of motor vehicles;
- Town owed duty under implied covenant of good faith and fair dealing to seek modification of Department of Environmental Protection (DEP) permit; and
- Waste acquisition agreement had not expired by operation of law.

Federal Aviation Administration Authorization Act preempted provision of state statute governing railroad corporations' operation of steamship companies, ferries, ferry boats, docks, motor vehicles, and aircraft that prohibited railroad from transporting solid waste by truck, due to provision allowing railroads to operate motor vehicles only in area served by railroad. Act expressly preempted state laws having connection with, or reference to, carrier rates, routes, or services, even if the law's effect on rates, routes, or services was only indirect, and provision regulated operation of motor vehicles by railroad companies for the transportation of freight.

Town owed duty to railroad company with which town contracted for solid waste transportation, under implied covenant of good faith and fair dealing, to make good faith effort to seek modification of town's Department of Environmental Protection (DEP) permit for operation of town's waste transfer station, which prohibited long-term trucking of solid waste to facility by transporter, following Commonwealth's termination of company's rail lease. Contract between town and company permitted company to transport waste by truck if rail lease was terminated, DEP prohibited long-term trucking of waste pursuant to town's manual of operating procedures, town, rather than DEP, had originally written provision of manual, and town was permitted to seek modification of permit from DEP.

LABOR - MASSACHUSETTS

City of Somerville v. Commonwealth Employment Relations Bd.

Supreme Judicial Court of Massachusetts, Suffolk - February 3, 2015 - N.E.3d - 2014 WL 7735812

City and school committee appealed decision by Commonwealth Employment Relations Board that city and the school committee had failed to satisfy their statutory bargaining obligations before unilaterally reducing contributions for retired employees' health insurance premiums.

The Supreme Judicial Court held that city and the school committee were not prohibited by statutes from unilaterally reducing their contribution to retirees' health insurance premiums without engaging in collective bargaining.

The legislature required retirees to pay full premium cost of their health insurance, subject to statutes, which, if accepted by a municipality, permitted it to pay a portion of the retirees' premiums, and the authority conferred on a municipality to decide whether and how much to contribute, within defined statutory percentages, would have been wholly undermined by an obligation to collectively bargain.

UTILITIES - MISSOURI

Dynasty Home, L.C. v. Public Water Supply District Number 3 of Franklin County, Missouri

Missouri Court of Appeals, Eastern District, Division Four - February 3, 2015 - S.W.3d - 2015 WL 456399

Dynasty is the owner and landlord of residential rental properties in a subdivision in Franklin County, Missouri. The District is a public water supply district that supplies water and sewer service to the premises of the subdivision. While the District will open new accounts for water or sewer service in the name of Dynasty or in the name of the tenant, Dynasty requires its tenants to procure service with the District in their own names.

When a tenant is delinquent in payment for services by thirty days, the District is required to notify Dynasty of the delinquency. The District only discontinues services when accounts are delinquent by forty-five days. When a tenant's service is discontinued for nonpayment, the District requires the property owner, Dynasty, to pay up to ninety days of charges and late penalties assessed to the account.

Dynasty requested that the District terminate service to the listed tenants whose accounts are delinquent by thirty days. The District refused these requests because Dynasty is not the named customer on the account.

Dynasty filed a petition for inverse condemnation against the District for its refusal to terminate service as Dynasty requested, thereby increasing Dynasty's liability for delinquent service charges and late penalties. The trial court granted the District's summary judgment motion and Dynasty appealed.

The Court of Appeals affirmed. The court rejected Dynasty's argument that because the statute deems it to be a furnishee, it should have the same right to terminate service that the occupant has. While section 250.140.1 does deem services to be furnished to both owner and occupant, the statute does not state, and it does not follow, that both parties share equal rights over the terms of the service.

Dynasty did not assert that it was a "customer" within the meaning of the rules and regulations, as it does not use the incoming water services itself. If Dynasty established the accounts in its own name, then billed the tenants for the water they used, it would be a customer, and would have the right to terminate services at its discretion. Dynasty instead chose that its tenants establish accounts in their own names. The tenants therefore have a contractual relationship with the District, and they have the right to terminate services pursuant to the terms of the contract. Dynasty had elected not to be a party to the contract, and therefore it did not have the same rights as the parties have to end services.

"Dynasty has not met its burden to show that the District's rules and regulations bear no reasonable relationship to the legislative objective or that they are unreasonable and plainly inconsistent with section 250.140.1. Because the District's rules and regulations on the termination of service are valid, and because section 250.140.1 does not grant it any additional rights or powers, Dynasty does not have the right to terminate service at its request. Therefore, Dynasty does not have a property right to be infringed, and it has not suffered a taking."

PENSIONS - NEBRASKA

Board of Trustees of City of Omaha Police and Fire Retirement System v. City of Omaha

Supreme Court of Nebraska - January 30, 2015 - N.W.2d - 289 Neb. 993

Board of trustees of city retirement system brought action against city, seeking declaratory judgment as to whether board had authority to retain an actuarial consultant and private legal counsel at city expense. The District Court entered summary judgment in favor of board. City appealed and petitioned to bypass the Court of Appeals.

The Supreme Court of Nebraska held that:

- Board had authority to hire actuarial consultant;
- Consultant was required to be paid by city; but
- Board lacked authority to hire private legal counsel unless there was a conflict of interest preventing city attorney from serving.

LABOR - NEW JERSEY

Teaneck Firefighters Mut. Benev. Ass'n Local No. 42 v. Township of Teaneck

Superior Court of New Jersey, Appellate Division - February 3, 2015 - Not Reported in A.3d - 2014 WL 7735838

Teaneck Firefighters Mutual Benevolent Association Local Number 42 (FMBA) appealed from a final decision of the Public Employment Relations Commission (PERC) that determined the Township of Teaneck and FMBA's past practice of permitting up to four firefighters off per shift was not mandatorily negotiable because it prevented the Township from meeting its minimum staffing levels.

The parties agreed that the scheduling of time off and work hours is, as a general principle, mandatorily negotiable and that managerial prerogatives are non-negotiable. The central issue in this dispute was whether permitting four firefighters off on each shift fell into the former or latter category. The answer involved a fact-sensitive determination which PERC resolved when it concluded that "the underlying issue in this case primarily involves a minimum staffing level determination, not the allocation of time off."

The appeals court affirmed, finding PERC's decision supported by sufficient credible evidence on the record as a whole.

MUNICIPALITIES - NEW MEXICO

Einer v. Rivera

Court of Appeals of New Mexico - February 2, 2015 - P.3d - 2015 WL 433648

Resident of San Miguel County, submitted a form petition to the County Clerk, requesting that she approve the form of the petition for circulation to qualified electors. The petition requested the San Miguel County Commission to appoint a charter commission providing for the "home rule" government of the county.

The San Miguel County attorney responded to the request, advising that the clerk declined to act on the petition because the petition seeking incorporation of the county and adoption of a charter was not authorized by law. Resident filed a writ of mandamus, requesting that the district court issue (1) a declaratory judgment that San Miguel County is a "municipality" under the Municipal Charter Act and that the form of petition met the requirements of Section 3–1–5(C); and (2) a peremptory or alternative writ of mandamus, compelling the clerk to approve the petition.

The Court of Appeals held that San Miguel County was not subject to the home rule charter process of the Home Rule Amendment of the New Mexico Constitution and the Municipal Charter Act. San Miguel County is not a "municipality" within the Municipal Charter Act or the Home Rule Amendment. The court further concluded that its holding did not violate the constitutional equal protection rights of resident.

UTILITIES - TENNESSEE

American Heritage Apartments, Inc. v. Hamilton County Water and

Wastewater Treatment Authority

Court of Appeals of Tennessee, at Knoxville - January 30, 2015 - Slip Copy - 2015 WL 399215

American Heritage Apartments, Inc. brought a lawsuit to protest a monthly flat charge in the amount of $8.00 per unit imposed by the the Hamilton County Water and Wastewater Treatment Authority (WWTA) on all of its sewer customers. The charge was instituted to fund a program designed to repair and refurbish private service laterals. American Heritage sought a declaratory judgment that the WWA had exceeded its authority by imposing an unjust and discriminatory charge.

The trial court granted summary judgment in favor of the WWTA, finding that because the Utility District Law of 1937 (UDL) provided an administrative procedure for contesting utility charges, no private right of action was available. The court further ruled that in the alternative, if a private right of action were allowed by the appeals court, American Heritage's complaint could be certified as a class action lawsuit. American Heritage has appealed.

The Court of Appeals reversed, holding that the trial court erred by applying the Utility District Law of 1937 to a non-utility district water and wastewater treatment authority. Thus, the trial court erred by applying the administrative remedies available to utility users under the UDL to the instant action and thereby erred by finding that American Heritage had failed to pursue said remedies.

The Court of Appeals affirmed the trial court's ruling regarding class action certification.

CONSTITUTIONAL LAW - UTAH

Summum v. Pleasant Grove City

Supreme Court of Utah - January 30, 2015 - P.3d - 2015 UT 31

After the United States Supreme Court, 555 U.S. 460, 129 S.Ct. 1125, rejected religious organization's free speech claim and the federal district court subsequently rejected organization's federal establishment clause claim, organization filed a complaint in state court, alleging that city had violated the religious liberty clause of the Utah Constitution. The Fourth District Court granted summary judgment in favor of the city. Organization appealed.

The Supreme Court of Utah held that religious liberty clause did not require city to install a proposed religious monument in a public park where a Ten Commandments monument was already situated.

Requiring city to erect a second religious monument would not render the allocation of public property and money to the two monuments neutral, displaying monuments that communicate the beliefs of only two religious viewpoints would not amount to an impartial distribution of public property among the spectrum of religious views held by Utah citizens, and because allocation of public money or property to a permanent religious monument was per se not neutral, the appropriate remedy for monument constituting "religious worship, exercise or instruction" would not be the forced installation of a second monument.

IRS Issues Guidance on New Clean Renewable Energy Bond Projects: Tax Analysts

The IRS has solicited (Notice 2015-12) applications for allocations of the remaining available amount of the national limitation for new clean renewable energy bonds under section 54C(a). The available amounts include forfeited amounts previously allocated under prior guidance (Notice 2009-33 and Announcement 2010-54).

Continue reading (subscription required).

TAX ANALYSTS
FEBRUARY 3, 2015

Improvements Underway for Exempt Bonds VCAP, Official Says: Tax Analysts

The IRS has made a number of improvements to its voluntary closing agreement program for issuers of tax-exempt bonds and will keep working to improve the program in 2015, Rebecca Harrigal, director of the IRS Office of Tax Exempt Bonds, said February 5.

Continue reading (subscription required).

Fred Stokeld

February 6, 2015

NABL: Looking Again at Rule15c2-12.

Earlier this week SEC Commissioner Luis Aguilar addressed the American Retirement Initiative's Winter 2015 Summit. The Summit, which was held at SEC headquarters in Washington, is a forum that focuses on how advisors can improve retirement outcomes for Americans. Commissioner Aguilar's remarks were entitled "Advocating for Investors Saving for Retirement" and he took the opportunity to focus on two areas where he believes improvements are necessary for investors to make informed decisions, one of which was disclosure in the municipal market.

Commissioner Aguilar acknowledges that the SEC has limited authority to regulate the municipal market and that situation will continue, as he puts it, "short of a Congressional fix to repeal the Tower Amendment." While he does not directly say so, his remarks seem to indicate that he believes such a fix is unlikely. However, he does say that "more things can be done to enhance disclosure practices in the municipal securities market" and that the SEC should "carefully consider" moving forward using the authorities that it has – regulating underwriters to ensure that investors have "certain limited disclosures" (i.e., 17 CFR 240.15c2-12, "15c2-12") and enforcing the antifraud provisions.

Although he acknowledged improvements in recent years though industry efforts and the introduction of the MSRB's EMMA system, his negative characterizations of the current situation were strong. He spoke of "the entrenched practice among issuers of municipal securities to provide inadequate disclosures" and "pervasive problems" in providing timely and complete continuing disclosures. He cited the enforcement actions against Kansas, Illinois, New Jersey and Kings Canyon Unified School District as support for the proposition that serious problems remain in municipal disclosure.

Among the specific concerns he mentioned were the "absence of detailed information" about an issuer's outstanding debt – specifically liens and collateral pledges – and the disclosure of bank loans.

Commissioner Aguilar mentioned in particular four of the recommendations that were made in the SEC's 2012 [Report on the Municipal Securities Market](#):

- Require fuller, and more specific types of disclosures in the initial offering documents, including the final terms of the offering and the price to be paid for the municipal securities in the initial issuance;
- Mandate more specific types of ongoing disclosures, including disclosures concerning the issuance of new debt;
- Provide a method to address noncompliance with continuing disclosure requirements; and
- Make disclosures easier to understand.

The MSRB recently submitted comments to the SEC calling for a review of 15c2-12 and mentioned some of the same concerns that Commissioner Aguilar raised. SIFMA also filed comments saying that SIFMA and its members "welcome a full and complete review of [15c2-12]", though saying that "fundamental flaws exist with regard to the structure" of 15c2-12 and that SIFMA and its members "are concerned that responsibility for compliance under [15c2-12] is not placed with those who have the best access to issuer information."

NABL WEEKLY WRAP
February 6, 2015

Puerto Rico Power Bonds Rise After Judge Throws Out Debt Law.

(Bloomberg) — Puerto Rico power bonds rallied after a judge threw out the island's debt-restructuring law, giving investors more power in negotiations with the electric utility.

Electric Power Authority securities maturing in July 2040 traded Monday at an average of about 58 cents on the dollar, the highest since May 28 and up from about 48 cents Friday, data compiled by Bloomberg show.

U.S. District Judge Francisco A. Besosa ruled Feb. 6 that the law that lawmakers passed last year would take away protections provided under the federal bankruptcy code, presenting an "irreconcilable conflict." The decision means the junk-rated power authority, called Prepa, can't dictate terms to investors, said Dan Toboja, senior vice president of municipal-bond trading at Ziegler, a broker-dealer.

"It gives Prepa bondholders a more powerful seat at the table if a restructuring becomes necessary," Toboja said from Chicago. "So perceived returns should be higher after the news."

The law that Puerto Rico lawmakers approved in June would have allowed some island agencies to negotiate with investors to lower their bond load. The commonwealth and its agencies owe $73 billion of debt, most of which is tax-exempt nationwide and held by investors around the country.

Creditor Agreement

Prepa and a majority of its creditors signed an agreement in August that puts off payment of bank loans. That contract ends March 31. The agency has asked for a new June 30 deadline, according to two people with knowledge of the request.

Prepa, which has $8.6 billion of debt, owes bondholders $400 million in principal and interest on July 1, according to Janney Montgomery Scott LLC. A debt restructuring of the agency would be the largest ever in the $3.6 trillion municipal market.

Puerto Rico plans to appeal the ruling, Secretary of Justice Cesar Miranda said in a statement Monday.
As Prepa bonds gained, commonwealth general-obligation bonds lost value, pushing yields to record highs.
General obligations maturing in July 2035 traded with average yields above 10 percent, the highest since they were first sold in March 2014. The debt changed hands for as low as 81 cents on the dollar.

The bonds have traded at distressed levels for more than a year as investors speculated that the island will fail to make timely debt payments as officials struggle to revive its economy. Puerto Rico's jobless rate, at 13.7 percent in December, was higher than in any U.S. state and more than double the national average.

If Prepa were to restructure, the commonwealth might direct money to the power agency to resolve investor negotiations, which could mean less cash would be available for general-obligation holders, Toboja said. Investors may also see a resolution of the power-utility debt before they know the fate of the general obligations, he said.

"We'll have a better sense of what's going on with Prepa before we know exactly how the general obligations all shake out," Toboja said. "That could take years."

by Michelle Kaske

February 9, 2015

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Judge Strikes Down Puerto Rico's Debt Restructuring Law.

Investors in billions of dollars of Puerto Rico bonds secured a major legal victory when a federal judge ruled that the commonwealth's recently enacted debt-restructuring law was unconstitutional.

In the decision Friday night, Judge Francisco A. Besosa of the United States District Court in Puerto Rico said the Puerto Rico Public Corporations Debt Enforcement and Recovery Act was void and enjoined commonwealth officials from enforcing it.

The recovery act was passed by Puerto Rico lawmakers last summer to enable the commonwealth to overhaul the debts and labor contracts of the island's struggling public corporations, including the Puerto Rico Electric Power Authority, which is known by its acronym, Prepa.

Like states, Puerto Rico cannot seek protection from creditors under federal bankruptcy law, leaving the commonwealth with few ways to straighten out the finances of troubled agencies like Prepa, which supplies electricity to the island's roughly 3.6 million people.

A group of Prepa bond holders, including BlueMountain Capital and OppenheimerFunds, that own about $2 billion of the power's authority's debt sued the commonwealth in federal court, arguing that the recovery act violated their contractual rights.

The ruling is "a major victory for municipal bondholders," Amy Caton, a lawyer for Oppenheimer and Franklin Mutual, another Prepa investor, said in a statement.

The passage of the recovery act in June rattled investors, particularly hedge funds, which had been buying up bonds issued by Prepa and other Puerto Rico entities at distressed prices. Investors feared that the new law showed how the government of Puerto Rico was willing to unilaterally change the rules, without warning.

The law spawned a spate of downgrades by the ratings firm Moody's, which had already rated the commonwealth's debt as junk.

On Friday, Judge Besosa denied the commonwealth's motion to dismiss the investors' lawsuit, saying that the recovery act was pre-empted by federal bankruptcy law.

"The commonwealth defendants, and their successors in office, are permanently enjoined from enforcing the recovery act," he wrote in a 75-page decision.

A spokesman for the Government Development Bank, which oversees the commonwealth's debt deals, said: "We will be reviewing all the aspects of the ruling rendered by Judge Francisco Besosa. In due time and after careful examination, we will decide on a course of action."

The ruling is a significant setback for the Puerto Rico government, which has been engaged in a high-wire act — trying to restructure the debts of its public corporations while still maintaining the confidence of the municipal bond market that it needs to keep financing its operations.

The recovery act allows for the revamping of debts at certain public corporations. But it does not apply to the commonwealth's general obligation bonds.

Prepa is mired in about $9 billion in municipal bond and other debt and has been struggling with high fuel costs, though the drop in oil prices has relieved some of that strain.

"This is a victory for the rule of law," said Laurence L. Gottlieb, chairman and chief executive of Fundamental Advisors, a hedge fund and private equity firm with investments in Puerto Rico debt. "But now the question is what's next in terms of dealing with Prepa's debt."

THE NEW YORK TIMES

By MICHAEL CORKERY

FEBRUARY 8, 2015

Lawyers Recommend Disclosure Strategies in Wake of MCDC.

WASHINGTON — The Securities and Exchange Commission's disclosure violation self-reporting program has highlighted that issuers and underwriters should take steps to strengthen their disclosure and due diligence procedures to protect themselves from SEC enforcement action, bond lawyers said Thursday.

Attorneys from Orrick, Herrington & Sutcliffe described the state of continuing disclosure in the aftermath of the SEC's Municipalities Continuing Disclosure Cooperation initiative during a webinar the firm presented in conjunction with The Bond Buyer.

The MCDC, announced last March, allowed both issuers and underwriters to voluntarily report, for any bonds issued in the last five years, any time they misled investors about their compliance with their continuing disclosure obligations. The SEC offered lenient settlement terms in exchange for the voluntary reporting.

Though the deadline was in September for underwriters and December for issuers, the SEC is still in the process of combing through the many submissions it has acknowledged receiving from deal participants. Elaine Greenberg, a partner in Orrick's Washington office, said that while it is likely many settlements will result from the MCDC, it may be some time before the SEC gets around to them all.

"The process is likely to take a good part of the rest of the year," she said.

The MCDC was based on the SEC's Rule 15c2-12, which requires dealers to review issuers' official statements in primary offerings and reasonably determine that the issuers have contracted in writing to disclose annual financial and operating information, as well as material event notices.

The Municipal Securities Rulemaking Board is among groups who called for the rule to be revisited and possibly overhauled after the SEC requested comment on the burdens the rule poses. Eileen Heitzler, a partner in Orrick's New York office, said the MCDC has resulted in a lot of discussion of disclosure requirements.

"There has been more discussion of what is or isn't material," Heitzler said.

Heitzler said the in-depth materiality analyses issuers and underwriters conducted could potentially be carried forward to help determine which, if any, instances of past compliance failure should be included in future official statements. But she cautioned that the SEC has still not ruled on the materiality of the disclosure failures reported under MCDC.

Robert Feyer, a partner in the firm's San Francisco office, offered some specific steps issuers could take to help with their compliance. Continuing disclosure agreements contained in offering documents should set specific dates for filing audited financial statements, rather than adhering to a common practice of promising to file a certain number of days after the end of the fiscal year, Feyer said.

"That makes compliance crystal clear," he said.

Feyer added that issuers should choose a date by which they can confidently complete their audits, and file unaudited information if the audited data is not available by the date in the continuing disclosure agreement.

Alison Radecki, another partner in the New York office, said it is important for both issuers and underwriters to emphasize written policies and procedures related to their compliance obligations, and to have training on the requirements at least annually.

The SEC has only publicized one settlement under the MCDC, a July 2014 action against Kings Canyon Joint Unified School District. That settlement was vague, annoying many bond lawyers. But the SEC has said future MCDC settlements would be more revealing of the commission's views on what should or should be disclosed as material.

THE BOND BUYER

BY KYLE GLAZIER

FEB 5, 2015 2:57pm ET

IRS EO Update: e-News for Charities & Nonprofits - February 5, 2015

1. Register for IRS Phone Forum: Employment Taxes for Exempt Organizations

Thursday, February 19, 2015 – 2 p.m., ET

Topics include:

- What are employment taxes?
- Independent contractors vs. employees
- Voluntary Classification Settlement Program
- Church and the clergy
- Electronic filing and payment options for employment tax returns
- Small Business Health Care Tax Credit
- Exempt Organizations: Additional Employment Tax Resources

Register for this phone forum.

2. Renew your PTIN

Recently, the IRS sent expiration notices to PTIN holders who have not yet renewed their PTIN for 2015. Anyone receiving a notice can still renew their PTIN online at any time, but their status has been changed to "expired" until they do so.

To date, approximately 635,000 tax return preparers have valid PTINs for tax year 2015.

If you do not renew your PTIN, you can no longer prepare federal tax returns for compensation. If you intend to renew your PTIN for 2015, you can renew online or submit a paper application.

Online renewal

You can renew online. If you need assistance, review our instructional videos for help.

Paper renewal

If you prefer, you can renew by paper using Form W-12, available via the IRS homepage. It will take

4-6 weeks to process.

3. New EO published guidance posted

[Review the following revenue procedures:]

- Revenue Procedure 2015-9, which concerns issuing determination letters on the exempt status of organizations under sections 501 and 521 of the Code.
- Revenue Procedure 2015-10, which concerns issuing determination letters and rulings on private foundation status under section 509(a) of the Code.

4. 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.

MSRB Updates Market Participants on Progress of Proposed Standards of Conduct for Municipal Advisors.

The Municipal Securities Rulemaking Board (MSRB) is updating the municipal advisory community and other market participants on the status of the development of MSRB Rule G-42, on duties of non-solicitor municipal advisors. As a reminder, the following steps of the rulemaking process have been completed:

COMPLETED STEPS

Request for Comment, January 2014
Draft MSRB Rule G-42 seeks to ensure that municipal advisors are fulfilling their fiduciary duty to their municipal entity clients and their duty of care toward all clients.

Review of Comments Received, March 2014 – August 2014
The MSRB received significant public comment on the initial draft rule and determined to seek additional public comment on a revised draft rule.

Second Request for Comment, July 2014
Input on the revised draft rule has significantly aided the MSRB in its further development of the rule.

The MSRB Board of Directors has approved the submission of a further revised version of the rule for the SEC's formal consideration. The process related to this formal submission is described below.

NEXT STEPS

Formal Filing to the SEC
The MSRB plans to submit a revised version of the rule for the SEC's formal consideration. The MSRB will distribute a link to the filed rule proposal to all registered firms.

Publication of MSRB Filing in Federal Register
When the SEC receives the filing, it will publish the MSRB's proposed rule in the Federal Register

for an additional public comment period, the length of which is determined by the SEC but typically is 21 days. The MSRB will notify registered firms about this opportunity for comment via email.

SEC Action on Proposed Rule
Following the Federal Register comment period, the SEC will have 45 days to act on the proposed rule, during which time the MSRB typically responds to all public comments received by the SEC. The SEC can seek up to a 45-day extension of its deadline to act, and then institute additional proceedings to determine what action to take that can last up to an additional 150 days.

Effective Date of MSRB Rule
The MSRB anticipates that the rule, if approved, would become effective six months following the date of approval. The information in this status update is being provided so that advisors may plan, as much as possible given the nature of the rulemaking process, for the effectiveness of any approved rule. Advisors are encouraged to familiarize themselves with the proposed rule that the MSRB files with the SEC to begin to consider implementation strategies and how they would prepare timely to comply with an approved rule.

SEC Budget Increase Would Bolster Exams.

WASHINGTON — The Securities and Exchange Commission's requested fiscal year 2016 budget of $1.722 billion would allow the commission to hire hundreds of examination staff and step up enforcement, as well as help the muni office coordinate with self-regulators.

The SEC justified its budget request this week in a lengthy document laying out goals for each of its divisions and explaining how a budget increase of 9% over the fiscal year 2015 enacted level of $1.574 billion would help the commission reach those objectives. Topping its priorities is a big boost to National Examination Program staffing, putting more boots on the ground to ensure that entities regulated by the SEC are in compliance with the rules.

"The SEC's responsibilities have increased significantly over the last few years across all fronts, and, at the same time, the financial markets and market participants have grown in size and complexity," SEC chair Mary Jo White said in a statement. "Providing the SEC with the resources it needs to effectively oversee these markets and participants benefits America's investors, businesses and our economy."

The SEC's budget is deficit neutral, because its expenditures are offset with fees collected from the securities industry rather than with money appropriated by Congress. Another regulator, the Commodities Futures Trading Commission, would operate under the same model under the Obama budget.

The budget request would allow the SEC to hire an additional 431 staff, the commission said, including 225 in the examination program. Many of them would be involved with examining investment advisers, though others would take part in the SEC's initiative to examine municipal advisors. The SEC in August announced a two-year exam program focusing on MAs who are not dealer firms and members of the Financial Industry Regulatory Authority. FINRA is taking point on examining dealer-affiliated MAs.

"I am pleased that the President's budget request would allow us to hire additional staff to enhance our enforcement and examination capabilities, provide greater oversight of our markets, add more experts to implement our expanded rulemaking responsibilities and permit the agency to continue to leverage technology to help fulfill its important mission," said White.

The budget would also support 93 new enforcement staff, the SEC said. The budget justification document explains that the SEC is involved in more litigation now than in previous years, leading to increased costs. The budget money would also support the mission of the Office of Municipal Securities, which plays a major role in working with FINRA and the Municipal Securities Rulemaking Board to develop and approve new rules affecting the muni market.

"In FY 2016, the OMS will continue to implement the final rules for municipal advisor registration by monitoring and improving the new registration system for municipal advisors, participating in the review of these registrations, advising the Office of Compliance Inspections and Examinations regarding examinations of municipal advisors, and providing interpretive guidance," the SEC said.

Obama's overall budget proposals have already met with a frosty reception from congressional Republicans, some of whom have declared them as dead on arrival.

THE BOND BUYER

BY KYLE GLAZIER

FEB 3, 2015 3:07pm

The Bond Lawyer - Winter 2015

The Winter 2015 issue of The Bond Lawyer is now available.

Featured articles:

"Federal Securities Law" by Paul S. Maco
Bracewell & Giuliani, Washington, DC

"Tax Lines" by Linda B. Schakel
Ballard Spahr LLP, Washington, DC

Download.

TAX - UTAH

Anadarko Petroleum Corp. v. Utah State Tax Com'n

Supreme Court of Utah - January 30, 2015 - P.3d - 2015 UT 25

Owner of oil and gas interests appealed decision of Tax Commission disallowing severance tax deductions they made for tax-exempt federal, state, and Indian tribe royalty interests.

The Supreme Court of Utah held that severance tax statute categorically excludes any federal, state, and Indian tribe interests from the net taxable value of an oil or gas interest for purposes of calculating the applicable tax rate.

Virginia House Passes P3 Safeguards.

Virginia's House of Delegates on Tuesday overwhelmingly approved a bill aiming to reduce risk associated with public-private partnerships.

House Bill 1886 Public-Private Transportation Act, introduced by House Appropriations Chairman Chris Jones (R) at the request of Gov. Terry McAuliffe (D), would require a newly formed P3 steering committee, which will include the staff directors of the House Appropriations and Senate Finance committees to declare a project is in the public interest before it can go ahead.

Once the committee has issued the finding, state transportation officials would be required to certify the risks, liabilities and other aspects of the deal have not changed since the committee gave its approval, reported the Richmond Times-Dispatch.

The legislation was prompted by concerns over several P3s:

- The U.S. 460 project which Virginia spent more than $300 million on the project before applying for the federal permits needed to begin construction. The project has yet to receive approval.
- A 58-year concession agreement with Elizabeth River Crossings to renovate the Downtown Tunnel and build the Midtown Tunnel connecting Norfolk and Portsmith. The state paid the private sector operator $200 million to prevent tolls from rising sharply and should the state build a new crossing, it would need to pay "alternative facilities charges."
- A 20-year lease for a private marine terminal in Portsmouth with a firm that sought to operate the entire Port of Virginia. The McAuliffe administration is seeking a lease extension or guarantee the state will own the asset after paying $50 million annually in rent.

The bill passed the House by a vote of 98-0.

NCPPP

By Editor February 5, 2015

IRS Seeks Applications for New CREB Volume Cap.

Read the Notice.

MMA Issuer Brief: Strong Jan Ends; Atlantic City Implications.

Read the Brief.

Municipal Market Advisors | Feb. 3

[Recent Favorable IRS Guidance for Tax-Exempt Bond Financed Facilities: Ballard Spahr.]

The IRS has released guidance in three areas of interest to entities that benefit from tax-exempt bond financings, particularly hospitals and educational institutions. This guidance creates new rules related to management contracts and participation by a nonprofit entity in an accountable care organization (ACO), final rules addressing requirements for charitable hospital organizations added by the Patient Protection and Affordable Care Act (ACA), and the creation of a standardized voluntary closing agreement program (VCAP) for issuers of 501(c)(3) bonds for the benefit of a 501(c)(3) organization that had its tax-exempt status reinstated after having it revoked for failure to file returns for three consecutive years. Highlights of the guidance are summarized below.

New Five-Year Safe Harbor for Management Contracts

For the first time in 18 years, the IRS made a significant change to existing IRS safe harbors under which management contracts do not result in private business use of tax-exempt bond financed facilities. Notice 2014-67, which was released on October 24, 2014, provides a new favorable five-year safe harbor from private business use for management contracts and expands the types of productivity awards that are permitted. The changes apply to contracts entered into or materially modified on or after January 22, 2015, but may be applied to contracts entered into before that date. The new management contract safe harbor has important immediate implications for borrowers or issuers of bonds who have entered into management contracts with service providers for their bond financed facilities.

New Bond Guidance on Accountable Care Organizations

Notice 2014-67 also is the first step taken by the IRS in addressing the tax issues raised by nonprofit organizations with tax-exempt bond financing participating in ACOs. According to the Notice, the participation of a 501(c)(3) hospital organization (or governmental entity) in the Medicare Shared Savings Program through an ACO will not result in private business use of the tax-exempt bond financed facility if certain conditions are met. The conditions set forth in Notice 2014-67 parallel the conditions in Notice 2011-20, which provided guidance related to the tax treatment for exempt organizations seeking participation in ACOs. These provisions apply to bonds sold on or after January 22, 2015, but may be applied to bonds sold before that date.

Final Section 501(r) Regulations for Charitable Hospitals

In December 2014, Treasury and the IRS released final regulations regarding the requirements charitable hospital organizations must meet under new section 501(r) of the Internal Revenue Code added by the ACA. Under section 501(r), charitable hospital organizations or entities seeking 501(c)(3) status face additional requirements to maintain their tax-exempt status. These requirements include conducting a community health needs assessment at least once every three years. The final regulations provide needed guidance regarding the potential effects on tax-exempt bonds in the event the charitable hospital organizations do not meet the requirements.

Voluntary Closing Agreement Program for 501(c)(3) Organizations

The IRS announced a simplified process for issuers of 501(c)(3) bonds to request a closing agreement in situations where the borrower received prospective reinstatement after its tax-exempt status was automatically revoked for failure to file an annual return for three consecutive years. The closing agreement amount for each bond issue covered by an agreement is equal to $500 for each calendar month or portion thereof in the period, starting with the month of revocation and ending in the month when the organization’s exempt status was reinstated.

Ballard Spahr will host a webinar on Friday, February 27, from 12:00 p.m. to 1:00 p.m. ET, on the recent IRS developments affecting tax-exempt bond financed educational institutions, which will include a detailed discussion of the new management contract safe harbor. Register for this webinar here.

The firm will also be hosting a webinar on recent health care developments on Thursday, April 16. Registration details will be distributed as soon as they are available.

February 2, 2015

by Vicky Tsilas and Linda B. Schakel

Attorneys in Ballard Spahr’s Public Finance Department have participated in every kind of tax-exempt bond financing. These financings include bond issues for hospitals and health care institutions, as well as universities, colleges, and student housing. For more information, please contact Vicky Tsilas at 202.661.2283 or tsilas@ballardspahr.com, or Linda B. Schakel at 202.661.2228 or schakel@ballardspahr.com.